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Steller sea lion EIS update

The NMFS Alaska Region released the Draft EIS/RIR/IRFA on the Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area on May 15, 2013. This is available as a two-volume set with 1,281 pages, is available for download at the NFMS AK Region site (<http://www.alaskafisheries.noaa.gov/sustainablefisheries/sslpm/eis/default.htm>) or the Council website (<http://www.alaskafisheries.noaa.gov/npfmc/>).

The Draft EIS analyzes and ranks the impacts to the human environment of five Steller sea lion protection measures alternatives: **Alternative 1** is the status quo, no action alternative, **Alternatives 2-4** are the alternatives that were in the Preliminary Draft EIS, and **Alternative 5** is the **Preliminary Preferred Alternative (PPA)**, composed of elements from Alternatives 2-4. NMFS is soliciting public comment on the Draft EIS until July 16, 2013. Comments can be submitted by mail or fax, or on the web at [www.regulations.gov](http://www.regulations.gov). Enter docket number "NOAA-NMFS-2012-0013" in the search bar.

At this Council meeting, staff from Protected Resources Division (PRD) presented a report that highlights areas where the PPA appears to be less protective for Steller sea lions than the regime analyzed in 2010, and where the measures may not adhere to the performance standards for Steller sea lion protection measures provided in Chapter 1 of the DEIS. PRD also identified elements of the PPA that the Council may wish to consider modifying at final action for analysis in a new Biological Opinion.

## **AI Processing Sideboards**

In December 2009, an initial review analysis was presented to the Council that proposed establishing processing sideboards on processing vessels eligible under the BSAI crab rationalization program, American Fisheries Act, and Amendment 80 program that receive deliveries of Pacific cod harvested in the Eastern and Central Aleutian Islands. The impetus for this proposed action was to ensure that the historical share of Pacific cod delivered shoreside, primarily to Adak, would continue. Review of the initial review analysis was delayed to coincide with the review of the ongoing Steller sea lion biological opinion, but was postponed and not reviewed.

The Council, concerned with shoreside processing protections in context of the Steller sea lion EIS, requested an updated discussion paper concerning Aleutian Islands (AI) Pacific cod processing sideboards. Following the review of that discussion paper at the April 2013 meeting, the Council tasked staff to prepare a discussion paper to evaluate the impacts of allocating a Pacific cod directed fishing allowance (TAC minus CDQ and ICA) in Area 541/542 to the catcher vessel sector, with a regionalized delivery requirement to shoreside processors in the AI. Included in the paper will be a discussion of a potential waiver to the delivery requirement in the event that there is insufficient shoreside processing capacity in the AI. The discussion paper will draw on the Western Aleutian Island golden king crab program. The paper will also explore the need for and impacts of measures to avoid stranding AI ITAC, such as allowing catcher processor activity after a certain date or at higher ITAC levels. The Council also requested the paper provide historical catch and processing distribution across the various sectors (gear and operational type) in Areas 541, 542, and 543, as well as a discussion of current processing capacity and activities in Adak and Atka. Complicating matters, Icicle Seafoods Inc. has closed its operation in Adak in April 2013. Icicle Seafoods Inc. leased the facility starting in the spring of 2011. The discussion paper is currently scheduled for the October 2013 Council meeting.



**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

AGENDA B-7  
Supplemental  
JUNE 2013

May 28, 2013

Eric Olson, Chairman  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Dear Chairman Olson:

This letter is in regards to our process to complete both an Environmental Impact Statement (EIS) and a Biological Opinion (BiOp) for Steller sea lion protection measures for groundfish fisheries in the Bering Sea and Aleutian Islands Management Area. In this letter, we respond to the North Pacific Fishery Management Council's (Council's) comments on the preliminary draft EIS contained in the Council's April 2013 motion. We greatly appreciate all the efforts of the Council and its Steller Sea Lion Mitigation Committee (SSLMC) and Scientific and Statistical Committee (SSC) to facilitate preparation of the draft EIS and the BiOp.

