

5.0 NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE IMPLEMENTATION AND RECOMMENDATIONS

5.1 Introduction

The purpose of Chapter 5 is 1) to explain the procedures that will be used to implement future National Environmental Policy Act (NEPA) compliance on permitting and grant activities addressed in the Steller Sea Lion (SSL) and Northern Fur Seal (NFS) Research Programmatic Environmental Impact Statement (PEIS); 2) document actions underway to address concerns raised during preparation of this PEIS regarding compliance with the Animal Welfare Act (AWA); and 3) to make recommendations for further actions associated with SSL and NFS research that have been suggested during the course of the EIS process. A number of recommendations were made that fall within general categories: reporting requirements for research and grant activities; coordination of research activities and monitoring the effects of research activities; developing a research implementation plan; and additional coordination with Alaska Native organizations. NMFS determined that it was most appropriate to address these issues outside the scope of any one alternative as these issues and recommendations are considered significant enough that they should be considered and implemented independent of any selected alternative. Unless otherwise stated, the following recommendations are to NMFS for action (for further detail on Alternatives Considered, refer to Chapter 2).

5.1.1 Need for National Environmental Policy Act Compliance Guidance

The SSL and NFS Research EIS addresses research permit and grant activities that are expected to occur over the foreseeable future. NMFS staff, research permit and grant applicants, and the general public should understand the process for preparing grant and research permit applications and how they will be reviewed for NEPA compliance using this PEIS. In addition to providing a NEPA compliance “road map”, Sections 5.1 and 5.2 will provide guidance to research permit and grant applicants in preparing their applications, and provide other stakeholders with an understanding of the level of subsequent NEPA review that will take place.

5.1.2 National Environmental Policy Act Compliance Review of Annual Research Permit and Grant Applications Using the Steller Sea Lion and Northern Fur Seal Research Programmatic Environmental Impact Statement

The Final SSL and NFS Research PEIS will cover the research programs for these species in general, but is not specific to issuance of any particular permits or grants. Thus, each project-specific action (i.e., permit or grant application) will require its own NEPA compliance review. The form of this additional NEPA review will depend on the nature and scope of the proposed research and may take the form of a Memorandum to the File, a supplemental EIS, an Environmental Assessment (EA), a new EIS, or a Categorical Exclusion memorandum.

NMFS anticipates that applications for grants, new permits, and amendments to permits will be submitted in the future. There is no formal schedule for submission of permit applications or limitation on the date by which applications must be received, meaning they can be submitted at any time throughout a calendar year. The permit process schedule is thus initiated and driven by the applicants. In contrast, the schedule for submission of grant applications is initiated by NMFS with a call for proposals, the timing of which will depend on availability of funds. Each time a permit application is received or a grant cycle is initiated, the requests will be reviewed by NMFS to determine whether the activity proposed by the applicant is covered by the assessment of impacts in the Final SSL and NFS Research PEIS.

The Final SSL and NFS Research PEIS has identified Alternative 4 as the Preferred Alternative. The Record of Decision (ROD) associated with the PEIS will identify any conditions of approval that are relevant to permit and grant applications, and will provide a listing of research permit and grant activities addressed by the Preferred Alternative. Both constitute a decision document that will be used for the purpose of documenting NEPA compliance of ongoing and future activities addressed within the PEIS. Proposed research permit and grant

activities that are identified and analyzed within the Preferred Alternative will be subject to routine NEPA compliance implementation, as described below. Proposed research permit and grant activities that are not identified and analyzed within the Preferred Alternative will be subject to a separate NEPA compliance action, to be determined at the time the application is submitted.

Permit Review Procedures

Applications for new permits and for modifications to permits for research on SSL and NFS will be reviewed by NMFS Office of Protected Resources, Permits, Conservation and Education Division (F/PR1). Applications for grants for research on SSLs and NFSs will be reviewed by the Alaska Region Operations/Management/Information Division, Grants Program Office (Grants Program). During processing of these permit and grant applications:

- NMFS staff will review the proposed permit or grant application against the Final SSL and NFS Research PEIS and ROD to determine if the research proposed is within the scope of the Preferred Alternative. NMFS Grants Program staff will use an Environmental Compliance Questionnaire to assure consistency across applications in this review. In addition to internal review by F/PR1 staff, permit applications are sent out for public review and comments.
- The methodology for estimating unobserved mortality used in Chapter 4 of this PEIS will be applied to the requested take contained in each permit application. NMFS F/PR1 staff will calculate the requested and potential incidental mortality, and adjust the permitted take as appropriate, taking into account the total take already authorized in existing permits, to ensure that levels estimated in the PEIS are not exceeded.
- If the research proposed in the permit or grant application has been identified and analyzed within the Preferred Alternative of the Final SSL and NFS Research PEIS, a Memorandum to the File will be prepared, documenting that NEPA compliance for issuance of the grant or permit is provided by the Final PEIS and any conditions of approval that apply as documented in the ROD. A copy of the ROD will be attached to the Memorandum.
- Applications for permit amendments will be evaluated following the same procedures as applications for new permits.

