

**North Pacific Fishery Management Council  
Steller Sea Lion Mitigation Committee  
September 8-9, 2004 Meeting**

**Minutes**

The Steller Sea Lion Mitigation Committee (SSLMC) convened September 8-9, 2004 at the Alaska Fisheries Science Center in Seattle. Chairman Larry Cotter reviewed the agenda (attached) and the minutes from the last SSLMC meeting (available on the NPFMC website). Cotter noted that in the minutes of the last SSLMC meeting, reference was made to a letter that would be sent to NMFS regarding SSLMC concerns over their July 16, 2004 "initial determination" letter; Cotter stated that the SSLMC letter to NMFS was not sent, as it was judged inappropriate to correspond between this Committee and NMFS; such correspondence should occur between the Council and NMFS. Furthermore, the issues raised are now tempered by other events and are not as relevant at this time. The Committee members agreed.

Members attending this meeting were: Chairman Larry Cotter and members Julie Bonney, Shane Capron, Tony DeGange, Doug DeMaster, John Gauvin, Sue Hills (via teleconference), Terry Leitzell, Chuck McCallum, Bob Small, and Beth Stewart. Bill Wilson attended as NPFMC staff. Sandra Moller, Craig Cross, and Dave Fraser attended to present a revised Aleut Corporation proposal. NMFS staff attending included Melanie Brown, John Bengtson, Lowell Fritz, Tom Gelatt, Sharon Melin, and several other NMML and AFSC staff. Several members of the public attended.

**Update from Steller Sea Lion Recovery Team**

Bob Small gave a report on the status of preparation of a draft Recovery Plan for the eastern and western Distinct Population Segments of Steller sea lion (eSSL and wSSL) (outline of the Plan is attached). The Recovery Team has met periodically since early 2002, and Small reported that during the upcoming meeting in Homer on September 14-16, 2004, the Team would be assembling a first draft of the narrative of the Recovery Plan. Small further noted that he hoped the Recovery Team would have a first draft of the entire Recovery Plan available for internal NMFS review at the end of 2004 or very early in 2005.

The Recovery Plan will include recommendations from the Recovery Team on measures that may be taken to speed the wSSL and eSSL to recovery. The Plan will include specific recovery criteria, both qualitative and quantitative; these criteria will define the Recovery Team's recommendations to evaluate when the wSSL and eSSL may be delisted. Small noted that when the Plan is completed by the Team, the Plan is submitted to NMFS who may choose to implement the Plan, modify it, or reject it.

The schedule for completing the Recovery Plan is: to have a completed narrative by mid November 2004, a Recovery Plan implementation schedule drafted by the end of 2004, and an entire draft Plan available by early 2005, at which time the Recovery Team would seek an external peer review prior to finalizing the Plan.

Shane Capron noted that the Recovery Plan is considered an important milestone which will help to focus the agency's plans and schedule for re-initiating consultation on the interactions between the Alaskan groundfish fishery and the western DPS of Steller sea lions. Doug DeMaster added that there are a group of peer-reviewed publications on Steller sea lions soon to be available that supplement the available information on the decline in wSSLs which, as a body, will provide new data that may affect how NMFS views how the recovery of eSSLs and wSSLs might be facilitated.

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### **Discussion of Re-Designation of wSSL Critical Habitat**

Cotter asked about the process for re-designation of wSSL critical habitat (CH) – i.e. what is involved in revisiting the elements of CH? Bob Small reported that the SSL Recovery Plan will make recommendations on CH, in light of new data available since CH was designated about a decade ago. Small also reported that genetic studies conducted on the wSSL DPS show some population differentiation in the westernmost region of the wSSL distribution; however, Small reported that the Recovery Team is not recommending any change in the stock structure at this time until results of these genetic studies are published in the peer-reviewed literature. Capron noted that NMFS will not revisit the elements, definition, or extent of CH in Alaska until the Recovery Plan has been received.

