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July 19, 1993

Nancy Foster, Ph.D.
Acting Assistant Administrator
for Fisheries
National Marine Fisheries Service
1335 East-West Highway
Silver Spring, MD 20910

Dear Dr. Foster:

The State of Alaska has completed a supplemental review of the proposed regulations at 50 CFR Part 226, and has also reviewed the accompanying Environmental Assessment and Coastal Zone Management determination. The State appreciates the opportunity to comment further on this proposal, and is confident that additional input from the public will be worthwhile. In preparing these comments, we have consulted with state resource agencies, affected coastal districts and other interested parties. This letter represents the consolidated comments of the State's resource agencies.

The State concurs with the National Marine Fisheries Service (NMFS) that the proposed rule is consistent to the maximum extent practicable with the Alaska Coastal Management Program. The State has serious substantive concerns with the proposal, however, which we are submitting pursuant to the National Environmental Policy Act. This letter is consistent with, and expands upon, the comments submitted on June 1, 1993 by Carl Rosier, Commissioner of the Alaska Department of Fish and Game, copy attached.

As Commissioner Rosier's letter indicates, the State conceptually supports the designation of Steller sea lion rookeries, major haulouts, and important feeding areas as critical habitat. The extent of the proposed designations, however, is not supported or justified by sound scientific data. Furthermore, the maps, documentation of impacts, and other supplementary information provided are not adequate to fully assess the proposal.

Rookeries and Haulout Areas

Preparatory to proposing critical habitat for Steller sea lions, the Steller Sea Lion Recovery Team recommended designation of 3,000 feet seaward of rookeries and major haulout areas. The NMFS proposal, however, proposes designation of 20 nautical miles seaward for rookeries and haulouts west of 144 degrees west longitude. This vast expansion of the recovery team's recommendation is not justified based on available data. There is no scientific evidence to support the assertion that the zones within 20 nautical miles of all these rookeries and haulouts provide critical feeding habitat for sea lions.

The State strongly urges adoption of the 3,000 foot boundary for listed rookeries and haulouts throughout the sea lion's range. If results of subsequent research indicate that other adjacent habitat is sufficiently important, the areas can be expanded as needed in the future. At present, the 20 nautical mile designation is highly speculative and would cover many thousands of square miles of off-shore areas without reasonable cause.

The State also notes that the 20 nautical mile zone west of 144 degrees longitude places a greater burden on Alaska than on Washington, Oregon and California. There is no reason to propose larger areas in western Alaska, especially since this remote coast is generally removed from most human activities compared to the more populated coastal areas, and related threats of disturbance, of the other states.

The Department of Natural Resources, Division of Parks reports that at least one known haulout area on the outer coast of the Kachemak Bay State Wilderness Park appears to have been omitted from the list in the Federal Register. Please contact Roger MacCambell at 907-235-7024 for more information.

Foraging Areas

The State recognizes that the Shelikof Strait, Bogoslov, and Seguam areas are sufficiently important feeding areas to merit critical habitat designation, as recommended by the Steller Sea Lion Recovery Team. The documentation and justification presented by the NMFS is, however, currently not adequate. As stated in Commissioner Rosier's letter, before such designations are made, these feeding areas should be "defined based on the actual needs of sea lions and other ecological factors, rather than only their proximity to rookeries and haulouts". Sufficient scientific information may exist for these three areas being proposed, but such data have not been presented in the Federal Register Notice or Environmental Assessment as required by the Endangered Species Act.

Oil and Gas Activities

The State's Division of Oil and Gas has proposed two lease sales in the Shelikof Strait area. A critical habitat designation may ultimately have an effect on these lease sales by virtue of the additional scrutiny and possible mitigation measures that may be recommended in light of a critical habitat area designation. Such substantive and/or procedural impacts are not adequately addressed in the proposed rule.

Documentation

Review of this proposed rule has been made difficult because supporting documentation, scientific data, maps, and analysis of impacts are very poor or lacking entirely. For example:

- * Maps do not show the location and boundaries of the identified critical habitat areas. Without such mapping, the location and combined extent of the designations is not readily apparent.
- * The total acreage of affected areas is not calculated or estimated.
- * Biological needs are not "sufficiently well known" in all instances as required by 50 CFR 424.12.
- * No discussion accompanies the Federal Register statement that "recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities." Activities that could be affected include commercial, recreational and subsistence fishing; tour boats; aquaculture; oil and gas exploration and development; management of state-owned tidelands, and shore-based activities such as grazing and timber harvesting.
- * Critical habitat is not adequately defined, e.g. are prey fish species considered integral to critical habitat; and if so, what are the management implications for fisheries?
- * Economic effects are not adequately addressed as required by Section 4 of the Endangered Species Act.