Responses to Council Comments

At its April 2013 meeting, the Council reviewed the preliminary draft EIS and recommended a preliminary preferred alternative (PPA) to include in the draft EIS. The National Marine Fisheries Service (NMFS) completed the draft EIS, including the analysis of the Council's recommended PPA, and released the draft EIS for public review on May 14, 2013. The Council also included a number of recommendations for the draft EIS and new BiOp in its April 2013 motion that we respond to below.

1. Comments made by the SSC on the preliminary draft EIS and the proposed BiOp analytical methods should be fully addressed in the draft EIS and associated Regulatory Impact Review (RIR), as well as the BiOp.

Response: We carefully considered the comments provided by the Council and SSC, and we addressed those comments to the maximum extent practicable in the draft EIS and RIR. Section 8.21 of the RIR is a point-by-point response to the SSC comments. The SSC's comments on the EIS resulted in editing of the EIS chapters, particularly Chapters 5 and 6. In October 2013, we plan to provide a point-by-point response to the SSC's April recommendations for the EIS.

2. The Council needs to have all of the relevant information available for review and comment prior to making a final decision on a preferred alternative. The Council asserted that all of the relevant information was not available in the preliminary draft EIS and that it was premature to release a draft EIS for public review.



**Response:** We revised the content of the draft EIS to ensure a complete document for public review, within the court-ordered schedule, including an analysis of the Council's recommended PPA. The draft EIS provides decision makers and the public with an evaluation of the predicted effects of the alternatives on the human environment. The analysis in the draft EIS is designed to allow decision makers to compare and contrast the potential effects of the alternatives on the human environment, including Steller Sea lions.

3. The Council's motion asserted that the analytical methods and metrics used to evaluate the environmental effects of the alternatives in the draft EIS must be consistent with the metrics used in the BiOp to evaluate the effects of the eventual preferred alternative on the continued existence of the western Distinct Population Segment (WDPS) of Steller sea lions and the conservation of designated critical habitat. The Council also asserted that these metrics must be available for review by the Council, its SSC, and the public throughout the process to make informed decisions that comply with National Environmental Policy Act (NEPA) and other relevant law.

**Response:** The analysis in an EIS is intended show the potential effects of the alternatives on the human environment, allowing the decision maker to be able to compare and contrast these potential effects. The analysis in a BiOp is to insure that the proposed action is not likely to jeopardize the continued existence of ESA-listed species or result in the destruction or adverse modification of critical habitat designated for those species (result in JAM). The EIS and BiOp are on somewhat different schedules due to the court-ordered time frame for completing the EIS and our ongoing work to incorporate the feedback from the external reviews of the 2010 BiOp into subsequent ESA section 7 consultations on the groundfish fisheries. The 2014 BiOp will be completed in time to coincide with completion of the final EIS. NEPA requires NMFS to use the best available information, and the draft EIS incorporates the latest information regarding potential interaction between Steller sea lions and groundfish fisheries. If additional information emerges from the section 7 consultation we can include that in the final EIS. If new information becomes available through the ESA consultation process, we will evaluate the need to prepare a supplemental draft EIS.

4. The Council's April 2013 motion stated that the preliminary draft EIS continues to rely on the findings and conclusions of the 2010 BiOp and does not adequately address the findings and recommendations of the reviews conducted by the Center for Independent Experts and the Scientific Review Panel convened by States of Alaska and Washington. The Council's motion stated that it is essential for NMFS to provide a response to each controversial issue identified by the external reviews to understand the analysis of the environmental effects of the proposed alternatives and to comply with NEPA.

**Response:** The draft EIS includes, as appropriate, the findings on the factors affecting Steller sea lions in the two external reviews conducted on the 2010 BiOp. The draft EIS does not include a point-by-point response to the reviews because some of the issues identified in these reviews were specifically related to the ESA analysis and would not directly inform the NEPA analysis in the draft EIS. The issues identified in the external reviews that were related to the NEPA analysis are identified and discussed in the draft EIS, primarily in Chapter 5.