If NMFS determines through the above process that the research proposed in the permit or grant application was not analyzed within the Preferred Alternative, an additional NEPA compliance review will be conducted. The NOAA NEPA Compliance Handbook and NOAA Administrative Order 216-6 provide guidance for agency officials on this step of NEPA review, including the process for tiering analyses from a general or broad-scope EIS to a project-specific review, and incorporating by reference.

5.1.3 Coordination of the Grant and Permitting Review Process

At present, grant and research permit applications are submitted separately, and often at different times, therefore individual NEPA compliance reviews are conducted separately by F/PR1 and Grants Program staff for permits and grants, respectively. Staff from these two program offices coordinate to the extent practicable, and share NEPA compliance documentation where applicable. This process will be reviewed by NMFS to determine whether more formalized coordination is appropriate. Potential options include formalized joint participation in permit and grant application reviews, and a mechanism to identify: if a research grant proposal is associated with an existing permit; will require a new permit or permit modification; or is not eligible for a permit. Similarly, the F/PR1 and Grants Program will consider “condition of approval” language which indicates that funding cannot be unconditionally committed to research projects that cannot be permitted, and that receipt of grant money does not guarantee issuance of a research permit.

5.1.4 Reporting Requirements

NMFS F/PR1 requires annual and final reports from permit holders, and the Grants Program requires semi-annual reports from grant recipients (see Section 4.7.3). However, there are differences in reporting requirements and content, and in enforcement of reporting requirements.

- NMFS will develop a process for linking permit and grant reporting compliance, including for enforcement purposes. The types of information required in permit versus grant reports are necessarily different, but failure to comply with one should have consequences for the other and enforcement of compliance should be consistent.

NMFS F/PR1 is developing a web-based permit application and permit tracking system which will include submission of electronic reports. Information about permits, including annual reports, will be available to the public through this system. In the interim, NMFS will investigate establishing a page on their website where annual permit reports, technical memoranda, journal publications, and conference presentations related to SSL and NFS research could be made available for access by interested parties.

5.1.5 Other Considerations

The fact that grant cycles and permit processing are not synchronized often results in permit applications with vaguely stated objectives or methods, or overly broad objectives or sample sizes, when applicants are uncertain which projects may be funded or to what extent. Further, when additional funds become available after permit issuance (e.g., new Congressional appropriations), some permit holders will submit numerous applications to amend their permits to take advantage of the new money. It is expected that some researchers will continue to voluntarily coordinate with each other prior to entering the field, to optimize resources and reduce potential problems with overlapping research areas. However, given the broad nature of some permits, NMFS may not know where and what research is actually occurring until after it is conducted. Permits for research on SSLs and NFSs require permittees to notify NMFS Alaska Region of their planned field work at least two weeks in advance. However, since not all researchers initiate research at the same time each year, and some researchers have multiple field seasons within a year, NMFS does not have the information to understand the overall research “plan” (e.g., what research is being done where, when, or by whom) until receiving annual permit reports after research has been conducted. To assist with permit monitoring and compliance, the pre-field work reporting date by which all permittees notify NMFS of field plans for the coming year will be coordinated by the Research Coordinator and become an established annual event.

5.2 Coordination of Research and Monitoring of Effects

Issues were raised during scoping with regard to whether research activities were being coordinated by researchers, or whether NMFS was required to coordinate research that it permits or funds. Uncoordinated research was perceived as increasing the amount of unnecessary harm to individual animals, affecting more animals than necessary, and reducing the efficiency of research. Comments indicated that research was overly repetitive and that it could not be determined whether there would be duplicative effects on one group of animals or rookeries that were unnecessary and could be avoided with a plan. Comments received pointed to the 2006 Draft SSL Recovery Plan, Objective 1.5, focused on the development of an implementation plan for research. Further, section 3.5 of the Draft Recovery Plan Implementation Schedule focused on the evaluation and reduction of direct and indirect impacts of research activities, coordination of research efforts to reduce duplicative takes, and monitoring of unintentional takes associated with research activities.

