



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

RECORD OF DECISION

Steller Sea Lion and Northern Fur Seal Research Final Programmatic Environmental Impact Statement

NOAA, National Marine Fisheries Service (NMFS)
Silver Spring, Maryland

SUMMARY

This Record of Decision (ROD) documents the decision by the NMFS to select the Preferred Alternative, as described in the Final Programmatic Environmental Impact Statement (PEIS) for Steller Sea Lion and Northern Fur Seal Research, as its preferred strategy for the issuance of grants and permits for scientific research on Steller sea lions (SSL) and northern fur seals (NFS). The purpose of the proposed action is to disburse federal funds and issue permits for scientific research on SSLs and NFSs, consistent with applicable federal laws. Following review of the Preferred Alternative in relation to the current status of the endangered western population of Steller sea lions, the threatened eastern population of Steller sea lions, the environmental baseline for the action area, and the direct, indirect, and cumulative impacts of the activities proposed under the Preferred Alternative, NMFS has determined that the implementation of the Preferred Alternative will be limited in duration and scope at this time such that it limits research permits to three years (effectively three summer field seasons, June 2007 to August 1, 2009) while engaging in a program review as outlined herein. Upon completion of the program review (no later than December 2008), NMFS will adopt policy and guidance to improve the implementation of the Steller sea lion and Northern fur seal research program. Until such policy and guidance is adopted, NMFS will not process any requests for amendments to the current research permits, nor will it issue new permits for Steller sea lion and Northern fur seal research. NMFS will not issue grants for research activities on Steller sea lions and northern fur seals that conflict with this limitation on research permits.

PURPOSE AND NEED

The purpose of conducting research on SSLs and NFSs, as stated in the SSL Recovery Plan and NFS Conservation Plan, is to promote the recovery of the species' populations to levels appropriate to justify removal from Endangered Species Act (ESA) listings (in the case of SSL) and to delineate reasonable actions to protect the depleted species (in the case of NFS) under the Marine Mammal Protection Act (MMPA). NMFS is the federal agency responsible for management, conservation, and protection of these species. NMFS facilitates research on SSL and NFS by awarding grants and issuing permits. This research may yield information that can be used by NMFS to develop more informed and effective management actions to promote recovery and conservation of SSL and NFS.



The need for NMFS' grant program for research on SSL and NFS is related to its obligations to administer directed grants from its operational budget and "pass through" grants detailed in the federal budget. These grants are administered through the NMFS Alaska Regional Office.

The need for issuance of permits relates to the "take" prohibitions of the MMPA and ESA. The ESA and the MMPA prohibit "takes" of threatened and endangered species, and of marine mammals, respectively, with a few exceptions. Permits for bona fide scientific research are one such exception. A scientific research permit allows an exemption to the "take" prohibition for research activities that may result in harassment, harm, pursuit, capture, and mortality of SSL and NFS. Many scientific research activities require approaching or capturing animals and may result in harassment or other prohibited "takes." As such, most research activities on these species require permits, which NMFS issues to qualified individuals and institutions through the Permits, Conservation and Education Division (PR1), Office of Protected Resources, NMFS.

The legal and regulatory framework for NMFS' responsibilities regarding marine mammals is described in Section 1.7 of the PEIS. All of the alternatives must meet research and management needs within the scope of NMFS' legal limits and responsibilities. There is considerable flexibility under the MMPA, ESA, and NMFS regulations regarding the types of research objectives and procedures that can be permitted. If an applicant submits information demonstrating that a requested activity is consistent with the provisions of the MMPA, ESA, and permit regulations, and NMFS determines that issuance of the permit would not violate any other environmental laws, researchers can request and receive authorization for a wide variety of studies and protocols. The MMPA and ESA give NMFS authority to place such terms and conditions in research permits as are deemed appropriate. These conditions are typically specific mitigation measures that are required to minimize risk of adverse effects.

The PEIS provides decision-makers, and the public, with an evaluation of the environmental, social, and economic effects of the research being conducted on SSLs and NFSs and alternatives to that research strategy for the upcoming years. The PEIS evaluates the effects of the type and range of SSL and NFS research activities (i.e., the alternative actions) that may be exercised in current and future grants. The PEIS assesses the direct and indirect effects of various levels of funding and different research techniques on SSLs and NFSs throughout the entire range of these species in United States (U.S.) waters and on the high seas, which includes parts of Alaska, Washington, Oregon, and California. The PEIS assesses the contribution of research activities to the cumulative effects on these species and resources, including effects from past, present, and reasonably foreseeable future events and activities that are external to the research activities. The PEIS serves as the central planning document for PR1 and the Alaska Region's Grant Program for activities related to SSL and NFS. The PEIS and this ROD address the requirements of the National Environmental Policy Act (NEPA).