NMFS is committed to new analyses to address the critiques of the 2010 BiOp. We are conducting responsive analyses, as shown in the enclosed analytical approach; the results of these analyses will be incorporated into the 2014 BiOp. While we were able to complete and review some studies in response to the external reviews that informed the draft EIS analysis, other analyses important for the ESA process remain under development.

5. The Council's motion also expressed concern about using information that became available after the December 14, 2012 cutoff date for new information stated in the preliminary draft EIS, and the reliance on unpublished and incomplete studies for critical chapters of the preliminary draft EIS, stating that the use of these studies is inconsistent with the agency's scientific integrity policy.

Response: We used the best available scientific and fishery information to develop the draft EIS, including relevant information that became available after December 14, 2012. Based on comments received from the SSLMC and the Council on the preliminary draft EIS, we clarified the explanation of the information used for the draft EIS in Chapter 1 to identify December 14, 2012, as the cutoff date for the fisheries catch data used to perform the spatial and temporal analysis of catch under all of the alternatives. Any new information that informed the analysis was incorporated into the draft EIS until the completion of the draft document in early May 2013, including analysis of the PPA, which was not possible until after the April Council meeting.

NOAA's scientific integrity policy establishes an expectation that we use unbiased science and are transparent in our decision making. We are committed to providing the highest caliber of objective scientific advice to support fishery management decisions. Our goal is to use, and make public, the best available scientific information. We used agency studies and data that are essential to understanding the impacts of the alternatives. Not considering or using agency data for decision making would greatly limit the amount of information available to the public on many important issues. The public, and independent scientific reviewers, have the opportunity to review and comment on the scientific information and analysis in the draft EIS. All information used in the draft EIS followed the process established under the Information Quality Act for release of analyses and the supporting information, including reviews of Alaska Fisheries Science Center information and reports by the program-level and Center directors. Draft documents cited in the draft EIS are available upon request.

#### ESA Consultation on the Proposed Action

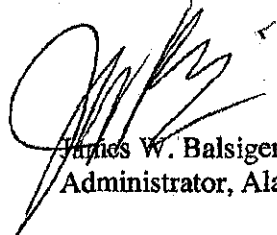
To meet the Court-ordered schedule for completion of the EIS and to fulfill our intent to implement any new protection measures for the Alaska groundfish fisheries by 2015, we have started the ESA section 7 consultation. We will complete the 2014 BiOp prior to publishing a proposed rule to implement the preferred alternative.

NMFS's Protected Resources Division analyzed the Council's PPA to provide initial feedback to the Council on elements of the PPA that may be problematic for insuring that the eventual proposed action is not likely to jeopardize the continued existence of the WDPS of Steller sea lions or adversely modify critical habitat. We developed this assessment with the best information available at this time. We identified areas where the Council may wish to modify

the proposed action to increase protection to Steller sea lions. The initial analysis is Supplemental along with the analytical approach for the anticipated 2014 BiOp that was presented to the Council's SSC in April 2013. The analytical approach describes how we will incorporate feedback from the external reviews of the 2010 BiOp and the quantitative and qualitative analyses that we will conduct to evaluate the effect of the preferred alternative in the 2014 BiOp. Due to extensive data gaps, the 2014 BiOp's jeopardy and adverse modification risk assessment will comprise several qualitative analyses. Thus, we are not able to provide quantitative metrics or thresholds for selecting a preferred alternative that NMFS can insure is not likely to result in JAM. However, we continue to recommend the Council refer to the performance standards described in Chapter 1 of the draft EIS (which we previously presented to the SSLMC) for guidance about measures needed to protect Steller sea lions and critical habitat from potential effects of fishing.

We look forward to continuing to work in partnership with the Council as we work toward understanding potential fishery effects on Steller sea lions and implementing measures to meet our ESA obligations. We appreciate your comments and support as we work together to meet the court ordered schedule to complete the EIS and implement revised Steller sea lion protection measures in the Aleutian Islands subarea Atka mackerel, Pacific cod, and pollock fisheries.