The Draft PEIS indicated that such a plan would serve to refine research priorities and determine a strategy for when and how research should be conducted for purposes of management decisions. NMFS has coordinated activities on an annual basis and many of the comments failed to recognize that pre- and post season workshops or meetings have occurred which have facilitated a transfer of information between the researchers such that

everyone knew where everyone else would be at any given time. Research efforts were often piggy-backed in order to reduce unnecessary field trips to any one location and leverage one research activity with another. This level of duplication is often necessary, is intentional, and provides valuable trend information from specific areas. NMFS recognizes that the coordination of research has not been formalized but it has occurred at the day-to-day/within season level to a greater extent than that recognized in the comments and this is described in more detail in Section 4.7.2.2. Large-scale efforts such as monitoring or survey work have also been coordinated in great detail. Given that it takes several years to complete a survey, this coordination is absolutely critical.

However this is not the level of needed coordination suggested by the comments. What has been lacking has been an implementation plan that would focus beyond the immediate needs. For example, if research shifted from the eastern DPS of SSLs to the western DPS, or to NFSs, in 3 years (during the five-year life of the permits being authorized under this PEIS) how would that influx of research be coordinated and how would the activities be staggered such that there would not be a tremendous increase of effects in areas and on rookeries that had not experienced previous research activity? This is of considerable concern under Alternative 4, which would allow for increased effort in any given area. This is the scenario that precipitated the focus on SSL research effects in 2001-2002 and since, and is still the major issue of concern being addressed in this PEIS. In 2001-2002 an influx of funds provided the mechanism necessary to allow needed research to move forward. However, the increased research efforts and the analysis of the effects of that influx of activity on SSLs and their habitat have not been comprehensively assessed. NMFS hired a research coordinator and initiated such an effort in 2002 but the effort was never completed such that it could be implemented. As a result there have been no formalized coordination plans or protocols implemented by NMFS regarding a comprehensive research plan and this was highlighted in many of the comments received. The 2006 Draft Recovery Plan states that the Regional Coordinator should maximize coordination, minimize duplication of research, and enhance collaboration. Therefore many of the specific steps that are identified in the 2006 Draft Recovery Plan, and that NMFS is now recommending should be implemented prior to the 2008 field season, were actually supposed to occur prior to the 2005 EA (and field season) but never actually proceeded past the planning stages.

Another issue raised in the scoping process, and one which is linked with the long-term coordination of research, is the uncertainty about the effects of research, given the recognized lack of post-research monitoring. Of particular concern to some commenters are the potential long-term effects of research activities and associated disturbance on rookeries and on pups or juvenile SSLs at rookeries. NMFS recognizes that some post-activity monitoring has occurred. Most researchers observe and monitor animals that have been captured or restrained for a short period of time after their release. However, much field work moves from location to location with minimal follow-up after the research activity has concluded. This often cannot be avoided. Some locations preclude such extended monitoring due to logistical restraints. However, monitoring sites could be established that would serve to provide necessary, representative information. For example, locations in the western Aleutian Islands cannot be occupied for extended periods for many reasons. However if effects were monitored elsewhere, and best practices based on that monitoring were implemented on the Aleutian sites, much of the concern expressed in the comments would be addressed.

There is a need to analyze the results of monitoring that has occurred, establish new monitoring requirements, and incorporate them in a long-term monitoring plan. Therefore, in response to this concern, NMFS intends to phase-in the implementation of the Preferred Alternative during 2007, and 2008 if necessary, to limit approval of intrusive activities associated with rookery research during pupping season to a specific set of rookeries and haulouts, some of which will be subject to a permit condition to conduct a post-research activity monitoring program to observe the potential effects of research activities. Results of the monitoring program will be assessed to determine the uncertainty that currently exists regarding research effect, and determine what conditions subsequent intrusive actions at rookeries and haulouts should be permitted and implemented into a long-term research coordination and monitoring plan (see section 5.2.1).

5.2.1 Development of a Formalized Research Implementation Plan

In the past, implementation plans and teams have been proposed for endangered marine mammals to guide recovery efforts (i.e., overall direction of recovery efforts, establishing priorities), practical matters (e.g., logistics, funding, coordination). The 2006 Draft SSL Recovery Plan describes the need for an implementation plan and team as follows: “An implementation plan should be developed that includes a comprehensive ecological and conceptual framework that integrates and further prioritizes the numerous recovery actions provided in this plan. The implementation plan should provide a synthesis of the individual actions and coordinate their implementation in a cohesive strategy (Section V.B)”. The 2006 Draft NFS Conservation Plan also references the need for an implementation schedule.

