

**North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
February 15, 2006
Alaska Fisheries Science Center, Seattle**

Minutes

The Steller Sea Lion Mitigation Committee (SSLMC) convened at the Alaska Fisheries Science Center on February 15, 2006. Committee members present were: Larry Cotter (Chairman), Jerry Bongen, Julie Bonney, Sam Cotten, Ed Dersham, Kevin Duffy, John Gauvin, John Henderschedt, Sue Hills, Terry Leitzell, Max Malavansky, and Art Nelson. Also present were Bill Wilson (Council staff), Doug DeMaster and Shane Capron (NMFS), Jon Pollard and John Lapore (NOAA GC), and Melanie Brown (NMFA AK Region staff).

Committee members were introduced and members of the public attending the meeting were acknowledged. Mr. Cotter noted that Oceana, WWF, and other conservation groups were invited to participate, but declined. Doug DeMaster and Shane Capron are advisors to the Committee. Mr. Cotter reported that Dustan Dickerson has resigned from the Committee.

Chairman Cotter reviewed the agenda (attached), the general responsibilities of the Committee, and the work schedule for the coming months. The consultation time line is presented in a handout and will involve work through 2006 and 2007 with any changes in the commercial fishing season implemented for the 2008 season. Mr. Cotter noted that this committee's work needs to be done and recommendations provided to the Council by early 2007. Future meetings already scheduled are 25-27 April and 16-18 May, both in Seattle.

Bill Wilson discussed the Council's motion to request reinitiation of consultation. Handouts were provided as background for Committee members: maps of the regulatory areas of the GOA and BSAI, maps of SSL critical habitat for the western and eastern DPS of SSL, a discussion paper on the Section 7 consultation process that was provided to the Council in December 2005, the Council motion recommending reinitiation of consultation, and the November 29, 2005 NMFS response that outlines their recommended approach to the consultation process.

ESA Section 7 Consultation Process Overview

Shane Capron provided an overview of the history of consultations on the groundfish fisheries, and outlined the process for this upcoming consultation. The process will begin with the development of a Biological Assessment (BA). The BA will provide an overview of the action (the FMPs, their amendments, and implementing regulations), the ESA-listed species that are subjects of the consultation, and an assessment of fishery effects on these species. When accepted by the Protected Resources Division of NMFS, the consultation will begin. The goal is to evaluate the proposed action as defined in the BA and make a determination whether the action is likely to jeopardize the continued existence of ESA-listed species or adversely modify or destroy their designated critical

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habitat. The consultation will include Steller sea lions and may include other listed whales (e.g. northern right whale and critical habitat) or sea turtles. NMFS is conducting a separate consultation with the Northwest Region of NMFS on ESA-listed salmon Evolutionarily Significant Units (ESUs).

Mr. Capron and Dr. DeMaster noted that under the ESA, Section 7 can have considerable impact on Federal actions. Section 7 prohibits a Federal action to result in jeopardy or adverse modification of critical habitat (CH) for any ESA-listed species. Section 10 of the Act pertains to non-Federal actions. The intent of Section 10 is to provide a mechanism by which non-Federal organizations or individuals can consult under the ESA, reduce their take of listed species, and acquire an incidental take permit to legally take listed species. The goal of Section 10 is to reduce the overall level of take of listed species.

The time line for the Section 7 consultation provides for a draft Biological Opinion (BiOp) for public review by August 15. At this point the Council has the opportunity to review the proposed action and the initial determinations in the BiOp and decide whether they would like to make changes to the proposed action (groundfish fisheries). If the Council chooses to make changes to the action, then the SSLMC would be involved in the development of those changes. The Council would need to take final action on an amendment to the SSL conservation measures by April 2007 for implementation by January 1, 2008. NMFS will then review any proposed changes to the action and issue a final BiOp some time in late summer or fall of 2007. The SSLMC will have an opportunity to review and comment on the draft BiOp after it is released for public review. Thus, prior to its issuance, the SSLMC should become familiar with the current available scientific information regarding the status of SSLs and the threats to their recovery.