DECISION

NMFS has selected the Preferred Alternative (Alternative 4) as the approach to issuing grants and permits for scientific research on SSL and NFS. This alternative allows the agency to fully implement the recommendations in the species' conservation and recovery plans. NMFS released the SSL and NFS Programmatic Draft EIS in February 2007 and the Final PEIS in May

2007. NMFS has determined that the implementation of the Preferred Alternative will be limited in duration and scope at this time such that it limits research permits to three years (effectively three summer field seasons, June 15, 2007 to August 1, 2009) while engaging in a program review as outlined herein. Upon completion of the program review (no later than December 2008), NMFS will adopt policy and guidance to improve the implementation of the Steller sea lion and Northern fur seal research program. Until such policy and guidance is adopted, NMFS will not process any requests for amendments to the current research permits, nor will it issue new permits for Steller sea lion and Northern fur seal research. NMFS will also not award grants that would conflict with this limitation on research permits.

Major Management Reasons Used to Select the Preferred Alternative

Alternative 4 includes all research activities needed to address all information objectives identified for both species of concern. This alternative would include the same types of research as described in the status quo alternative, but would also allow for activities that have not been authorized under the status quo, including new permits and permit amendments that were pending as of January 2006. However, it could also include some types of techniques and activities that have not been previously requested or authorized, including intentional lethal take. Research conducted under Alternative 4 could provide a major amount of information to support the management and conservation objectives listed in the Recovery and Conservation Plans for each species and was selected as the Preferred Alternative for that reason.

The alternatives considered in the PEIS range from allowing only activities that do not require a permit (Alternative 1) to allowing the maximum amount of research that can be justified (Alternative 4). All of these alternatives would be consistent with NMFS' current statutory and regulatory authority. However, the alternatives considered vary by management policy, including the types of research and the level of effort that would be permitted under each different policy.

For example, research conducted under Alternative 1 would not cause any mortalities or sub-lethal effects on SSLs or NFSs in the wild. However research conducted under Alternative 1 would provide the minimum amount of information to support the conservation objectives listed in the Recovery Plan. As permits expire there would be no research under this alternative.

Under Alternative 2, the capture and handling of SSLs or NFSs in the wild would not be permitted and research would be limited to activities such as aerial surveys, scat collection or other "hands-off" techniques. Alternative 2 would provide a minimum amount of information to support the monitoring requirements of the MMPA and ESA. Likewise, it would have provided for the minimum amount of information to address the conservation requirements of the Recovery Plan. For example, without collection of tissue samples, NMFS would not have information on the incidence or types of disease present in these populations, nor could NMFS determine or monitor variations in population genetics that might be relevant to delineating stocks for management purposes. Thus, while Alternative 2 may initially benefit SSLs and NFSs by eliminating some harassment, injury, or potential mortality due to research activities, the 'Research Program without Capture or Handling' Alternative would hinder NMFS' ability to conserve or recover these marine mammal populations by limiting collection of information needed for management.

The Status Quo Alternative (Alternative 3) would allow research at levels consistent with research activities that were valid on January 1, 2006, including those permits that were subsequently vacated by court order on May 26, 2006 (Civil Action No. 05-1392). It would not have included those activities that had been applied for (permits or amendments) but not yet authorized at the time this EIS was initiated. Research conducted under Alternative 3 could have provided a major amount of information to support the recovery objectives listed in the SSL Recovery Plan but would have been inadequate to address the conservation recommendations of the NFS Conservation Plan, and any increase in research needs to support management and conservation for NFSs.

The Environmentally Preferable Alternative

The environmentally preferred alternative (40 CFR 1505.2(b)) promotes the national environmental policy as expressed in Section 101 of NEPA. This is often characterized as the alternative that causes the least damage to the physical and biological environment and is the alternative that best protects, preserves, and enhances historic, cultural, and natural resources. In this case, Alternative 2-Research Program without Capture or Handling, is considered the environmentally preferred alternative because intrusive research on SSLs and NFSs would not be funded or authorized by permit, but some level of non-intrusive research would continue to allow for collection of information on the distribution and abundance of SSL and NFS stocks. Thus, SSLs and NFSs would be subject to a minimum of research activities that could potentially harass, injure, or kill them while information relevant to management could still be collected.

