

Marine Mammal Commission
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

18 April 2008

Ms. Sue Salveson
Assistant Regional Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802

Dear Ms. Salveson:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the 26 December 2007 *Federal Register* notice (72 Fed. Reg. 72992) regarding the development of a supplemental environmental impact statement (SEIS) on potential revision of Steller sea lion protection measures applicable to the groundfish fisheries of the Bering Sea/Aleutian Islands and the Gulf of Alaska. We offer the following recommendations and comments regarding preparation of the SEIS.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Sustainable Fisheries Division of the Alaska Region, National Marine Fisheries Service—

- provide in the SEIS a detailed description of the new socioeconomic information that prompts a potential change in protection measures for Steller sea lions;
- consult under section 7 of the Endangered Species Act with the headquarters office of the National Marine Fisheries Service, Office of Protected Resources, to obtain independent review of any alternative protection measures developed;
- in the SEIS and as part of the section 7 review, provide sufficient evidence to support a determination that the final measures are adequate to protect sea lions and promote their recovery; and
- work with the Protected Resources Division of the Alaska Region and the Steller Sea Lion Recovery Team to ensure that any proposed alternative measures provide adequate protection to sea lions and will lead to their recovery.

RATIONALE

After seven years of work, the Steller Sea Lion Recovery Team completed and the National Marine Fisheries Service finalized a revised Steller Sea Lion Recovery Plan (73 Fed. Reg. 11872; 5 March 2008). The plan made three general recommendations regarding recovery activities, one being to “[m]aintain current or equivalent fishery conservation measures until change is warranted.” It seems odd that, after so much effort to finalize its revised recovery plan calling for a steady course, the National Marine Fisheries Service has now initiated preparation of a supplemental EIS to change the existing measures. To be sure, the recommendation in the recovery plan was to maintain current “or equivalent” measures, allowing some flexibility. However, the plan also noted that it is too soon to know if the existing measures are working as expected and will lead to the recovery of the western

stock of Steller sea lions. In view of the uncertainty, judging the equivalence of current and proposed measures will not be easy.

The consideration of alternative conservation measures appears to have arisen because of newly available socioeconomic information. That information is not described in the *Federal Register* notice and, without it, readers cannot determine whether a revision of protection measures is warranted at this time. Particularly because the development of alternative measures seems contrary to the guidance in the newly released recovery plan, the Marine Mammal Commission recommends that, in preparing the SEIS, the Sustainable Fisheries Division provide a detailed description of the new socioeconomic information that has prompted it to consider changing the established protection measures for Steller sea lions.

The *Federal Register* notice also does not discuss the basis for judging the equivalence of any new protection measures being contemplated with those currently in place. Rather, it emphasizes that any new measures will avoid jeopardy to the stock and destruction or adverse modification of its critical habitat. Those are not the standards that should be applied in an environmental impact statement but rather the standards applicable to a section 7 consultation under the Endangered Species Act. The notice does not explicitly state that a section 7 consultation will be conducted to evaluate any proposed new measures, but if protection measures are changed, a new consultation will be needed. To ensure that the Sustainable Fisheries Division meets the requirements of both the National Environmental Policy Act and the Endangered Species Act, the Division must consult with the appropriate component of the agency. Because the fisheries and protected resources divisions of the Alaska Region are supervised by the same regional administrator, it will be necessary to involve headquarters personnel in the review to ensure appropriate levels of independence and objectivity. For that reason, the Marine Mammal Commission recommends that the Sustainable Fisheries Division consult under section 7 of the Endangered Species Act with the Office of Protected Resources at National Marine Fisheries Service headquarters to obtain independent review of any alternative protection measures being developed. Furthermore, because of the endangered status of the western stock of Steller sea lions, the Marine Mammal Commission recommends that, in both the SEIS and the section 7 consultation, the Sustainable Fisheries Division provide sufficient evidence to support a determination that the revised measures are adequate to protect sea lions and promote their recovery.

Finally, it is not clear why the Service is turning to the Steller Sea Lion Mitigation Committee of the North Pacific Fishery Management Council to develop alternative protection measures without also consulting the Steller Sea Lion Recovery Team. Although we do not question the mitigation committee's knowledge of socioeconomic issues, a Council-based committee is more likely to be guided by concerns related to the maintenance of the fisheries than concerns related to the conservation of marine mammals. Such a committee, even with the best of intentions, cannot be viewed as being sufficiently independent in its deliberations to ensure that the recovery needs of the Steller sea lion are given adequate consideration. The Marine Mammal Commission therefore recommends that the Sustainable Fisheries Division and the Protected Resources Division of the Alaska Region engage the Steller Sea Lion Recovery Team in a review to ensure that any proposed alternative measures provide adequate protection to sea lions and will lead to their recovery.

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I hope that these recommendations and comments are helpful. Please contact me if you or your staff has questions.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a prominent initial "T".

Timothy J. Ragen, Ph.D.
Executive Director

cc: Ms. Kaja Brix
Mr. James Lecky