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Testimony on “NOAA’s Seller Sea Lion Science and Fishery Management
Restrictions, “Does the Science Support the Decisions?”

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Chairman Hastings and Congressman Young: I would like to thank you for inviting me to testify before your committee today. As I believe you are aware I had major back surgery one week ago. That made it impossible for me to complete my written testimony in advance. I apologize for that and have copies available now.

My invitation to testify asked that I share my views, as Chair of the North Pacific Council’s Steller Sea Lion Mitigation Committee, regarding the process used to develop the Biological Opinion, my views of the role of the North Pacific Council in the process, my concerns with the recovery plan criteria and my concerns with the science relied upon in justifying the fishery restrictions.

I have been down this road twice with NMFS. The first time was in 2001. At that time the RPA Committee was formed in February with me as Chair. We were given two tasks: the first was to provide the North Pacific Council with draft emergency rules to implement fishery management changes by mid-summer to allow the groundfish fisheries in the Gulf and Bering Sea/Aleutian Islands to continue without causing jeopardy or adverse modification; the second was to provide the North Pacific Council with draft emergency rules to implement fishery management changes by October to allow the groundfish fisheries in the Gulf and Bering Sea/Aleutian Islands to continue operating into subsequent without causing jeopardy or adverse modification.

Both of these tasks were successfully completed. In my opinion this was one of the highlights of fishery management in the North Pacific. An enormous amount of work, cooperation and collaboration were necessary. Everyone participated, including the agency. Protected resources staff were not walled off from us and sustainable fisheries – we all worked together and got smart together.

Somehow the world changed between then and 2006, and then they simply deteriorated. I am going to be very blunt. There was not a single moment of this most recent process when any action by NMFS resembled the development of an unbiased scientific evaluation of Steller sea lions and issues they face regarding recovery. The agency was simply on a mission. They still are. Even Dr. Schwab includes a nice series of references to the Steller Sea Lion Recover Team in his testimony to you today, concluding with “NMFS reviewed the comments and recommendations submitted by peer reviewers and the public on the 2007 version of the draft revised plan and modified the plan as appropriate to produce the Final Revised Steller Sea Lion Recovery Plan in February 2008.” Only one small problem with that statement – 8 out of 17 recovery plan team members signed a letter repudiating the recovery plan, and NMFS continues to this day to pretend that didn’t happen.

Our mitigation committee paid its own way. Easily in excess of \$500,000 was spent on behalf of the volunteers who sat on the committee. From the beginning the process was tortured. The committee first started to meet in winter, 2006. We were told to expect a draft BiOp in the fall. We met seven times that year. The due date for the BiOp was delayed repeatedly, until June, 2008. The committee met five more times in 2007.

That jeopardy and adverse modification would be found in this BiOp was guaranteed from the beginning. The cornerstone for the recovery plan and ultimately the BiOp is something referred to as Homes, et al. Homes et al is a model that was constructed to predict that decreasing pup rates by female sea lions was inhibiting the population recovery of the species. In fact, we were told the increases we were observing in the sea lion population would prove to be an anomaly. NMFS assumed the study was accurate, and assumed it applied to all sea lions throughout their range – despite the fact that the study only focused on one area in the central Gulf of Alaska.

If the agency is going to assume that Holmes et al is accurate and applies across the entire range of the WDPS, then it will be impossible to avoid jeopardy and adverse modification since the population will be continuing to decline. In essence, the Recovery plan with its down and de-listing criteria were doomed for failure. I personally pointed this out to the most senior members of NMFS, proclaiming that a huge train wreck was now just around the bend, but they were contentedly fixed on their position.

A few years later the Seward Sea life Center presented a paper that directly contradicted Holmes et al by reviewing the photographic proof of female sea lions at Chiswel Island pupping consistently over the preceding eight years. NMFS did everything they could possibly do to debunk this paper. There was no way they were going to let new scientific information get in their way.

The development of the new BiOp commenced in 2006. NMFS delayed the release of the BiOp ten times before finally issuing it in August, 2010. Along the way – in late 2009 or early 2010 – they totally changed their writing staff. They even sought to retain on a sole source contract a former Alaska Region Protected Resources employee to write the new BiOp. NMFS reportedly offered this individual a six figure contract to do the job. That individual, by the way, was then employed by the Department of Energy and presumably could have been made available on an intra-agency employment loan. I do not know what ultimately happened with that contract.

The next thing that happened was Alaska Regional Director Jim Balsiger rejected the draft BiOp in April, 2010. If you think about it, that was really an incredible act of courage. It was then and remains now an almost singular clarion call from one person in the Agency to call a spade a spade – this BiOp process has failed!

Unfortunately, there was no time to start the process anew and do it right. The environmental NGO litigants were pounding on the door at NOAA in Washington DC – do it our way or we sue. So, having no choice, Dr. Balsiger put together a new BiOp team that spent the next four months pounding together the best, flawed BiOp they could.

This was a crazy, frantic, keystone cops type of process that clearly violated the APA, NEPA Magnuson Stevens Act and other laws. NMFS was not focused on sound science – they simply had to get jeopardy/adverse modification BiOp in place before the environmental NGOs would sue. This was political, pure and simple. And incompetently handled. The Agency should be ashamed of themselves. And thank you for the hearing, but what we really need is a wholesale investigation.

In conclusion, I do think some question must be posed and answered:

1. Is the ESA being applied consistently between the Fish & Wildlife Service and the National Marine Fisheries Service, and is it being applied consistently within the regions of both agencies?
2. How can the delisting criteria for Steller sea lions require a less than one percent chance that they will go extinct in the next 100 years, and grey wolves only require ten breeding pairs in for states, or California sea otters simply need a population in excess of 3,000 animals for three consecutive years?
3. How can Fish & Wildlife Service conclude that transient marine mammal eating orcas are the reason for the collapse of sea otter populations in the Aleutian Islands (resulting in their status as endangered), yet NMFS concludes predation by the same orcas has no impact on sea lions in the same area? Shouldn't this be an issue to be resolved and agreed upon by these two agencies?
4. How is it that the Seward Sea Life Center is able to do such high quality research on sea lions in Russia when NMFS can never find the time to do anything in the western Aleutians?
5. Should it mean anything to discover what we already know – there is no commercial fishing with 50 miles of the Komondorski Islands just west of our Aleutian Islands, and their sea lions are apparently doing the same thing as ours.

Thank you.