

**North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee
July 19-20, 2004 Meeting**

Minutes

The Steller Sea Lion Mitigation Committee (SSLMC) convened July 19-20, 2004 at the Alaska Fisheries Science Center in Seattle. Some members of the Committee and the public tied in to this meeting via telephone. Chairman Larry Cotter reviewed the agenda (attached). Cotter briefly discussed adding to the agenda a discussion of the pollock "A" season opening dates, but this was postponed to a future meeting.

Members attending this meeting were: Chairman Larry Cotter and members Dave Benson, Julie Bonney, Tony DeGange, Wayne Donaldson, John Gauvin, Sue Hills, Chuck McCallum, Matt Moir, and Beth Stewart. Bill Wilson attended as NPFMC staff. Technical difficulties with the telephone system prevented some members from attending via teleconference. Kaja Brix attended from NMFS Protected Resources Division. Jeff Passer with NMFS Enforcement attended July 20 via teleconference. Other NMFS staff attending included John Bengtson, Rolf Ream, Lowell Fritz, Tom Loughlin, and several other NMML and AFSC staff. Several members of the public attended.

NMFS Letter and Report on Aleut Corporation AI Pollock Fishery Proposal

Kaja Brix from NMFS Protected Resources reviewed the agency's "initial determination" that the proposed changes in SSL protection measures in the Aleutian Islands region, if implemented, would likely adversely impact the western Distinct Population Segment (DPS) of Steller sea lions (wSSL); NMFS further concluded that, without additional mitigation (offsetting closure areas), formal Endangered Species Act (ESA) Section 7 consultation would be required to determine if these adverse effects would result in jeopardy to the wSSL or adversely affect its critical habitat. A copy of the agency's letter and analysis document is attached. Brix reviewed the agency's analysis of wSSL population demographics at rookeries and haulouts in the AI region, diet and prey data, historic pollock catch patterns in this region, and a test of the trade-off tool to evaluate how it might be applied to this proposal.

The SSLMC expressed concern over several parts of the NMFS letter and analysis:

- The Committee felt that the document contains some language and conclusions that seem to indicate that the agency has predetermined that any change in wSSL protection measures to facilitate a small vessel fishery in the AI region would adversely impact wSSLs and thus would trigger formal Section 7 consultation. The Committee was concerned that this effectively "shuts the door" on further informal consultations with NMFS on this issue, and precludes consideration of modifications to the Aleut Corporation proposal.
- NMFS used the preliminary "trade-off tool" in its analysis of the Aleut Corporation proposal, but the SSLMC notes that it has not discussed the tool nor worked to refine the various rating criteria included in its present form. The Committee expressed concern that since the tool has not been fully developed, and thus is in a preliminary form, the use of the tool in the NMFS analysis document is premature and results may be misleading.
- Some Committee members pointed out several places in the NMFS document where statements were not fully referenced or documented. The Committee felt there was an unclear relationship between the data contained in the tables and some of the written conclusions. The Committee's concern is heightened since this document, and the statements it contains, may be used in future

litigation. Some Committee members also felt that the document likely would not withstand review by the Council's SSC because of the unclear connections between the data presented and the conclusions reached.

- In several parts of the NMFS analysis document, NMFS refers to the AI pollock fishery closure (since 1999) as an opportunity for an adaptive management experiment that could be used in a test of the effects of a fishery closure on Steller sea lions. NMFS referenced the National Research Council recommendations, but the SSLMC noted that the Council is not pursuing this recommendation at this time. The Committee noted that the AI region is not currently part of such an experiment, has been open to a pollock fishery since 2003, and since 2003 has not been closed for SSL protection. The SSLMC felt that the document seems to imply an experiment is ongoing when it is not (see item 2 on p. 20 in the attachment). The NMFS document describes the AI region as “the only large scale closure of critical habitat and is a unique opportunity to look at the effects of fishery closures...”. The SSLMC felt that this implies that there is an ongoing experiment which is misleading and is contrary to Congressional intent that an AI pollock fishery be opened. The SSLMC was confused over a statement on p. 20, item 2, last sentence, where NMFS states that the loss of the AI closure would be a substantial change to the 2001 conservation measures.
- NMFS states that the proposed changes in the AI SSL protection measures would open “substantial areas to fishing for pollock” when, according to the Aleut Corporation proposal, the proposed openings are small when compared with the closures in the AI region. The Committee suggested that NMFS consider using GIS or other techniques to quantify the proposed openings in comparison to all other existing closed areas in the AI region.
- The Committee felt that NMFS' estimates of the expected number of vessels that might participate in an AI pollock fishery seem unrealistically high. The Committee recommended that the Aleut Corporation be contacted for an update on the vessels likely to fish pollock in the AI in the coming years; some Committee members believe that only one or two AFA vessels will participate in the early years and that small vessels will likely participate only when enough areas are open to fishing that are within a safe distance from shore.
- The SSLMC felt that NMFS should substantiate with references and data statements that wSSLs are taken in Russian herring fisheries. If this take is of sufficient magnitude, this could be a key impact to the wSSL population.