The regulations purport to affect only federal activities. Yet there is the potential for indirect impacts through federal permitting and oversight of non-federal activities which are not fully acknowledged.

Subsistence

In addition to the procedural requirements just discussed, the NMFS should also conduct an analysis of subsistence impacts pursuant to Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA). The State interprets a critical habitat designation as a form of withdrawal or reservation of public land, thus triggering the ANILCA Section 810 requirement. In addition to harvest of sea lions by Alaska Natives, federal subsistence regulations pursuant to ANILCA provide for the subsistence harvest of other species on federal land and waters affected by these designations, and as such should be addressed in an ANILCA Section 810 analysis. We do not expect that such an analysis would identify adverse impacts, but this does not relieve the NMFS from the ANILCA requirement.

Recommendations

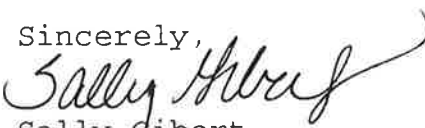
The State believes that sufficient justification exists to proceed with designation of critical habitat areas around rookeries and major haulouts using the Steller Sea Lion Recovery Team's recommendation of 3,000 feet for the seaward boundary. The three foraging areas at Shelikof Strait, Bogoslov and Seguam also merit designation **following appropriate documentation of need**. These designations will fulfill the critical habitat requirements of the Endangered Species Act.

All other areas proposed for designation should be withdrawn until:

- 1) a firm scientific basis can be shown which justifies additional designations; and
- 2) the NMFS fully conforms with all procedural requirements.

As the Environmental Assessment indicates, "the protection provided by a critical habitat designation essentially duplicates the protection provided under Section 7 jeopardy provision." Furthermore, rigorous commercial fishing regulations under the Magnuson Fishery Conservation and Management Act provide another layer of protection for sea lion foraging species. Given existing mechanisms which provide considerable protection to listed species under the Endangered Species Act, there is no reason to proceed with the more extensive designations around rookeries at this time.

Thank you for the opportunity to provide these comments. The State of Alaska looks forward to continuing cooperative efforts to identify important habitat for the Steller sea lion. If you have any questions, please feel free to call me at 907-561-6131.

Sincerely,

Sally Gibert
State CSU Coordinator

Enclosure: June 1, 1993 letter from Commissioner Rosier

cc:

Carl Rosier, Commissioner, Department of Fish and Game
Harry Noah, Commissioner, Department of Natural Resources
John Sandor, Commissioner, Department of Environmental
Conservation

Bruce Campbell, Commissioner, Department of Transportation and
Public Facilities

Richard Burton, Commissioner, Department of Public Safety

John Katz, Governor's Office, Washington, D.C.

Affected Coastal Districts in Alaska

**Distribution List
Affected Coastal Districts
Steller Sea Lion Comments
July 20, 1993**

Glen Vernon, Borough Manager, Lake and Peninsula Borough, King Salmon

Darcy Richards, Aleutians West CRSA, Anchorage

Linda L. Freed, Kodiak Island Borough, Kodiak

Walt Wrede, City Manager, City of Cordova

Mary Pearsall, KPBCMP Coordinator, Kenai Peninsula Borough, Soldotna

John Merrick, Manger of Lands & Resources, Koniag, Inc., Anchorage

Larry Bullis, ACMP Liaison, Department of Natural Resources, Anchorage

Chris Titus, Superintendent, State Parks, Department of Natural Resources, Soldotna

Marie Crosley, Division of Oil & Gas, Department of Natural Resources, Anchorage

Lori Landstrom, Division of Parks, Department of Natural Resources, Soldotna

Lloyd Lowry, Wildlife Conservation, Department of Fish & Game, Fairbanks

**CSU Distribution List
Steller Sea Lion Comments
July 20, 1993**

Tina Cunning, Department of Fish & Game, Anchorage

Terry Haynes, Department of Fish & Game, Fairbanks

Priscilla Wohl, Department of Environmental Conservation, Anchorage

Alice Iliff, Department of Natural Resources, Anchorage

Paul Rusanowski, Division of Governmental Coordination, Juneau

Beth Kertulla, Attorney General's Office, Juneau

Connel Murray, Division of Tourism, Juneau

John Katz, Governor's Office, Washington, D.C.

Sue Flensburg, BBCRSA, Dillingham

Stan Leaphart, CACFA, Fairbanks

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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June 1, 1993

Dr. William W. Fox, Director
Office of Protected Resources
NOAA NMFS
1335 East-West Highway
Silver Spring, MD 20910

Dear Dr. Fox:

I am writing to comment on the proposed rule to designate critical habitat for Steller sea lions that was published in the Federal Register on April 1, 1993. In this rule the National Marine Fisheries Service (NMFS) is proposing to provide additional Endangered Species Act (ESA) protection to Steller sea lion rookeries, haulouts, and feeding areas.

