

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

30 October 2006

Ms. Diana Hynek
Departmental Paperwork Clearance Officer
Department of Commerce
14th and Constitution Avenue, NW
Room 6625
Washington, DC 20230

Dear Ms. Hynek:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's proposed survey for measuring the preferences of U.S. residents regarding programs for the conservation and recovery of the Steller sea lion as described in the Service's 16 August 2006 *Federal Register* notice. The Commission appreciates the importance of generating useful information for decision-makers but has several concerns about the design of the proposed survey. We provide the following general and specific comments that we hope will be helpful.

GENERAL COMMENTS

First and foremost, we question whether the data generated by the survey will be useful. Because participants in the survey are being selected randomly, many, if not most, will be unfamiliar with the mandates of the Endangered Species Act and the specifics of the situation involving Steller sea lions. Thus, the survey results will likely reflect the first impressions of relatively uninformed citizens based on limited, and sometimes misleading, information involving fairly complicated issues.

We also question the utility of seeking public opinion, not on the general mandates and goals of a broadly applicable statute such as the Endangered Species Act, but on whether or how that Act should be implemented on a species-specific basis. Should the Service, for example, base its decisions on what is needed to achieve the recovery goals of the Act and its allocation of endangered species recovery funds on the popularity of the various species?

In some respects, the survey is designed to be a referendum on the mandates of the Endangered Species Act and the priorities placed on achieving its goals. In others, the questions are designed more to elicit what the average citizen is willing to spend (or forego) in furtherance of conserving Steller sea lions. By intermingling these objectives, the survey does not do a very good job of achieving either. If, in fact, the survey is intended to provide public opinion on the general directives of the Act, additional information on its provisions and rationale need to be provided. In addition, such questions should be couched in terms of protecting endangered species and ecosystems generally and should not be raised in the context of a single species. If, on the other hand, the survey is intended to apply only to Steller sea lions, it should begin by setting forth the

mandates of the Act, and the questions should be geared toward eliciting views on the best ways to achieve those goals.

In the Commission's view, the survey seems inconsistent with the broad and farsighted findings and purposes of the Endangered Species Act. The survey presents inaccurate and insufficient information; seems inappropriately to lead respondents to particular conclusions; misrepresents the complexity of the issues involving Steller sea lion status and conservation; appears to assume that the only values of consequence are short-term economic ones; proposes actions that appear inconsistent with or contrary to the provisions of the Endangered Species Act and the Marine Mammal Protection Act; and promotes a utilitarian perspective rather than a rigorous science-based search for solutions to difficult conservation problems. The superficiality and inaccuracy of the survey design seem likely to produce responses that could detrimentally affect the conservation and management of fisheries and marine ecosystems. More significantly, the survey seems to challenge the fundamental premises of major federal statutes, including the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and the National Environmental Policy Act.

We also question the scale of the suggested economic consequences in several of the questions and the level of detail in how those impacts might affect particular households. Also, the survey does not indicate what is being spent on Steller sea lion conservation under the current program. This would be useful background information for assessing the various alternatives.

Over the past several years, funding for the National Marine Fisheries Service's Steller sea lion program has varied considerably, from about \$3 million in 1998 to more than \$40 million in 2001. Similarly, expenditures that the Coast Guard attributes to enforcement related to Steller sea lions have varied considerably from year to year, reaching a high of just under \$40 million in 2003. Total federal and state expenditures on Steller sea lion programs peaked in 2002 at about \$56 million. Current census figures indicate that there are about 109 million households in the United States. As such, the maximum amount spent in any year on Steller sea lion conservation has been on the order of 50 cents per household. Against this background, it seems incongruous to be asking survey participants whether they would be willing to spend an additional 10, 40, or 80 dollars per year on sea lion recovery. Is the Service truly suggesting that optimal Steller sea lion recovery programs will cost \$8.7 billion per year over the next 20 years? If so, additional justification for the amounts suggested and the predicted outcomes is needed. Presumably, you would elicit a very different response if you asked participants whether they would be willing to spend an additional 50 cents a year on Steller sea lion conservation. This amount would about double the maximum amount of federal and state expenditures in any one year over the past decade.

The questions related to costs seem to assume that potential increases in the cost of fish will be shared equally among consumers. It should be recognized that these costs would vary regionally and among households. In fact, much of the fish caught in the area inhabited by the western stock of Steller sea lions is marketed overseas. As such, it might be more appropriate to ask if the participant cares whether a Japanese consumer has to pay more for fish from the United States if

any such cost has only a small impact on the income of U.S. fishermen and contributes to the conservation of endangered and threatened species.

SPECIFIC COMMENTS

Question 1 appears to be a referendum on the Endangered Species Act. As noted above, if this is one purpose of the survey, the background information provided is insufficient to generate informed opinions. Further, although it is reasonable to assume that respondents will have various opinions regarding the merits of the Act, it is not clear to us why the National Marine Fisheries Service would be seeking such information as a basis for determining whether it should carry out its responsibilities under the Act.

Question 2 suggests that agencies responsible for implementing the Endangered Species Act should determine the rigor with which they do so based on other considerations, such as the state of highways and roads, etc. The implication appears to be that laws should be rigorously implemented only if the issues they address are rated as high priority or—conversely—those deemed of lesser priority do not warrant implementation. Also, if this question is retained, it could be made more useful by asking related questions as to what the participants think the United States is currently doing to protect endangered and threatened species. It is of little value that someone thinks we should be doing more, less, or the same if they do not know what we are doing now.