Alternatives Considered

Four alternatives were developed and analyzed in the PEIS. These alternatives represent a reasonable range of research granting and permitting options that fulfill the purpose and need for the federal action. The policy direction of each alternative is described followed by a summary of examples of specific research activities included under each alternative.

The alternatives vary in the threshold for what would be considered an “acceptable” level of serious injury and mortality associated with research activities. These thresholds are based on a metric for fishery-related mortality that is defined in the MMPA; the Potential Biological Removal (PBR). The formula for PBR is an extremely precautionary or conservative measure of human-caused mortality that could be expected to affect a population’s ability to recover from a depleted state or to remain at a sustainable level. Even if human-caused mortalities exceeded PBR they would not necessarily cause the population to decline, but could slow the rate at which the population recovers. Each of the alternatives allow a level of take that is a percentage of PBR, but none of the alternatives allow a level of take that exceeds PBR. Therefore SSL and NFS stocks would not decline under any of the alternatives considered solely as a result of the research activity.

Using the EIS to Establish Serious Injury and Mortality Limits Under the Alternatives

Chapter 4 of the PEIS describes the methodology and risk assessment analysis for the research efforts represented by each of the alternatives. One of the metrics used to measure the possible risks of research is a calculated estimate of potential serious injury and mortality that could result

from different research activities. The importance of this number of potential mortalities to the species is relative to the status of the population or stock of animals it affects. The PEIS concerns research on two different species but four distinct management stocks as defined under the MMPA, each with different population trends and management status.

As described, the different levels of research activity represented in the alternatives correspond to different levels of risk to individual animals. Increased intensity of field research and more intrusive types of research pose greater risks to individuals, even if they provide useful information for conservation purposes. In order to provide a guideline for the maximum amount of risk to individuals that would be acceptable under each of the alternatives, NMFS established an upper threshold level of mortality relative to PBR. This does not mean that NMFS would be obligated to authorize takes up to these threshold levels or that a certain percentage of PBR will be allocated to research regardless of other types of mortality.

Alternative 1 – No Action

Under the No Action Alternative, no new permits would be issued to replace existing permits as they expire, nor would existing permits be amended to allow modifications in research activities, sample sizes, or objectives. Further, no grants would be awarded for research that requires a permit, except for those activities authorized under existing permits. When the existing permits expire, all research activities that require a permit would have to cease, or researchers would risk violation of the MMPA, ESA, and NMFS regulations. Under Alternative 1, no incidental or intentional mortality due to research activities would be acceptable or authorized.

Alternative 2 - Research Program without Capture or Handling

Under this alternative NMFS would issue permits and provide grant support to qualified individuals and institutions to conduct research on SSLs and NFSs using methods that would neither involve capturing and handling of animals, nor allow researcher presence on rookeries during the breeding season. This alternative would also prohibit intrusive research, where intrusive is defined at 50 CFR 216.3 to mean a procedure conducted for bona fide scientific research involving: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). This restriction on intrusive activities would essentially limit research to censusing surveys and behavioral observations that have a very small potential to cause injury or harm. The total amount of serious injury and incidental mortality allowed under Alternative 2 for all research permits and authorizations would not exceed 5 percent of PBR for each of the 2 species (4 affected stocks) and therefore would be considered negligible. No intentional lethal take would be authorized under Alternative 2.

Alternative 3 – Status Quo Research Program

Research activities that were authorized on January 1, 2006, including those permits that were subsequently vacated by court order on May 26, 2006 (Civil Action No. 05-1392 [see mortality assessment EIS Chapter 4, Tables 4.8-3 through 4.8-7, 4.8-15 through 4.8-19, 4.8-27 through 4.8-31, and 4.8-39 through 4.8-43]) were considered the 'status quo' level of research for

purposes of the PEIS, which was initiated prior to the litigation. It does not include activities that had been applied for (permits or amendments) but not yet authorized at the time the PEIS was initiated. Under the status quo alternative, new permits would be issued to replace permits as they expire such that the levels and types of research activities would continue. New requests for permits and amendments to existing permits would be considered on a case-by-case basis and would be granted as long as the applicants satisfied all permit issuance criteria, including having a bona fide research project likely to contribute to the recovery of the depleted, threatened, or endangered species. Under this alternative, each new permit request would be evaluated separately during Section 7 consultation, against the baseline of impacts from whatever permits were in effect at the time of the request. Under Alternative 3, the total amount of incidental mortality allowed under all permits and authorizations would not exceed 10 percent of PBR for any stock and therefore would be considered a negligible effect under the MMPA.

