

**Agenda Item C-3 Steller Sea Lion EIS, Motion
April 5, 2013**

NMFS has indicated its goal is to work with the Council to ensure a robust, science driven and transparent process in the development of the Court ordered EIS. NMFS Protected Resources has also indicated its intent is to produce an accompanying BiOp that is transparent, objective, evidence-based, and compliant with applicable law. The Council applauds NMFS intent, and notes that the NEPA/EIS process is a critical component to meeting both this objective as well as the court order to take a "hard look" at the action and involve the public in the decision making process. With this in mind, the Council moves the following:

Motion:

The Council adopts for analytical purposes the draft Preliminary Preferred Alternative (PPA) recommended by the SSLMC with the clarifications made by the AP. The Council is adopting this PPA to facilitate continued preparation of the DEIS and the draft Biological Opinion (BiOp).

As part of this motion the Council endorses the comments made by the Scientific and Statistical Committee concerning both the PDEIS and the proposed BiOp analytical methods (C-3c), and recommends that they be fully addressed in the DEIS and associated RIR as well as the BiOp.

Furthermore, the Council wants to reinforce its previous comments about the need to have all of the relevant information available for review and comment prior to making a final decision on a preferred alternative. Because this information is currently not available, the Council believes it is premature to release a DEIS for public review, and to schedule a final decision on a preferred alternative. The analytical methodologies and metrics used in the EIS to evaluate the environmental effects of the alternatives, and the metrics used in the BiOp to determine IAM, must be consistent and available for review by the SSC, the Council, and the public throughout this process in order to make informed decisions and comply with NEPA and other relevant law.

In making these recommendations, and after review of the Preliminary Draft EIS (PDEIS), the Council also notes the following:

1. At present the PDEIS omits key metrics—namely, which criteria and methodologies will guide the agency's ESA "jeopardy" and "adverse modification" ("IAM") determinations. Those criteria and methodologies are central to defining the scope of "reasonable" alternatives, and the environmental effects of those alternatives, in the EIS. Neither the Council nor the public have any way of determining whether the alternatives are "reasonable" under NEPA when the relevant metrics are not available for Council or public view. NMFS must clearly identify those metrics in both the DEIS and the BiOp before requiring the Council to make any further decisions regarding preferred alternatives.
2. The PDEIS continues to rely on the findings and conclusions of the 2010 FMP BiOp, but does not adequately address the findings and recommendations of the independent scientific peer reviews conducted on behalf of NMFS by the Center for Independent Experts ("CIE") and the Independent

Scientific Review Panel convened by Alaska and Washington (collectively, the "Independent Reviews" or "Reviews"). The PDEIS refers to these reviews, but fails to succinctly incorporate or respond to their findings and recommendations regarding the FMP BiOp. 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. This information is essential to understanding the analysis of environmental effects of the proposed alternatives and to comply with NEPA.

4. Important components of the PDEIS analysis rely on unpublished studies and studies conducted and/or completed after the December 14, 2012 cut-off date announced by NMFS for scientific information to be used in the analysis. Many of these reports are either "in preparation" or "in press", and up to now have been unavailable to the SSC and the public. Many of the analyses and findings of these reports appear to be quite controversial. If the reference materials are dated after the cutoff date or are not complete, the public is unable to evaluate the analysis or the environmental effects of the alternatives. Moreover, the heavy reliance on unpublished and incomplete studies for critical chapters of the PDEIS is inconsistent with the agency's scientific integrity policy, risking a repeat of many of the criticisms leveled at the 2010 FMP BiOp by the Independent Reviews.

As a final point the Council wants to acknowledge the hard work of NMFS staff in putting together the PDEIS and related analyses, and to express our appreciation for their dedication to completing this task in a professional and timely manner.