The 2006 Draft SSL Recovery Plan also places the responsibility for monitoring of combined impacts of research at the NMFS Alaska Region. While the implementation of that plan may rest at a NMFS regional office, NMFS believes the development of that plan should be the responsibility of an independent review group. Section 202 of the MMPA recommends that the Marine Mammal Commission (MMC) and its Committee of Scientific Advisors, or a similar body, undertake, or cause to be undertaken, reviews and studies as it deems necessary in connection with its assigned duties as to the protection and conservation of marine mammals, and conduct reviews of, amongst other activities, research programs conducted under the authority of the MMPA, and of all applications for permits for scientific research, and further to recommend to the Secretary such steps as it deems necessary or desirable to protect and conserve marine mammals with regards to these activities. NMFS believes the development of this plan is of such importance that the MMC and its Committee of Scientific Advisors, should oversee the development of the research implementation plan and provide that plan to the Secretary as a recommendation for its implementation. At this time demonstration of an effective effort to implement a long-term research plan for Steller sea lions and northern fur seals may be the single most important thing that NMFS can do to instill a sense of confidence and trust in the research and management efforts on behalf of the species of concern.

In that regard, NMFS intends to convene an independent research “implementation team” with MMC oversight to assess the effectiveness of the research program. Among other things, the team would:

1. conduct an analysis of [recommended] research and management priorities consistent with the recovery plan goals and objectives, and based on that analysis, recommend a cohesive strategy for the conduct of specific research studies consistent with the recovery plan and sufficient to assess the effectiveness of management actions,
2. establish timelines for initiation and completion dates for research efforts as appropriate,
3. evaluate and help coordinate logistics within and among research organizations,
4. help identify funding sources and recommend distribution of discretionary funding in accordance with research and management priorities,
5. coordinate activities to minimize disturbance at research sites,
6. identify [recommend] studies to monitor and determine the effects of research on the subject species,
7. review research results on an ongoing basis and update research directions and priorities accordingly consistent with implementation of the recovery plan, and
8. standardize procedures used to coordinate grant and permit application requirements, reviews, and conditions of approval to ensure that comparable procedures are being used.

In response to comments submitted on the Draft PEIS, recommendations by staff, and the need for an implementation plan, NMFS has determined that while the Preferred Alternative optimizes the opportunity for collection of information that could be used to protect the species, approval of research activities associated with rookery disturbance will be limited to a specific set of rookeries and haulouts during 2007, and possibly 2008, and post-activity monitoring at several of these sites will be required. These approvals will be subject to a permit condition to conduct a post-research activity monitoring program to observe the potential effects of research

activities. Results of the monitoring program will be assessed to determine what additional conditions might need to be implemented, and what subsequent research actions at rookeries and haulouts should be permitted. Any proposed new conditions associated with research actions at rookeries and haulouts will be circulated for public comment before approval as part of the research permitting process. The intent of this phased implementation is to provide additional observations on potential effects of research activities (in addition to the literature cited and analysis conducted in the PEIS).

5.3 Animal Welfare Act (AWA) Compliance and Establishment of Best Management Practices

During the public meetings, NMFS received comments on, and recognized the importance of establishing Institutional Animal Care and Use Committees (IACUCs), to review the handling of SSLs and NFSs during research activities. The Animal Welfare Act (AWA) charges the Secretary of Agriculture (delegated to the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS)) with promulgating regulations and standards for the humane handling, care, treatment, and transportation of “animals” by dealers, research facilities, and exhibitors. Requirements include annual reporting and establishing an IACUC to review protocols and assure compliance with AWA. The AWA states that “Each Committee shall be appointed by ... such research facility and shall be composed of not fewer than three members. Such members shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility and shall represent society’s concerns regarding the welfare of animal subjects used at such facility.”

It is the responsibility of individual researchers to comply with the IACUC requirements of the AWA, and it is within the jurisdiction of the USDA APHIS to enforce such compliance with the AWA. To ensure research NMFS permits, funds, or undertakes on SSL and NFS is consistent with the IACUC requirements of the AWA, NMFS will require, as part of the permit application, a copy of the protocols approved by the permit applicant’s IACUC, and a copy of the IACUC’s recommendations. NMFS is aware that not all researchers are affiliated with an IACUC and that some may not be required under the AWA to have their protocols reviewed by an IACUC because they do not meet the AWA definition of a “research facility.” Consistent with current practice, all permit applicants will be required to provide enough detail about their research protocols to allow NMFS F/PR1 staff to determine whether the proposed research methods satisfy the MMPA’s humane and bona fide science standards. Applications without sufficient information and justification for research methods to allow NMFS to make determinations about these permit issuance criteria will be returned to the applicants.