Alternative 4 - The Preferred Alternative

This alternative would include not only those specific activities currently or previously permitted but any additional research activities or methods that are needed to implement the SSL Recovery Plan and the NFS Conservation Plan. Research activities related to priorities listed in the Draft SSL Recovery Plan have been used by past and current research programs under the status quo permits. However, some of the research questions may require use of techniques or protocols that have not previously been requested or permitted on SSLs and NFSs. As such, they may involve unique or uncertain risks to the animals. Under Alternative 4, NMFS would consider proposals for research that posed a higher, or unknown, risk of injury to individual animals, including intentional mortality of animals or other specified individuals, if the permit applicant could demonstrate that the research would provide significant data relevant to conservation of the species. Permit issuance criteria under the MMPA and ESA would still prohibit research from putting the species at a disadvantage or in jeopardy. Under Alternative 4 NMFS could authorize serious injury takes up to 15% PBR, a level greater than that for the status quo (Alternative 3) but still considered minor on the population level. Specifically, the % increase in time to recovery for the case where 35 animals were killed annually incidental to research (15% of PBR, observed and cryptic mortality) is 5.8%, while for 70 animals a year it would be 6.6%. Perhaps more important is the contrast between no mortality incidental to research and 70 animals a year. For the former (no mortality incidental to research), the % increase in time to recovery is 4.8%. That is, mortality related to bycatch in fisheries and Alaska. Native subsistence harvests alone would be expected to increase the time to recovery by 4.8% relative to a scenario of no anthropogenic removals. Therefore, the percent increase in time to recovery due to mortality incidental to research by itself is on the order of 2 percentage points (i.e., 0.066 - 0.048). As the Preferred Alternative, this approach allows the agency to fully implement the recommendations in the species' conservation and recovery plans. NMFS has chosen Alternative 4 as the Preferred Alternative in the Final PEIS.

Alternatives Considered and Eliminated from Detailed Study

Alternatives that would allow research inconsistent with the requirements of the MMPA and ESA, or with NMFS implementing regulations, were not carried forward because they would not meet the minimum environmental standards established by these laws, or would require revision of the statutes by Congress. For example, an alternative that would allow researchers to conduct research using methods that would not meet the humane standard under the MMPA, or would

not be likely to contribute to conservation of the endangered species that was the subject of the permit, as required by the ESA, was not considered further because it would not meet these minimum requirements of the statutes governing research on protected species. Similarly, an alternative that would allow research permits to be issued for an indefinite time period, or for longer than five years, was not carried forward because it would not meet the minimum requirements for permits as currently stipulated in NMFS implementing regulations.

A research moratorium not allowing any research and revoking all active research permits was not carried forward because it would not be consistent with NMFS legal mandates to monitor the status of marine mammals and recover threatened and endangered species. A permanent “no research” policy would end all research activities and compromise NMFS’ ability to monitor distribution and abundance of the species. Without some level of research surveys, NMFS would not be able to monitor the status of the endangered population, nor assess whether protective measures, such as regulations prohibiting fishing in critical habitat, were achieving the desired effect on recovery of the species.

IMPLEMENTING THE PREFERRED ALTERNATIVE - MITIGATION

Section 1505.2(c) of the CEQ regulations stipulates that the ROD shall state whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, or why none were adopted. The ROD must specifically identify which mitigation measures were selected and adopted as part of the Federal agency’s proposed action. The agency must also include a monitoring program for each mitigation measure. Further, to improve NEPA effectiveness, CEQ recommends that federal agencies conduct extensive monitoring to confirm their predictions of impact, to ensure the effectiveness of their mitigation measures, and to adapt projects to account for uncertainties in impact prediction. Neither NEPA nor CEQ provides specific guidance on how to develop monitoring programs but do state that such monitoring should be reflected in the ROD when an EIS is prepared.