### **Discussion of the Formal Consultation Process**

Capron outlined how informal and formal consultation processes differ. To date, the SSLMC has been involved in informal consultations on changing SSL protection measures in the Aleutian Islands as it has discussed the Aleut Corporation proposal, but that formal consultation would now be required if the proposal is moved forward. Under formal consultation, the entire wSSL DPS would be re-evaluated throughout its range in light of the proposed change in protection measures, and all current groundfish fishery regulatory measures in place to protect the wSSL DPS also would be reviewed. Capron noted that the review likely would be fairly narrowly focused on the proposed regulatory change (in this case the changes proposed by the Aleut Enterprise Corporation or AEC), but that those proposed changes would be reviewed in light of all current measures in place to protect the wSSL. The objective of this review is to determine if the proposed change, when considered together with all the existing protection measures in place, would cause jeopardy to the wSSL or adversely modify its critical habitat. The agency would be required to be certain that, based on available information, the “jeopardy bar” would not be exceeded if a new regulatory measure were in place.

Considerable discussion of this issue continued through the remainder of this SSLMC meeting. Some members of the Committee were concerned that by opening the current suite of protection measures to reconsideration, the agency could conceivably decide to change any of the existing measures that it judges are inadequate in protecting wSSLs, and that industry could face even more stringent measures in the resulting new Biological Opinion. Others understood that the formal consultation would be more narrowly focused on the proposal at hand, and would not deviate far from the measures proposed by the AEC. Capron suggested that legal input would be required from NOAA General Counsel to clarify the extent to which formal consultation on the AEC proposal could result in larger changes in the current set of SSL protection measures in the range of the wSSL DPS.

The SSLMC has previously questioned what criteria NMFS uses to require formal consultation versus informal consultation. Capron provided to the SSLMC an excerpt from the agency’s ESA Section 7 consultation handbook that outlines how a decision is made to require formal consultation (attached). Capron pointed out that the “trigger” for requiring a formal consultation is the agency’s determination that the proposed action “is likely to adversely affect” the wSSL DPS. Involved in that decision is consideration of beneficial, insignificant, and discountable effects; the definition of these terms includes language that would require NMFS to make a determination of “likely to adversely affect” the wSSL if any “take” could occur. Under the AEC proposal, where a portion of CH would be opened, a “take” could occur. Capron noted that the trigger to require formal consultation is light.

The SSLMC determined that perhaps mitigative measures might be offered in the AEC proposal that could allow the discussions to continue informally, and agreed to re-review the AEC proposal (see below).

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## **Aleut Enterprise Corporation Proposal Re-review**

Sandra Moller with the Aleut Enterprise Corporation (AEC) presented a revised proposal for changing wSSL protection measures as they relate to the AI pollock fishery in two areas near Adak. The elements of this proposal, as modified by the AEC, are outlined in a letter from Moller to Chairman Cotter dated September 1 (attached). Moller's PowerPoint presentation also is attached. The objective of the AEC proposal is to provide pollock fishing areas close to shore and to Adak so that small trawl vessels might operate more safely. Moller pointed out that these proposed areas would require opening some areas of wSSL CH. These areas are where pollock CPUEs have been high in past directed fisheries, and are close to Adak or to areas where small vessels can find protection from bad weather, and thus would be safer for small vessels to fish in the future AI pollock fishery. Moller reported that the AEC has changed their proposal since it was first provided to the SSLMS for consideration during its July 19-20 meeting. The original AEC proposal would close to P. cod trawling the area around Atka North Cape from 3 to 20 nm; the revised AEC proposal now offers a smaller P. cod trawl closed area, from 3 to 10 nm. The current proposal retains the originally-proposed opening of CH in the Kanaga Sound area ("the box").

Moller also proposed that the AEC could mitigate the major concerns expressed by NMFS in their July 16 letter. Moller outlined the AEC's suggested mitigation in four areas: potential spatial compression of harvest, temporal compression of harvest, local depletion of the wSSL prey field, and disproportionate harvest rate. Specifics of these proposed mitigation measures are continued in the attached PowerPoint slide presentation. Moller stated that the AEC would like to move forward with this proposal so that these measures could be implemented for the 2006 fishing season.