The NMFS Science Review Board recently addressed the issue of NMFS compliance with AWA as a “research facility.” The Board reviewed the following questions: 1) Are NMFS research facilities (i.e., science centers) subject to the AWA; and 2) Are marine mammal field studies exempt from the IACUC requirement? It was determined that NMFS is subject to the AWA and therefore there is a need to establish IACUC committees. The AWA requires all Federal research facilities to comply with the requirements for all other research facilities, including annual reports and having an IACUC. NMFS falls under the definition of a Federal research facility. Research Facility is defined as “...any school, institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments.”

With regards to the second question, the law does exempt “field studies” from IACUC review and monitoring. The definition of field study is “...a study conducted on free-living wild animals in their natural habitat.” However, this term excludes any study that involves an invasive procedure, harms, or materially alters the behavior of an animal under study. It is not clear what NMFS marine mammal research, in addition to those that solely involve observations of animals and noninvasive measurements, would be exempt from the AWA requirements. These determinations would be made by the established IACUC. Other issues to be evaluated would be to determine what field study activities should be approved and used by researchers conducting their work under a scientific research permit issued by NMFS, such as marking procedures, use of anesthesia,

techniques for taking tissue samples from live animals, techniques for restraint of animals, and marking/data transmission protocols.

Therefore, and important to the questions asked during the public meetings and comment period on the Draft PEIS, it was recognized that the need for an IACUC committee and process should not be imbedded in any one alternative. The need for an IACUC review process works across all alternatives and will be implemented by NMFS independent of this NEPA process. Steller sea lion and northern fur seal research, as well as all other marine mammal research, will be subject to the IACUC review once the process is established. At present NMFS has appointed a committee to develop a policy on how to implement this process. The committee will determine whether IACUCs should be established for each science center, regionally, or nationally. The committee will also look into how the IACUC members will be selected, how science is reviewed under this process, and any other AWA requirements. A report by this committee to the NMFS Science Review Board is due early May 2007.

Currently, most if not all academic researchers applying for marine mammal research permits use IACUCs. This greatly facilitates the permitting process in making the humaneness determination. For those permit requests in which an IACUC is not established, mainly NMFS research, NMFS F/PR1 staff will continue to make the required MMPA determinations for humaneness, least possible degree of pain and suffering, and feasibility of non-lethal methods. Once the NMFS IACUC committees are established they will facilitate this process by having humaneness and “least practicable degree of pain and suffering,” reviewed pursuant to the AWA which will aid in reviewing permits under the MMPA process.

5.4 Coordination with Alaska Native Organizations

NMFS has formally established co-management agreements with Alaska Native communities for specific marine mammals, including SSLs and NFSs (see Appendix F). In addition, the agency recognizes both the special relationship provided under Government-to-Government Consultation requirements (Executive Order [E.O.] 13175), and potential contribution of traditional knowledge to the management of SSLs and NFSs.

Several Alaska Native organizations participated in the scoping and consultation processes associated with the SSL and NFS Research PEIS (see Appendix C and Appendix E). The following recommendations are based on comments submitted.

- Improve mechanisms that allow Native Tribes or Alaska Native Organizations (ANOs) to participate in identifying priorities for SSL and NFS research in Recovery and Conservation Plans.
- Improve collection and meaningful inclusion of local Tribes or ANO’s traditional Native knowledge in Recovery and Conservation Plans, research plans, and management findings. This is something that could be achieved during implementation of Recovery and Conservation Plans, or during plan development.
- Seek and encourage participation of Alaska Natives in developing research and grant projects and applications, including monitoring of the long-term effects of research activities.
- Identify appropriate ANOs to be included on a standing mailing list, where NMFS will notify them, and ask for comments on permit applications.
- Provide notification of proposed research field activities to ANOs and communities in the vicinity of the proposed research, including when, where, and who is conducting the research. This could be done by NMFS or required of permit holders.
- Encourage researchers to involve Tribal or ANO biologists in field research.
- Provide annual feedback on research activities and results which affect the closest Native communities(s) affected by the research.

- Share final documents of research with the nearest Native Tribe or affected ANO. Establishing a website where research results (as in permit reports, technical memoranda, conference proceedings, publications, etc.) could be posted would facilitate this.