SSLMC Interaction with the Consultation Process

Chairman Cotter reviewed procedures for SSLMC interaction with the consultation process. The Committee will track the consultation process and will review the draft BiOp and will develop proposals for changes to fishing regulations based on public input. To do so, the Committee will be provided information on SSL counts and trends, results from the Fishery Interaction Team (FIT) studies, and other pertinent information on SSLs and other listed species. The Committee will review the draft SSL Recovery Plan if available, a report contracted by the Council on recently-published literature on SSLs, and a variety of other documents (see list below). This information review will provide the perspective the Committee will need to review the BiOps and develop proposals. The Committee also will explore the development of a trade-off tool which could be used to weigh proposals for changes in SSL protection measures.

The SSLMC discussed the proposed action – which is the prosecution of the groundfish fisheries of the GOA and BSAI, including State parallel fisheries for groundfish. The consultation will exclude State-managed, non-parallel groundfish fisheries which are not accounted for in the Federal TAC. The State of Alaska has indicated its desire to have State parallel fisheries included. Therefore, NMFS intends to send a letter to the State

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inviting the State to participate in the consultation. The State must then request to have the parallel fisheries considered in the consultation.

The Committee discussed what is entailed in determining which fisheries are included in this consultation. For a non-Federal action (e.g. the State parallel fisheries) there must be a nexus between that action and a Federal action. Common examples of a nexus include actions which include substantial Federal funding or actions that are linked such that they cannot be easily separated.

The role of SSLMC was discussed in further detail. The process will undoubtedly evolve over time as the Committee becomes more familiar with available information and is briefed on progress in developing the BiOp. An initial task is for the Committee to become familiar with new scientific information available on SSLs and how groundfish fisheries interact with SSLs. The Committee will review the draft SSL Recovery Plan when it is available, and eventually will review the draft BiOp. Just how the SSLMC will interact with the process of preparing the BiOp is yet to be determined, but likely will evolve with time. For now, the SSLMC's charge is to get up to speed on the issues, background, various laws that affect the process, and documents that will be available in the coming months. The immediate task will be to receive briefings and updates on SSL biology and fishery interactions, scat analyses, pup trends, and telemetry, all of which will provide the SSLMC with a knowledge foundation. Eventually, the SSLMC will solicit proposals for regulatory change, perhaps even before the draft BiOp is completed, and eventually be in a position to review the draft BiOp and recommend changes to the action.

There was some discussion of how actions the Council is contemplating fit into this process. Some of these actions may involve potential effects on SSLs, but the Council is steering away from some alternatives if they potentially trigger reinitiation of formal consultation. This raises the question of how to deal with any new actions the Council takes between now and the time the BiOp is finalized. Mr. Capron noted that the BA describes the proposed action, including actions that are likely to occur. Some discussion focused on alternatives in Amendments 80 and 85 that could trigger formal consultation; if not adopted, then some of these alternatives could come to the SSLMC in the future.

Other Species in the Consultation Process

The SSLMC may also need to review concerns over northern right whales. Mr. Capron recommended that the SSLMC wait until the BA comes out to see if a preliminary determination has been made whether fisheries are likely to adversely affect this or other species, and then determine the SSLMC's review responsibility. The Council likely will expect recommendations from the Committee on issues involving any species included as part of the consultation.

Mr. Capron noted that there will likely be a separate consultation with the USFWS on sea otters. NMFS has drafted a BA to provide to the USFWS, but the consultation hasn't started yet. Also, a separate consultation will occur on salmon with the NW region of NMFS.

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SSL Recovery Plan

Mr. Capron provided an overview of progress on drafting a Recovery Plan for SSLs. A draft plan will be reviewed by the Recovery Team in March 2006, and hopefully a draft Recovery Plan will be ready for public review in May or possibly later. At that time, the SSLMC should review the plan and provide comments to the Council. Mr. Capron noted that the Recovery Plan will contain a review of SSL information that will be helpful to the SSLMC, and will also contain recovery criteria that NMFS will use to determine when SSLs are recovered and may be downlisted to threatened or delisted.

The recovery criteria in the Plan could have some influence on determinations made in the BiOp. The Plan's recovery criteria will help NMFS determine whether an action is likely to jeopardize SSLs or not. In short, the Recovery Plan will be a great resource for the Committee.

Jon Pollard reviewed a 2001 letter from NOAA GC on issues associated with the ESA, BiOps, establishing RPAs, and the Jeopardy and Adverse Modification standards. He noted that the 9th Circuit invalidated the standard on adverse modification of CH, as they ruled it was too permissive. A new policy is now applied in the interim, while NMFS' new policy is being developed with the USFWS. The new policy ties the test to the recovery of the species (if it diminishes the quality of the habitat, such that recovery will be made less likely or more slowly). John Gauvin asked about the impact of the court challenge to the standard for adverse modification of CH. Mr. Pollard noted that courts overruling a determination would not necessarily lead to a new decision on JAM.