Capron noted that, while the AEC's revised proposal has some good ideas to mitigate the concerns expressed in the agency's July 16 letter, the fact remains that the under this proposal the pollock fishery would be changed to allow fishing in CH, within the 3 to 10 nm zone around several haulouts. This would not likely change the agency's concerns over potential adverse impacts and likely would not change the agency's previous determination of "likely to adversely affect" and thus the revised proposal would probably require review in a formal consultation process.

The SSLMC discussed the revised proposal and the elements that would trigger the need for formal consultation. The Committee also discussed what options might be available to the AEC as appropriate trade-offs for the proposed new open areas in "the box" and around Atka North Cape. Discussion also included the "likely to adversely affect" trigger for formal consultation; the Committee also discussed that, under formal consultation, the jeopardy bar would be the primary consideration if the AEC proposal were to be continued under formal consultation. While there are some good ideas in the AEC proposal, the SSLMC is constrained by the Council's mandate to not enter into formal consultation. The SSLMC concluded that it is at a stalemate and must report to the Council that no further progress can be made unless the Council relaxes its mandate of no formal consultation.

The Committee discussed the pros and cons of a formal consultation process, including the fear that changes in fishing regulations might be recommended in other regions within the distribution of the wSSL DPS with the potential adverse impacts further regulatory change might have to the Atka mackerel, P. cod, and pollock fisheries. What would happen if NMFS determined that to avoid jeopardy and adverse modification, more onerous changes would be required for these fisheries? Or could the formal consultation be limited to a narrowly-focused review of only the proposed changes in the Adak area?

The Committee was divided in its opinion of whether to recommend that the Council allow continued work on the AEC proposal. The Committee drafted a statement that conveys the concerns discussed above (see attached), but Terry Leitzell did not support this statement; the remainder of the members of the Committee present at this meeting did support this statement. The statement notes that "The SSL MC believes that development of an AI pollock fishery in CH for the wSSL cannot occur without a formal consultation. For the SSL MC to work on the proposal, the Council would have to change the

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Committee's Terms of Reference. The SSL MC recognizes that there are concerns regarding the consequences of formal consultation. Therefore, the Council should request guidance from NOAA General Counsel concerning potential legal risks of this strategy." The Committee's statement continues with a suggested timeline and suggested elements of continued work on the AEC proposal should the Council wish to proceed.

[During the discussions of the AEC proposal, the SSLMC received a report on a winter 2002 pollock survey in the Bering Sea conducted by Japanese researchers. The Committee was particularly interested in the echo integration midwater trawl surveys in the Aleutian Islands, particularly the data from the AEC proposal area. This report is attached.]

### **VMS Issues**

At its June 2004 meeting, the Council asked the SSLMC to review concerns that have been expressed by fishermen regarding the requirement to use VMS equipment when operating Federally-licensed fishing vessels or fishing for species other than Atka mackerel, P. cod, or pollock. The SSLMC initiated this discussion at its last meeting, and requested data from NMFS that would scope the problem. NMFS made available to the Committee some data on numbers of VMS-related violations (see attached e-mail from Jeff Passer dated August 6), an Overview of the Federal Fishery Permit (FFP) Program (also attached), and the numbers of Federally permitted vessels with endorsements requiring use of VMS by fishery and vessel length category (see attached data from Jessie Gharrett). The Committee also reviewed the Federal regulations language on VMS requirements (attached excerpt from the Federal Register) and a statement from industry outlining the concerns over the current VMS regulations prepared by Beth Stewart (also attached).

The SSLMC discussed the above data and reviewed the issue and some potential measures that might be taken to alleviate some of industry's concerns. Industry's principal concern is the requirement that Federally-licensed and endorsed vessels must operate VMS equipment when not involved in the three fisheries that must comply with SSL closed area restrictions. Industry believes that VMS was intended to be a tool to more closely monitor vessel activity near SSL critical habitat and not as a tool to monitor vessels engaged in other fishing activities. Industry believes that, if NMFS and the Council wish to expand the use of VMS for purposes other than compliance with SSL protection measures, the Council should debate this issue directly and then take appropriate action.