During the review of the PEIS, the Steller sea lion and Northern fur seal research program, the decision-making process used to authorize research permits, and the general classes of activities the program would authorize, conducted under the ESA, NMFS concluded that the program would benefit from a stronger, clearly articulated decision framework that promotes a reasoned way to balance competing interests and competing risks to ensure that research activities authorized under the program would not permit an exemption to the protective restrictions imposed by the MMPA and the ESA for a particular study or investigation except when a particular study or investigation would be expected to promote the conservation and recovery of the species. This review mirrored the recommendations for mitigation and monitoring that were made during the public comment periods. These recommendations fall within five general categories: (1) reporting requirements for research and grant activities; (2) coordination of research activities; (3) monitoring the effects of research activities; (4) developing a research implementation plan; and (5) improvement of NMFS decision-making framework and implementation of the MMPA and ESA criteria for the issuance of scientific research permits for Steller sea lions and northern fur seals. 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.

Reporting Requirements

All permits issued by NMFS for research on marine mammals and ESA-listed species require annual and final reports from permit holders to monitor permit compliance. The Grants Program requires semi-annual reports from grant recipients (see Section 4.7.3 of PEIS). Permits issued under the Preferred Alternative will require annual reports be submitted to NMFS within 90 days of the end of each permit year. If reports are not submitted on time, the research permit will be temporarily suspended pending receipt of the report, and may be revoked or modified if no report is received. The NMFS Permits Division is developing a web-based permit application and tracking system that will include electronic submission of reports. Information about permits, including annual reports, will be available to the public through this system

Coordination of the SSL and NFS Research Programs

Issues were raised during public comment periods with regard to whether research activities were being coordinated by researchers, or whether NMFS was required to coordinate research that it permits or funds. The lack of a research coordination plan was perceived as potentially increasing the amount of unnecessary harm to individual animals, affecting more animals than necessary, and reducing the efficiency of research. The Draft PEIS indicated that a plan should be developed that would serve to refine research priorities and determine a strategy for when, and how, research should be conducted for purposes of management decisions.

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 of the PEIS.

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. Further, replication is often necessary, is intentional, and provides valuable trend information from specific areas.

Coordination of large-scale efforts such as monitoring or survey work is necessary given that it takes several years to complete a population survey. However this is not the level of needed coordination suggested by the comments. What has been lacking has been a research 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 as described in the Preferred Alternative of the 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.

Monitoring Effects of Research

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 are the potential long-term effects of research activities and associated disturbance on rookeries and on pups or juvenile sea lions at rookeries. There is also a need to analyze the results of monitoring that has occurred, establish new monitoring requirements, and incorporate them into a long-term monitoring plan.

Again, 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. 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.

Program Review

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 PEIS recognized that an implementation plan should be developed for SSL and NFS research 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.

Nonetheless, NMFS believes the development of an effective effort to implement a long-term research plan for SSLs and NFSs 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, and to help guide the implementation of the Preferred Alternative.

NMFS must engage in a study to better understand the links between permitted activities and their ability to facilitate recovery and conservation management of protected species, and to ensure that NMFS would not permit an exemption to the protective restrictions imposed by the ESA for a particular study or investigation except when a particular study or investigation would be expected to promote the conservation and recovery of the species. The study should also help NMFS prioritize research projects for SSLs that would facilitate the purpose and policies of the ESA to conserve the ecosystems upon which endangered and threatened SSL depend, to provide a program for the conservation of the species.

Therefore, NMFS intends to convene an independent research “implementation team” with Marine Mammal Commission (MMC) oversight to assess the effectiveness of the research program. NMFS has requested that the MMC and its Committee of Scientific Advisors oversee the development of the research implementation plan and provide that plan to NMFS with a recommendation for its implementation. Specifically, NMFS must:

1. Develop with the assistance of an independent body (e.g., the MMC) an implementation and coordination plan for Steller sea lion and Northern fur seal research. The plan must:
 - a. Analyze current [and recommended or needed] research and management priorities and based on that analysis, recommend a long-term, cohesive strategy for conducting specific research studies [consistent with the recovery plan] and sufficient to assess the effectiveness of management actions
 - b. Evaluate and recommend a sampling protocol for monitoring among and between populations, that would minimize the risks to stocks,
 - c. Evaluate and recommend a long-term strategy to monitor and minimize disturbance at research sites,
 - d. identify [recommend] studies to determine the effects of research on the subject species,
 - e. review current research practices and determine whether techniques currently used are the best to achieve their purpose, or whether other techniques can be substituted that might have less of an impact on sea lions [and fur seals], and
 - f. review research results on an ongoing basis and update research directions and priorities accordingly consistent with implementation of the recovery plan.