NMFS has developed some new guidelines on what constitutes Adverse Modification; Mr. Capron will distribute copies to the SSLMC. Recovery of an endangered or threatened population is defined as a state when the animal no longer has to be listed. Mr. Pollard also reviewed what constitutes arbitrary and capricious decisions on JAM, and the importance of a written record documenting the path the agency takes in arriving at their decision.

Role of the SSLMC in the Consultation

Mr. Cotter noted that the SSLMC would have the BA available for our next meeting in April, and perhaps the draft Recovery Plan. The SSLMC will provide a public forum for discussing and tracking the process. The Committee will review the SSL Recovery Plan when available, and shortly the BA. Eventually the Committee will receive proposals for changes in regulations. Mr. Cotter outlined that proposals will have to be carefully crafted and comply with a specified format. But first, the Committee needs to review new information, new scientific data, and view this information in light of the current way fisheries are managed. The draft BiOp will contain a review of this information, and likely will define how current fishery management comports with all the new information and where there may be room for modifications.

John Henderschedt noted that there is still a concern over the dichotomy of the Council taking an action now to avoid affecting any change to SSL protection measures versus waiting until this consultation is done and then making the decision. For example, the

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Atka mackerel fishery would change to a coop fishery but must retain platoons to keep away from SSL problems. The P. cod split (BSAI) may be more problematic; the Council still is trying to attain the season splits for trawl and longline fisheries, yet do the split that is more efficient and has other benefits. The consensus is that, after the Council makes its final decision on Amendments 80 and 85, it is possible that the SSLMC will receive proposals from the Atka mackerel fishery or the P. cod fishery to make more changes to improve these fisheries. At that time the SSLMC will have the draft BiOp and other information, and may be able to make recommendations for further changes that would benefit the fisheries and not adversely impact SSLs.

Mr. Capron noted that one goal of the consultation is to develop a BiOp that allows for more flexibility in making future changes to the fisheries that don't require reinitiation of consultation. Mr. Pollard noted that the scope of the BiOp has to be the same as the scope of the action. A programmatic BiOp is very broad, typically, but in this case the action (FMPs) is both broad and narrow. Ideally, the FMB BiOp should be broad to provide for flexibility – but that will be a challenge. FMPs have both general programmatic framework provisions like TAC setting, as well as specific measures like a closure of a specific area for a specific gear type. Thus an FMP level consultation is both at a programmatic level and a specific level. Melanie Brown noted that some provisions are only minimally addressed in FMPs, like SSL measures, because the details are specified in regulations. Mr. Capron noted that the Committee will have to wait until the draft BiOp is completed before the SSLMC can fully consider the impacts of changes to the current set of conservation measures and the implications for decisions in the consultation.

John Gauvin suggested that it would be helpful to have guidance in a BiOp about what the goals of protecting SSLs are; e.g. fish removal rates in an area, rather than weighing the impacts on SSLs from a particular gear type (which assumes a removal rate). The Committee would benefit from guidance on what are the important issues that cause fisheries to compete with SSLs. That is, the SSLMC may be able to do things differently and attain a SSL protection goal while still allowing a fishery to proceed.

Public Comment

Paul MacGregor noted that the Council's motion contemplated two BiOps; the first would be at an FMP level, which would re-look at all management measures and review the new SSL information acquired since 2000, and revisit the main issues: competition for prey, localized depletion, etc. After this process, the first BiOp would be drafted based on this review. Then a second BiOp would be prepared, at a project level, trailing the FMP BiOp; here a tradeoff tool would be used to craft new regulations based on proposals from the public. Mr. MacGregor added that the FMP level BiOp is a much bigger project (e.g., every component of a fishery), while the project level is a smaller BiOp that evaluates specific actions. The latter is easier and less of an undertaking. He noted that it is the fear of initiating consultation that the Council has tried to avoid.