The SSLMC concluded by recognizing that the Council instructed the Committee to investigate the VMS concerns and provide a report to the Enforcement Committee. The SSLMC has outlined the issues of concern and has collected data that help to define the extent of this concern.

### **Development of a Trade-off Tool for Evaluating Future Proposals – BUMP II**

DeMaster summarized the history of development of a revised trade-off tool, including a description of how it might be used and a summary of the SSC's reaction to the tool from their June 2004 meeting. The tool has been termed "BUMP II" by the SSLMC. A description of how the tool might be constructed is provided in the attached; also attached are the minutes from the SSC's June 2004 meeting where the SSC provided its comments on the trade-off tool.

Doug DeMaster outlined for the Committee some of the reasons for having a tool that can be used to evaluate future proposals for changes in wSSL protection measures. This tool could be used to screen proposals and to weigh the benefits and losses to wSSLs. DeMaster cautioned that this tool would not be the only way proposals would be evaluated but would be just one of several considerations the SSLMC would give to proposals. DeMaster believes that a tool may become very useful should NMFS proceed with a new consultation on the Alaskan groundfish fisheries.

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The concept behind BUMP II is to have a simple, transparent way to compare proposals and to help develop an administrative record for decisions the Council will ultimately make on these proposals. The SSLMC endorses the concept of a tool, but recommended that there be more discussion of the assumptions that are made when using the tool and applying its rating criteria. The Committee also recommended additional work on the rating criteria for various gear types and how (or whether) two (or more) different gear type fisheries can be compared to each other or weighted relative to a specific proposal. DeMaster cautioned that some kind of fishing gear scoring scheme will be needed to evaluate relative impacts in zones around wSSL rookeries and haulouts. Sue Hills also cautioned that the SSC would like to see how fish removal rates affect wSSLs at specific sites, but that this linkage may not be available in current research data; in such cases, the assumptions in BUMP II must be made evident. Hills recommended that BUMP II be viewed as a negotiating tool, and a spatial trade-off tool, recognizing that it won't be used to evaluate all the possible factors that may affect wSSLs. Hills felt that being clear about the assumptions underlying the tool at the outset will likely garner more support from the SSC.

The Committee also discussed whether individual SSL rookery trend data or broader subregional (groups of rookeries and haulouts) trend data should be used. Julie Bonney suggested that the Committee consider how the use of BUMP II might be affected by the Council's fishery rationalization goals.

Cotter recommended that a SSLMC subcommittee, to be appointed by Cotter, continue developing BUMP II, taking into account the discussions and recommendations from the SSLMC and particularly the input provided from the SSC at its June 2004 meeting. The subcommittee will include AFSC scientists and representatives from various gear groups.

### **New Proposals**

Paul MacGregor and Glenn Reed reported that the BSAI pollock industry sector wishes to have the "A" season start date moved back so it would begin earlier than January 20. Pollock roe quality is peaking earlier, and the pollock fleet would like access to higher quality fish by starting the "A" season earlier. There may be wSSL issues associated with an earlier start date, and MacGregor recognized that the SSLMC may be involved in this issue if the Council moves the proposal forward. The pollock industry plans to make this request of the Council at its October 2004 meeting.

MacGregor also reported to the SSLMC that he has some ideas on how the AI pollock allocation to the Aleut Corporation could be "funded" in a manner different from the Council's June decision. Currently the AI fishery would be funded from the EBS Pollock TAC. MacGregor plans to bring to the Council some ideas for alternative funding mechanisms.

In light of the above new proposals, Julie Bonney raised the issue of how proposals are to be brought to the Council. Other industry sectors may have ideas or requests. The SSLMC noted that these issues can be brought to the Council at any time, but the Council makes the decision on whether to involve the SSLMC. Currently the SSLMC has no further charge other than the Aleut Corporation proposal. The SSLMC recommended that this issue – what is the process for accepting proposals for further consideration – be discussed with the Council in October.