2. Review the NMFS decision-making framework and implementation of the MMPA and ESA criteria for the issuance of scientific research permits. This plan must:
 - a. Evaluate and recommend ways to evaluate applications against relevant statutory and regulatory permit issuance criteria
 - b. Evaluate and recommend a strategy for weighted decision making given the relevant statutory and regulatory permit issuance criteria
 - c. Evaluate and recommend a strategy NMFS can use to evaluate the rational strength of a proposed investigation and the justification for using protected species.

Upon completion of the program review NMFS must adopt policy and guidance to improve the implementation of the Steller sea lion and Northern fur seal research program that would result in: a) minimizing intrusive handling and sampling of protected species except when a particular study or investigation would be expected to contribute to the conservation of the species, b) greater rigor in the overall decision to authorize (or not) research activities, and c) a strategy for reviewing and improving program performance, and ensuring program objectives are met. After the program is modified to incorporate the above mentioned changes, NMFS will issue a supplement to the PEIS to evaluate new circumstances or new information relevant to implementation of the proposed action, and NMFS' Permits Division will reinitiate consultation under section 7 of the ESA before issuing any new permits or permit amendments.

The above mentioned program review and any report recommending changes to NMFS' Steller sea lion and Northern fur seal program must be completed by the end of the calendar year 2008. To facilitate the implementation of these reviews, NMFS intends to phase-in the implementation of the Preferred Alternative during 2007-2008 as follows:

- a. All research permits (up to 13 in total) will be limited to three years (effectively three summer field seasons, June 2007 to August 1, 2009);
- b. NMFS would not permit any energetic studies (i.e., drag buoyancy studies) on free-ranging individuals from the endangered western distinct population segment of Steller sea lions;
- c. Surgical implantation of transmitters limited to animals held in temporary captivity (transient sea lion studies) such that post surgical monitoring and recovery ensured;
- d. NMFS will not process or accept any amendments to the current research permits and will not issue new permits for Steller sea lion and Northern fur seal research between June 2007 and August 2009, until recommended policy and guidance from reviews can be adopted as part of supplemental EIS for improved implementation of the Steller sea lion and Northern fur sea research program;
- e. NMFS will not issue any new research permits for Steller sea lion and Northern fur seal research until a supplemental Programmatic Environmental Impact Statement and section 7 consultation can be completed;
- f. Branding will not be conducted during the pupping season 2007 by NMFS (and likely not by ADFG) which will significantly reduce any effects from that activity. During this period, NMFS will analyze effects of rookery activities without branding and compare it to historic data (which it will be analyzing) from its long-term monitoring sites (for example, Marmot Island) to determine if there is a detectable difference in serious injury or mortality at a rookery as a result of disturbance and handling animals, with and without one of the more intrusive activities; and
- g. Other intrusive activities associated with rookery research during pupping season will be monitored. As a condition of permit issuance, researchers will be required to conduct a post- research activity monitoring program to observe the potential effects of research activities. Results of the monitoring program will be assessed and provided as part of the annual reporting requirement to determine the uncertainty that currently exists regarding research effects, to compare and ground-truth estimates of impact provided in Chapter 4 of the PEIS, and determine what subsequent intrusive actions at rookeries and haulouts should be permitted and implemented into a long-term research coordination and monitoring plan.

Results of the monitoring program will also be assessed to determine what additional research conditions might need to be implemented. 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).

CONCLUSIONS

Through the PEIS and as documented in this ROD, NMFS has considered the objectives of the proposed action and has analyzed a reasonable range of alternatives that adequately address the objectives of the proposed action. Furthermore, NMFS has analyzed the associated environmental consequences and impacts of the alternatives, and identified mitigation measures to address, to the extent practicable, those consequences and impacts. NMFS also has

considered public and agency comments received during the EIS review periods. NMFS has determined that the implementation of the Preferred Alternative will be limited in duration and scope at this time such that any potential effects will be minimized until such time that an independent review has occurred and recommendations from said review incorporated into a supplemental PEIS. NMFS will not process any amendments to the current research permits, nor will it issue new permits for Steller sea lion and Northern fur seal research. Taking into consideration the limited phase-in of the Preferred Alternative, NMFS concludes that the Preferred Alternative (Alternative 4) provides reasonable, practical means to avoid, minimize, or compensate for environmental harm from the action

Contact Person

Further information concerning this ROD may be obtained by contacting P. Michael Payne, NMFS, PR1, Silver Spring, MD 20910, (301) 713-2289.

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