Mr. Capron responded that the timeline to accomplish two BiOps isn't sufficient to meet the Council's implementation date. There isn't enough time to do an FMP consultation, with a draft and final BiOp, and then do another project-level BiOp (including a draft and

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final), and still have regulatory measures in place by January 2008. He added that the ESA did not envision a “tandem” process for two separate BiOps. Mr. Capron added that in 2000 we set a precedent with the FMP BiOp that included specific projects. Therefore, we can’t ignore this precedent. The Council was briefed in December and concurred with the process we have before us now.

Committee Information for Future Meetings

Mr. Cotter led a discussion on information the Committee likely will require to continue its work. The Committee members were asked to provide any recommendations to Mrs. Cotter or Wilson. The following items were requested:

- Introduce the tradeoff tool; assumptions in the tool; short vs. long version of the tool – DeMaster
- Loughlin and Tagart SSL literature compendium – March draft, April final
- Lee Alverson – summary of progress on hypotheses on SSL decline – March 2006 – from the NPUMMR Consortium
- Draft SSL Recovery Plan
- Updates on SSL research – counts and trends, etc, from NMML
- FIT study results – ongoing FIT studies – briefings
- FMP BiOp, 2001 BiOp, 2003 Supplement
- Federal preemption process and procedures; related to State actions and Federal regulations; State procedures for opening new fisheries
- Groundfish fishery removals before and after SSL protection measures of 2001; update the information in the 2003 BiOp Supplement

NMFS PR is going to be working on the BiOp, assuming current management measures. It was recognized that the SSLMC needs to understand the new data on SSLs and SSL prey species, new management regimes (e.g., rationalization programs), etc. Then after that (later this summer), the SSLMC will have to consider changes to the existing conservation measures. It was noted that proposals could come from anyone. Mr. Gauvin asked about the status of “trailing proposals” from the 2001 RPA process. Mr. Cotter assumed that we will solicit new proposals; only that new set of proposals will be considered. If people want to resubmit proposals trailing from the 2001 BiOp, they may do so. If the Council wants us to look at specific proposals, they will inform the SSLMC.

The Committee adjourned at 3:40 PM. The next meeting starts at 1 PM on Tuesday April 25 and will continue through Thursday April 27, 2006, at the Alaska Fisheries Science Center, Seattle. All meetings will be noticed on the Council’s website and through the Federal Register. Minutes and agendas will be on the website when available.

Bill Wilson

Bill.wilson@noaa.gov

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North Pacific Fishery Management Council
Steller Sea Lion Mitigation Committee Meeting
Alaska Fisheries Science Center, Seattle
February 15-16, 2006

AGENDA

This meeting is being convened to review the Council's charge to the Steller Sea Lion Mitigation Committee (SSLMC) to track the process of formal Section 7 consultation under the Endangered Species Act on the Fishery Management Plans for the groundfish fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands areas. The meeting is in the Traynor Seminar Room, Room 2076, Building 4 at the AFSC.

February 15 – 8:30 AM – 5:00 PM

1. Introductions and opening remarks (Cotter)
 - Committee composition
 - Charge to the committee
 - Ground rules, process, schedule
2. History of FMP consultations, recent Council request for reinitiation of consultation (Wilson, Capron)
 - 2000 FMP consultation and BiOp, 2001 BiOp, 2003 Supplement
 - Council's request to NMFS to reinitiate consultation on FMPs
 - NMFS response and Council concurrence
3. The consultation process (Capron, Pollard, DeMaster)
 - The ESA and Section 7
 - FMP level consultation defined
 - Product of the consultation
 - Consultation species
 - Participants
 - Process
 - Schedule
 - The SSL Recovery Plan
4. Participants in the consultation (Capron, DeMaster)
 - Roles of Sustainable Fisheries and Protected Resources
 - Alaska Region, headquarters, AFSC, NMML
 - Council's role, SSLMC role
5. Role of the SSLMC in this consultation (Wilson, Cotter)
 - Track the consultation process, inform the Council
 - Public forum for input to the process
 - Develop and discuss proposals, make recommendations to Council

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- Review SSL Recovery Plan
 - Review draft and final BiOps
6. Outline information needs (Cotter, DeMaster)
 - Identify what materials the committee will require
 - Establish topics and schedule for briefings and research updates
 - Discuss trade-off tool development and application
 7. Committee work schedule (Cotter, Wilson)
 8. Other business
 9. Action items, closing remarks (Cotter)

Contact Bill Wilson at the Council offices if you have questions (907-271-2809) or bill.wilson@noaa.gov.