The SSLMC discussed how “trade-offs” might be accomplished in the AI region since currently there is no pollock fishery in the Aleutians and thus there are no options for a pollock fishery closure that might be proposed as a trade-off for the proposed open areas. The Committee discussed options for how trade-offs might be constructed for the Aleut Corporation pollock fishery proposal.

The Committee also felt that, if informal discussions of the AI pollock proposal will be allowed in the future, perhaps some mitigating alternatives or modifications to the proposal could be developed. The NMFS analysis document expresses concerns with spatial and/or temporal compression of pollock harvest, prey/diet issues, and forage ratio issues; the Committee felt it may be able to develop measures that could be implemented for the pollock fishery that would alleviate some of these concerns.

The SSLMC suggested that a list of concerns over the NMFS analysis document be forwarded to Dr. Balsiger for agency review and perhaps reconsideration or further discussion with the Committee. And the SSLMC also recommended that, since the Aleut Corporation proposal likely will not be acceptable in

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its current form, the Aleut Corporation should develop a revised proposal, with alternatives, that would address the concerns raised by NMFS and discussed at this meeting. The SSLMC asked the Aleut Corporation to review the NMFS analysis document and address the concerns outlined therein, and bring to the next SSLMC meeting their response and any alternatives the Aleut Corporation wishes the SSLMC to consider.

Informal Consultation Process

The SSLMC is aware that NMFS may open the ESA Section 7 consultation process on groundfish fishery impacts on wSSLs, perhaps as early as 2005 (since the 2001 Biological Opinion has a “shelf life” of about five years). The SSLMC feels that it should be prepared to participate in that process.

The Committee revisited its process for reviewing proposals for changes in Steller sea lion protection measures and how the Committee’s process meshes with the informal consultation process. The Committee felt that its process should include ample opportunity for “give and take” and exchange of alternative approaches with a goal of developing a preliminary set of proposed regulatory measures that likely would avoid concerns over jeopardy or adverse modification. As the Adak pollock fishery develops and as the Council prepares for a future consultation on Steller sea lion interactions with fisheries, the SSLMC felt it should be prepared to work through issues and alternatives. That process would be aided by having clear protocols for reviewing and recommending proposals for changes in SSL protection measures. The SSLMC felt that the preferred process should include the following elements:

1. Proposals accepted for review must be well documented and should clearly outline the intended goal.
2. Proposers must attend the SSLMC meeting(s) when a proposal is being discussed, and should be prepared to clarify or explain their proposal.
3. Proposers should consider preparing alternative “fall-back” proposal alternatives in case a proposal encounters negative reviews; these alternatives need not be revealed initially, but having alternatives may facilitate making progress toward the intended goal.
4. Proposal review should include an initial filtering process or “pulse taking” to gather the sense of both NMFS and the Committee as to the feasibility of the proposal; time and effort may be saved if an honest and transparent filtering process occurs early in the review.
5. Sufficient time should be allowed in the proposal review process for discussion, weighing of alternatives, reflection, and development of alternatives and options; this process may include use of models such as the proposed BUMP II trade-off model currently in development by the Committee and the Alaska Fisheries Science Center.
6. When the proposal review is complete, the Committee should present the draft proposal concept in writing, with adequate documentation, to the Council and eventually to NMFS for agency review; the NMFS review document similarly should contain a well-documented written initial determination substantiated with data as necessary.
7. The informal consultation process may include one or more iterations of steps 1-5.

Update on Aleutians East Borough wSSL Research Program

Beth Stewart briefed the SSLMC on the status of new wSSL research being conducted by the AEB in the general area of the Shumagin Islands. The AEB received a Congressional grant in 2004 to conduct these studies to enhance knowledge of wSSL distribution, abundance, and diet preferences. The AEB program involves sea lion counts on rookeries and haulouts and scat collection and analysis. The AEB plans to provide a report to the Council at its December 2004 meeting.

