

5.0 NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE IMPLEMENTATION AND RECOMMENDATIONS

5.1 Introduction

The purpose of Chapter 5 is twofold: to explain the procedures that will be used to implement future National Environmental Policy Act (NEPA) compliance on permitting and research activities addressed in the Steller Sea Lion (SSL) and Northern Fur Seal (NFS) Research Environmental Impact Statement (EIS), and to make recommendations for further actions associated with SSL and NFS research that have been suggested during the course of the EIS process.

5.1.1 Need for National Environmental Policy Act Compliance Guidance

The SSL and NFS Research EIS addresses research and grant activities that are expected to occur over the foreseeable future. National Marine Fisheries Service (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 EIS. In addition to providing a NEPA compliance “road map”, Section 5.2 will provide guidance to research 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 Other Research Issues Raised During Scoping

During the scoping process associated with preparing the SSL and NFS Research EIS, a number of issues were raised by various stakeholders with regard to process and procedures associated with coordinating, conducting, and reporting on research activities. NMFS determined that it was most appropriate to address these issues in the form of recommendations for additional consideration and action, as presented in Section 5.3. (for further detail on Alternatives Considered, refer to Chapter 2).

5.2 National Environmental Policy Act Compliance Implementation of the Steller Sea Lion and Northern Fur Seal Research Environmental Impact Statement Preferred Alternative

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

The Final SSL and NFS Research EIS 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 EIS.

The Final SSL and NFS Research EIS will identify the Preferred Alternative, including an analysis of potential environmental consequences and mitigation measures. The Record of Decision (ROD) associated with the EIS

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 EIS. Proposed research 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 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.

Applications for new permits and for modifications to permits for research on SSL and NFS will be reviewed by NMFS Permits Division, Office of Protected Resources (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. 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 EIS and ROD to determine if the research proposed is within the scope of the Preferred Alternative. NMFS staff will use an Environmental Compliance Questionnaire to assure consistency across applications in this review.
- 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 EIS, a Memorandum to the File will be prepared, documenting that NEPA compliance for issuance of the grant or permit is provided by the Final EIS 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.

5.2.2 Coordination of the Grant and Permitting Review Process

At present, based on the fact that grant and research permit applications are submitted separately, and often at different times, individual NEPA compliance reviews are conducted by F/PR1 and Alaska Region Grants Program Office Staff. Staff from these two program offices coordinate to the extent practicable, and share NEPA compliance documentation where applicable. This process should 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, F/PR1 and Grants Program Office should consider “condition of approval” language that 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.

5.3 Recommendations for Coordination of Steller Sea Lion and Northern Fur Seal Research

The scoping process associated with preparing the SSL and NFS Research EIS included 1) reviewing comments submitted on previous NEPA documents (e.g., the 2002 and 2005 EAs on SSL Research), 2) reviewing other relevant comments, such as those associated with The Humane Society of the United States (HSUS) legal complaint, and 3) comments specifically submitted during the formal scoping period for this EIS. A number of recommendations were made that fall within three general categories: coordination of research activities,

reporting requirements for research and grant activities, and monitoring the effects of research activities. A fourth category, additional coordination with Alaska Native organizations, is addressed in Section 5.4.

5.3.1 Coordination of Research

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. Some coordination currently occurs voluntarily between researchers prior to preparing research plans and submitting permit applications as described in more detail in Section 4.7.2.2. NMFS permits for research require permittees to coordinate with each other when conducting research on the same species or in the same location. However, there are no formalized coordination plans or protocols implemented by NMFS. There are a number of specific steps that NMFS should investigate further regarding coordination of research.

Formalized Research Coordination Plan

- Develop formal mechanisms to address how researchers coordinate with each other, and with F/PR1 and the Alaska Region staff. This would include real time coordination prior to developing research plans/permit applications, and real time coordination during field work as appropriate with regard to logistics and level of disturbance.
- Investigate additional mechanisms of sharing information about planned or projected field work, such as establishing a program website with Geographic Information System (GIS) mapping component.
- Investigate mechanisms for sharing research results, including reports of annually permitted activities, presentation, and publications, such as on a program website or through annual symposia.
- Formalize mechanisms used by NMFS staff (e.g., Alaska Region, F/PR1, and the Grants Program Office) to coordinate grant and permit application requirements, reviews, and conditions of approval to ensure that comparable procedures are being used, and that the process is transparent to all interested stakeholders.
- Compare annual reports/research results with Conservation and Recovery Plan Objectives for evaluation of research priorities; this could result in a “roadmap” that provides additional direction to research permit and grant applicants, and assists NMFS staff in reviewing applications.
- Potential benefits of a formalized coordination plan would include minimizing duplicative research and unnecessary harm to animals, avoiding problems associated with research overlapping in time/space in ways that may compromise results or result in excess disturbance, and maximizing research resources.

5.3.2 Reporting Requirements

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

- NMFS should 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.
- F/PR1 is currently developing a new permitting application format that will eventually be web-accessible and will include submission of electronic reports that will be available to the public. In the interim, NMFS should 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.

5.3.3 Monitoring Effects of Research

One of the issues raised in the scoping process was uncertainty about the effects of research, given the lack of post-research monitoring. Of particular concern to some commenters are the potential long-term effects of hot-branding compared to other permanent marking techniques. Most researchers will observe and monitor animals that have been captured or restrained for a short period of time after their release. A major challenge to longer-term observation of animals post-research is the logistics of remaining in the field to monitor animals. In addition to being costly to maintain field camps in remote locations, it is not always possible to conduct monitoring without causing additional disturbance of a site. Further, animals may leave the research site and can be difficult to track at sea for extended periods of time given limitations of currently available scientific instruments and attachment methods. While use of cameras to monitor animals is a possible solution for some sites, maintenance of the cameras would usually require some disturbance of animals.

NMFS, researchers, and other stakeholders should collaborate to develop methods or protocols for monitoring and assessing effects of research. It should be recognized that studies of the effects of research would likely compete for funds with research projects themselves.

5.3.4 Other Considerations

The timing of grant cycles and permit processing are not synchronized. This 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, F/PR1 and Alaska Region staff 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, NMFS should consider establishing an annual pre-field work reporting date by which all permittees notify NMFS of field plans for the coming year.

5.4 Recommendations Coordination with Alaska Native Organizations

NMFS has formally established co-management agreements with Alaska Native organizations for specific marine mammals, including SSLs and NFSs (see Appendix G). 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 EIS (see Appendix D and Appendix F). 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 Conservations 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.

This page intentionally left blank.