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promoting sustainable fisheries to feed the world

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Dear Chairman Bernard, Chairman Jeffries, and Panel Members,

The Marine Conservation Alliance appreciates the opportunity to provide comments on your *Draft Independent, Scientific Review of the Biological Opinion (2010) of the Fisheries Management Plan for the Bering Sea/Aleutian Islands Management.* We would like to thank you for your efforts in reviewing the use of scientific information in NOAA's Biological Opinion (BiOp) and commend you for producing such a high quality draft review report. We especially appreciate the open and transparent process in which your review has been conducted and hope this serves as a model for future scientific reviews.

The Marine Conservation Alliance is a broad-based coalition representing a major segment of the harvesting and processing capacity engaged in federal fishing activity in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Also among its members are fishing communities who are impacted by implementation of the Reasonable and Prudent Alternatives (RPA) required as part of the BiOp.

We have reviewed your draft report and offer the following comments which are categorized below:

- Systematic consideration of alternative hypotheses
- Use of sub-areas in JAM determination
- Use of outside agency science, including
    - Dr. Burkanov
    - Dr. Boyd
- Degree of fishery/SSL overlap
- Use of POP data versus telemetry data

<u>Systematic Consideration of Alternative Hypotheses</u>

The review panel report has done a sound job in systematically evaluating evidence and logic in NMFS' case that competition from fishing has negatively impacted the SSL WDPS. The review systematically looks at how well environmental conditions and killer whales score against the same criteria. We urge the review panel to use this same systematic approach in evaluating the possible impact of contaminants and disease as potential causes or contributors to decline. Public comment on the BiOp presented NOAA with information on sources of contaminants, such as toxic wastes from former military sites, mercury, and organochlorines. The presence of these contaminants would be consistent with low reproductive rates in pinnipeds. We would be appreciative of the review panel considering the evidence on contaminants and disease in the same manner

that fishing, environmental conditions, and killer whales are examined. This would allow one to see how well these other potential causes of decline measure against the same criteria used to evaluate killer whales, environmental conditions, and fishing.

Use of Sub-Areas in Making JAM Determination

In making a JAM determination, NOAA has chosen to rely upon population trends in sub-areas that are smaller than a DPS and appears to confuse Recovery Criteria with extinction risk. The population of SSLs which reside in the Western Aleutian Islands (WAI) and Central Aleutian Islands (CAI) sub-areas have been declining while the broader population of SSLs in the WDPS appears to be increasing. For instance, during the 2004/2005 time frame the number of SSLs in the WDPS was estimated to be roughly 60,000 animals between the U.S. and Russia. More recent data estimates that same population at 75,000, clearly indicating an increase in the WDPS. Given that a JAM determination should consider the extinction risk of an entire DPS, it is unclear how the relatively few number of animals - and their associated population trend - which reside within the WAI and CAI can be relied upon to indicate the extinction risk of the entire WDPS of the SSL, especially when the broader DPS population appears to be increasing. It appears that NOAA has confused "recovery criteria" as outlined in the Recovery Plan with "extinction risk". The two concepts are different. We suggest the Panel consider the appropriateness of NOAA's use of sub-areas in reaching a JAM determination.

Use of Outside Agency Science

The Terms of Reference for the Review Panel ask *"Are the conclusions contradicted by any scientific, economic, and social information not presented in the BiOp?*" Your draft report has appropriately cited the work of outside agency scientists and pointed to the way in which NOAA could have used that information more effectively. We would also like to point out that there are two other noteworthy examples of scientific information that appear to be present in the BiOp but appear to have been used inappropriately or not given due consideration. We suggest the Review Panel examine these two additional sources of information and consider whether they were used appropriately. These two examples are discussed below.