Vessel Monitoring System Issues

At its June 2004 meeting, the Council asked the SSLMC to discuss concerns raised by groundfish harvesters over use of Vessel Monitoring System (VMS) equipment. The issue raised is that NMFS regulations require VMS to be “turned on” when harvesters with Federal Fishing Permits that are endorsed to fish for Atka mackerel, P. cod, or pollock are involved in any fishing activity when any of these three fisheries is open or when these species might be incidentally harvested in other fisheries authorized to take them as bycatch. Jeff Passer with NMFS Enforcement explained that this requirement helps the agency to monitor a vessel’s activity relative to wSSL closed areas. Vessel owners and operators are concerned over the requirement that VMS must be operating when a vessel is fishing in any fishery (salmon, halibut, etc. included) during which time a Federal fishery for Atka mackerel, P. cod, or pollock is open, or when those species might be caught. Harvesters must pay for the cost of operating the VMS equipment regardless what species they are targeting; this places a cost and operations burden on these vessels when they not involved in the fisheries that require VMS for monitoring fishing locations.

Passer explained to the Committee that NMFS Enforcement requires the VMS data for “real time” monitoring and enforcement. Even when one of these three fisheries is closed, there are situations when these species may still be taken incidentally in other fisheries, and because of the possibility that even incidental catch may occur near or within wSSL closed areas, NMFS Enforcement requires a means to be sure vessels are not harvesting, even incidentally, these three species from wSSL closed areas. Passer emphasized that the VMS requirement is for wSSL protection and that NMFS is taking seriously its mandate to ensure there is no commercial harvest of species considered to be important wSSL prey items during closed areas and time periods.

Passer also noted that, while vessels endorsed for P. cod, Atka mackerel, and pollock may be fishing for other target catch such as salmon, halibut, etc., NMFS cannot discern using VMS alone the species actually targeted by these vessels. But VMS does allow NMFS to monitor fishing in or near SSL critical habitat areas which may prompt NMFS to follow up dockside to determine the fish species targeted. Also, since some areas are closed to transit for all vessels, not just those endorsed for P. cod, Atka mackerel, or pollock, VMS provides an important tool for monitoring transit.

The Committee discussed this issue, and Passer responded to questions including issues about the Argos VMS equipment phase-out, using “spare” Argos VMS equipment, un-endorsing (or inactivating) an FFP, use of VMS when dockside, and NMFS’ desires to eventually require VMS in all Federal fisheries.

Beth Stewart volunteered to prepare a written industry position paper on use of VMS equipment. This report will include a summary of vessel owners’ and operators’ concerns and suggestions for improving the program. Cotter asked that NMFS prepare a summary of data on the VMS issue. Both documents will be discussed further at the SSLMC’s September 8-10 meeting; after that meeting, the VMS issue will be summarized for the Council’s Enforcement Committee.

Update on SSL Research

Lowell Fritz from NMML provided an overview of new and ongoing wSSL research and introduced several presenters from NMML and AFSC who are involved in these programs. Tom Loughlin presented a summary of the recent review of the NMML telemetry program by the Center for Independent Experts. Jeremy Sterling briefed the Committee on the overall telemetry research program. Lowell Fritz gave an overview of the SSL population assessment program, and Tonya Zeppelin outlined ongoing SSL diet studies. Libby Loggerwell summarized the fishery interaction studies involving P. cod, Atka mackerel, and pollock. The presenters provided the Committee with various handouts and scientific papers that summarize past and ongoing research efforts in these fields of study.

Development of a Trade Off Tool

The SSLMC received a report (see attached) from Lowell Fritz on his June 2004 presentation to the Council's SSC on a concept for a new "trade-off tool" for evaluating future proposals for changing wSSL protection measures. The SSLMC also received a copy of the SSC's response to that presentation (the relevant excerpts from the SSC's June 2004 meeting minutes are attached). The main concept embodied in the tool would be a quantitative way of weighing an option for sea lion protection measure change against another option for change to see the net effect. The concept of no net loss or zero sum game is preserved in the trade-off tool concept. The SSLMC discussed the tool, and acknowledged a need to address SSC comments as the tool is further developed. The Committee suggested that the tool might also include a means of weighing a fishery by its SSL prey removal rate. The SSLMC discussed the need for time to develop this tool, what to call it (BUMP II was preferred for the time being), how to incorporate options for modifying a proposal, how to address geographic and temporal variability in SSL diet preferences as this relates to fishery removal of prey, how to address environmental variability and climate change, how to address whether a fishery is rationalized or not, and what role BUMP II should take in the overall process for weighing proposals. Sue Hills urged the Committee to use the tool judiciously as a filter, but not as the sole justification for accepting or rejecting a proposal.

The Committee will convene a work session to further develop BUMP II at its September 8-10 meeting. Committee members were asked to think about these issues and to bring concerns, ideas, etc. to the September meeting.