Question 3 suggests that whether or not our conservation laws are implemented by the responsible agencies is simply a matter of the effects on jobs—and that protection of threatened and endangered species is always a trade-off resulting in a reduction of jobs. This seems a great oversimplification that may be true in some cases but certainly not true in all cases.

Question 4 is preceded by information including estimates of sea and sea lion abundance, but the information is incorrect and highlights seal species with large abundances, perhaps giving a false impression regarding overall status of seals and sea lions. The information is incorrect with regard to the trend in Hawaiian monk seals and the combined abundance of other seals. Further, the Steller sea lion is not the only seal or sea lion for which new protection efforts are being considered. As the Service should be fully aware, new protection measures are being considered for the Hawaiian monk seal (which, contrary to the information in the survey, is continuing to decline).

Question 7, and the information preceding it, give one possible future scenario for Steller sea lions, but there are others that may be equally likely. Scientists have documented, but cannot explain, an 80 percent decline in the western stock of Steller sea lions over the past three or four decades. To suggest that they have a reliable basis for projecting the trend in sea lions over the next 35 years presents a misleading representation of our understanding of sea lion status.

In the information preceding question 8, the second bullet suggests that fishing is not considered a major problem in the area where the eastern stock occurs. Is it that fishing occurs in a manner similar to that in the Gulf of Alaska and Bering Sea and doesn't have effects, or is commercial fishing in the southeast not comparable to that in the areas occupied by the western

stock? These alternative explanations could result in misinterpretation and misunderstanding by persons taking the survey.

Question 8 states that fishing restrictions to help conserve Steller sea lions have made fishing more costly. Again, this is not always the case. When measures were imposed on the Bering Sea pollock fishery to spread fishing effort over time and space, some of the large factory trawlers formed a cooperative that (1) established a joint strategy for dividing their catch allocation, (2) ended the race for fish (thereby making fishing safer), (3) distributed their fishing effort over time on a more rational basis (allowing fishing to occur when the target fish stocks were in the best condition), and (4) experienced a year of fishing that was profitable well beyond their expectations. So it is not always true that fishing costs more because of Steller sea lion measures. Also, as indicated above, those costs may not be borne by all consumers equally or, for that matter, even by U.S. consumers. This should be explained.

Question 8 presents costs only for conservation measures and therefore seems entirely one-sided in its perspective. Those purported costs are oversimplified, not necessarily true, and should be backed up by analysis and verification. To be well balanced, the question might also have included benefits of conservation measures, such as the likelihood of a more stable, functioning ecosystem, opportunities for tourism, and a decreased probability of further decline or extinction of sea lions.

The information preceding question 9 is also misleading. It states that scientists believe that protection, enforcement, and monitoring actions will have little impact on other species. First, some substantiation of that claim seems necessary. Second, it seems clear that the potential effects of oceanographic regime shifts, fisheries, and killer whale predation—hypotheses raised to explain the Steller sea lion decline—all may have bearing on the status of northern fur seals, which are continuing to decline in the same region, may be subject to similar risk factors, and may experience some benefit from suitable measures to protect sea lions.

Question 9 seems to suggest that, despite the directives of the Endangered Species Act and the Marine Mammal Protection Act, we ought to be able to pick and choose which populations to protect and which to ignore into extinction. The implication violates not only the spirit of conservation generally but the statutory requirements developed and enacted by Congress to guide domestic conservation programs.

Question 10 again suggests that there is some background analysis, rather than mere speculation, that costs of protection will be greater in the Aleutian Islands and that the purported difference in cost is a basis for dismissing protection and conservation measures in that region. This question suggests that the Service is considering dismissing the requirements of the Endangered Species Act and the Marine Mammal Protection Act and allowing the decline and extirpation of Steller sea lions throughout the Aleutian Islands. Furthermore, the question does not, but should, explain that there are potentially significant conservation benefits that arise from retaining Steller sea lions throughout their existing range.

Ms. Diana Hynek
30 October 2006
Page 5

Questions 11, 13, and 14 suggest a set of alternative choices that link costs to the number of sea lions. We know of no bases for these cost estimates and their linkages to the number of sea lions. They appear to be entirely hypothetical or speculative. These questions imply a degree of management control that is entirely inconsistent with our past experience with this conservation challenge. Moreover, as discussed above, these estimates appear to be orders of magnitude higher than seem warranted in light of recent costs of Steller sea lion conservation programs.

The information leading to questions 11, 13, and 14 is, again, simplistic and biased. That information states that the survey respondent should “[r]emember, if you spend money for [sea lion conservation], it won’t be available to buy other things.” Might it also remind readers that if they are willing to support conservation measures for sea lions, their contribution might help to conserve functioning ecosystems and thereby provide a more sustainable world for future generations? Recall that the Endangered Species Act states that there are numerous values associated with effective conservation.

We know that, as the lead agency responsible for recovery of the Steller sea lion, the Service is faced with a great many challenges and difficult choices. However, we also expect that the information provided and the choices made will reflect an appropriately broad perspective that is based on the best available information and that reflects a clear focus on the responsibilities entrusted to the Service by the Endangered Species Act and the Marine Mammal Protection Act. We question whether the survey as currently designed is likely to obtain the information necessary to further the goals of these statutes.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

cc: Douglas P. DeMaster, Ph.D.
William T. Hogarth, Ph.D.
Daniel K. Lew