Sincerely,



James W. Balsiger, Ph.D.  
Administrator, Alaska Region

Enclosures

## Steller Sea Lion Draft EIS

The Draft Environmental Impact Statement on Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area, consisting of two volumes and over 1,000 pages, was released to the public and the Council on May 10, 2013. At this meeting the Council received presentations from NMFS Alaska Region on the Draft EIS, as well as some preliminary information about the analytical approach that will be used in the future biological opinion on Steller sea lion mitigation measures (See memo Demaster to Kurland dated May 24, 2013; memo Balsiger to Olson May 28, 2013 and supporting documents). The Council again acknowledges the hard work of NMFS staff in putting together the DEIS as well as the analyses prepared in response to previous comments by the Council. We appreciate that these issues continue to be controversial, and express our appreciation for the professionalism brought to the task.

The Council's preliminary review of the Draft Environmental Impact Statement on Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area (DEIS) confirms that the Council and the public are still left without the key information needed to make fully informed public comment and a final decision on Steller sea lion mitigation measures. Many of the relevant supporting analyses are incomplete and pending, and there remains continued reliance on draft unpublished studies in critical sections of the document, particularly chapter 5. The Council reiterates its earlier comments about the need to have all of the relevant information and a complete analysis available for review and comment by the public before the Council makes a decision on a preferred alternative. Failure to provide this information jeopardizes the NEPA process in that the Council and the public will not have the necessary information to make informed comments or decisions on a final preferred alternative.

Although improved from the Preliminary Draft EIS presented in April, the DEIS is written with the implicit assumption that the findings of the 2010 Biological Opinion will not change, even though the agency has stated that new information available since the completion of the 2010 Biological Opinion is significant, will be objectively reviewed, and may result in different metrics for evaluating fisheries mitigation measures. And, while the DEIS very generally acknowledges the two independent scientific reviews of the 2010 Biological Opinion, and addresses a few aspects of the criticisms of those reviews, it does not present the agency's responses to the heart of those critical reviews: namely, that there is no scientific support for the conclusion of the 2010 Biological Opinion that fisheries jeopardize Steller sea lions through competition for prey, which results in chronic nutritional stress and reduced natality. Whether such a significant negative impact on Steller sea lions from the groundfish fisheries exists is as relevant under NEPA as it is under the ESA. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. NEPA documents must concentrate on the issues that are "truly significant to the action in question, rather than amassing needless detail" 40 CFR § 1500.1(b).

The truly significant issue is the potential for negative interactions between fisheries removals and Steller sea lions. The DEIS assumes that more fishing and more areas open to fishing results in greater negative effects on Steller sea lions, and evaluates the alternatives accordingly, without explaining how or why this assumption is merited in light of the existing criticism of the independent reviewers. NEPA requires that all major points of view on the environmental impacts of the alternatives must be discussed and disc

losed in the draft EIS (40 CFR § 1502.9(a)). The EIS should include an analysis of the potential impacts of fishing on sea lions, their prey, and critical habitat, and incorporate the agency's responses to the findings and recommendations of the independent reviews into this analysis, and then apply it across all alternatives. This information must be included in order for the EIS to meet the requirement to "take a hard look at the environmental effects" of each of the alternatives. Without these analyses, the EIS will not be based on the best scientific information, nor will the resulting decisions that depend on the EIS analyses.

The Council has previously identified this as a critical shortcoming in the overall approach to the EIS, and the way the process is unfolding for public comment and Council participation. This problem was also raised once again by the Chairman of the Council's Steller Sea Lion Mitigation Committee, noting that the DEIS remains deficient, and without this analysis the committee cannot provide informed advice to the Council or the agency.

In our April motion, the Council stated that, "At minimum, the DEIS should contain a stand-alone section identifying the findings of the 2010 BiOp, the findings and recommendations of the Independent Reviews, and NMFS' response to each controversial issue identified by the Independent Reviews." We repeat this recommendation here. NEPA requires that the document include all of the analyses and information discussed above in order to be complete.

The Council asks NMFS to re-examine its policy choice to rely on recovery plan criteria in the EIS analysis and as the basis for JAM determination in the pending biop.