Dr. Burkanov: Empirical Examples of SSL/Fishery Interactions from Commander Islands

In January of 2010, Dr Burkanov made a presentation to the NPFMC SSL committee. In that presentation Dr. Burkanov pointed to the case of SSL population trends on Medny Island, the only major SSL haul out in the Commander Islands. Declining population trends at this haul out are on the same order of magnitude as declining population trends in the WAI and CAI sub-areas, and yet a no-fishing zone has been in place in that area for over ten years. This appears to be an important case study because forage in this area is similar to the WAI and CAI sub-areas and the shelf is narrow as in the WAI and CAI sub-areas. These are key characteristics that are present in NOAA's attempt to draw connections between fishing and SSL population trends. It is unfortunate that NOAA appears to have chosen not to examine this study more carefully because it supplies direct evidence which contradicts NOAA's theory that fishing has caused SSL population declines and that fishery restrictions will have a positive effect on the

population. We suggest the review panel examine this information and consider its relevance next to NOAA's correlative evidence and fishery/SSL competition theory.

http://www.fakr.noaa.gov/npfmc/current_issues/ssl/JanuarySSL_mtg2010/BurkanovRussiastudies.pdf

Dr. Boyd: PVA analysis

In reaching a JAM determination, NMFS appears to rely heavily upon declining trends of SSL abundance in the WAI and CAI sub-areas, even though if one were to look at trends in the broader WDPS one may conclude the population of WDPS as a whole is increasing. Absent an explanation from NOAA as to why sub-area trends are indicative of extinction risk, it could be concluded that NOAA has confused recovery and downlisting criteria with extinction risk. A PVA analysis done by Dr. Ian Boyd looked directly at the issue of sub-population declines when the overall DPS is increasing. NOAA appears to have mis-interpreted the work and inappropriately dismissed its findings. For instance, NOAA states that Dr. Boyd's work assumes that the WDPS and EDPS are not separate DPSs and therefore the results are not appropriate to a case where there are two DPSs. However, Dr. Boyd's analysis examined the issue from two angles: treating the SSL population as a single DPS, and treating the SSL population as having distinct WDPS and EDPS units. These two scenarios resulted in the same conclusion. We suggest the Review Panel examine whether Dr. Boyd's analysis was treated appropriately.

http://www.fakr.noaa.gov/npfmc/current_issues/ssl/JanuarySSL_mtg2010/BoydViability.pdf

<u>Degree of Fishery/SSL Overlap</u>
The BiOp appears to treat the fishery/SSL competition theory in binary terms. In other words, NOAA appears to assume that where fishing is present, competition happens and that all competition is the same. We suggest that this is more a matter of degree than it is a binary question and that the relative *degree* of overlap is a more appropriate perspective when considering whether fishing is *likely* to cause Jeopardy.

Significant public comment has been provided on this issue, including the location, size of fish caught, and depth of the fishery's activities and this is compared to NOAA's data showing SSL use of area, depth, and size of fish used for forage. We believe this data shows minimal overlap between fishing activity and SSL foraging activity from several different angles and suggest that the Review Panel consider this information and whether NOAA has used it appropriately.

<u>Use of POP Data versus Telemetry Data</u>
NOAA appears to have discounted actual telemetry tagging data in favor of POP data. POP data may have an inherent bias in that it may be largely about where vessel activity is taking place than where SSL foraging activity is taking place. This is compounded by the fact that POP sightings are generally unable to identify gender, age or diving depths. Telemetry data on the other hand shows that the vast amount of foraging trips by SSL occur within ten miles, very little between 10 to 20 miles, and virtually no trips outside of 20 miles. We suggest that the Review Panel examine the use of POP data in development of the RPA to close areas outside of Critical Habitat in the WAI.

Other General Comments

NOAA appears to have focused on the amount of fish removed from an area as part of its competition theory rather than focusing on the amount of fish that remains in the ocean. Given the extraordinary productivity of the Bering Sea and North Pacific, fishery removals in this system can be quite large while still being a small fraction of the total fish population and leaving significant amounts of forage for SSL. A focus on removals rather than the amount of fish remaining in the ocean risks painting an inaccurate picture regarding fishery/SSL competition.

The above concept appears to be exacerbated by the fact that harvest ratios are calculated using survey data rather than actual population estimates – a calculation which results in erroneous conclusions regarding the amount of prey removed via fishing relative to the total population. This error was pointed out in the comments you received from the Freezer Longline Coalition so we incorporate them here by reference. We suggest that an examination of these two above factors and their possible impact on the BiOp's conclusions be included in your final report.

Finally, on behalf of the members of MCA I would like to thank you again for your time and efforts at this endeavor. We appreciate your thoughtful and insightful draft report and look forward to seeing your final report.

Sincerely

Merrick Burden
Executive Director