I agree with the analysis presented in the proposal that all Steller sea lion rookeries, major haulouts, and important feeding areas are critical habitats, and that they should be designated as such under ESA provisions. The areas identified as critical should be large enough that they allow for appropriate controls on human activities that may affect sea lion habitat, but small and specific enough to meaningfully reflect the zones in which special management actions may be required.

The Steller Sea Lion Recovery Team, with input from the Alaska Department of Fish and Game and NMFS, developed the list of rookeries and major haulouts in the proposal. The Recovery Team recommended that critical habitats be designated as extending 3000 feet landward and seaward from the sites actually used, in order to provide a buffer zone that could be used to prevent disturbance and other possible impacts. The Recovery Team also recommended that three at-sea areas be designated as critical habitat because of their importance for sea lion feeding.

While generally following the Recovery Team recommendations, the proposed rule published by NMFS differs in one very significant way. NMFS has proposed to extend the critical habitat designation 20 nautical miles seaward from rookeries and major haulouts in Alaska west of 144° W longitude. Because the Federal Register notice does not include a figure showing the locations of proposed critical habitat around rookeries and major haulouts, it is difficult to envision the area included in this part of the proposal. However, considering that there are 118 sites listed in

Alaska west of 144° W longitude (36 rookeries and 82 haulouts), it is likely that the buffer zones being proposed will include nearly all waters with 20 nm of the coast in the central and western Gulf of Alaska and the Aleutian Islands. Also, without a figure showing the sites and the buffer zones around them, it is not possible to see how the proposed 20 nm areas correspond to the three at-sea regions recommended by the Recovery Team and included in the NMFS proposal. It is possible that 20 nm diameter areas around rookeries and haulouts would cover much of the regions in Shelikof Strait, Seguam Pass, and around Bogoslof Island that are independently proposed as critical habitat zones.

The apparent intention of NMFS is to include areas in the critical habitat designation that may be important for sea lion feeding, in addition to those identified by the Recovery Team. The rationale for this is based in part on satellite telemetry studies. However, satellite tagging has only been done at a few locations, and it is by no means certain that areas within 20 nm of all rookeries and major haulouts qualify as critical habitat because of their importance for feeding. It is equally likely that there are certain regions in coastal and offshore waters with appropriate environmental and biological characteristics that provide important feeding habitats for animals from several rookeries and haulouts. These important feeding areas may or may not be within 20 nm of one or more of the identified rookeries or haulouts. Thus, while it is possible that the 20 nm buffers will include some critical feeding habitat, that is by no means certain. There should be some specific justification for designating areas as critical habitat for feeding. For example, in describing the proposed critical habitat area near Bogoslof Island the Federal Register notice states that this area "encompasses a diverse oceanographic region with high concentrations of important sea lion food resources, e.g., walleye pollock, eulachon, capelin, and migrating herring, as well as intense commercial fisheries for these prey resources." That statement reflects the type of analysis that should be conducted in order to identify areas that are critical for Steller sea lion feeding.

It appears that a further rationale for designating large areas around rookeries and haulouts as critical habitat is to correspond with management actions that have been taken to restrict trawling near certain rookeries. However, the fact that NMFS has taken certain actions to regulate fisheries near some rookeries does not necessarily lead to the conclusion that areas within 20 nm of all rookeries and haulouts are critical sea lion feeding habitat. Furthermore, the effectiveness of the existing fishing restrictions has not been fully evaluated, and it is too early to say with confidence exactly what size of buffer zones around rookeries may be needed to protect sea lion feeding areas.

I recommend that NMFS designate all the listed rookeries and major haulouts in Alaska as critical habitat for Steller sea lions, but that the seaward extent of the critical habitat area around sites west of 144° W longitude should be reduced to 3000 feet as is being


Dr. William Fox

June 1, 1993

proposed for other areas. Important feeding areas should also be listed as critical habitats, including the three described in the proposal (Shelikof Strait, Bogoslof Island, and Seguan Pass). However, these critical feeding areas should be defined based on the actual needs of seal lions and other ecological factors, rather than only their proximity to rookeries and haulouts. Limiting the areas listed as critical habitat should not preclude NMFS from continuing or modifying the existing fishing regulations that are in place around certain sea lion rookeries.

I hope these comments are helpful. If I or my staff can do anything else to assist NMFS with the designation of critical habitat for Steller sea lions, feel free to contact me at any time.

Sincerely,


Carl L. Rosier
Commissioner

- cc: Rob Bosworth
- Dave Kelleyhouse
- Jeff Koenings
- Frank Rue