

Testimony of David Little

President of the Freezer Longline Coalition

Presented before the

House Committee on Natural Resources

Seattle Field Hearing

“NOAA’s Steller Sea Lion Science and Fishery Management Restrictions,

“Does the Science Support the Decisions?”

Monday October 17, 2011

Good afternoon Chairman Hastings, Congressman Young and other Members of the Committee,

My name is David Little, I am here today testifying as the President of the Freezer Longline Coalition. I am also the founder and President of Clipper Seafoods, Ltd. I have served as a member of the North Pacific Fishery Management Council’s Steller Sea Lion Mitigation Committee as well as a member of the Council’s Advisory Panel and have been involved for more than 15 years in following Steller sea lion science.

The Freezer Longline Coalition would like to thank the Committee on Natural Resources for holding this oversight hearing and especially for this opportunity to provide comments on NOAA’s Steller sea lion science and fishery management restrictions. I believe it is particularly important for Congress to address the question of whether the science contained in the Steller Sea-Lion Biological Opinion supports the decisions by NMFS to move forward with an “*interim*” final rule and impose vast closures on the Aleutian Islands Pacific cod and Atka mackerel fisheries.

The Freezer Longline Coalition represents a Washington and Alaska based fleet that participates in the Aleutian Islands Pacific cod longline fishery. The Aleutian Islands cod fishery is important for the freezer-longline fleet as a whole, as well as for individual vessels; many vessels in our fleet have specialized in the high value fish that are caught in these areas. For some members, up to 50% of their revenues have come from Aleutian Islands cod. Because the interim final rule is

still in the first year of its implementation, the full financial effects of the rule are not yet well known. However, the anticipated economic impacts of the rule, as evaluated by NMFS in the BiOp state that resulting losses could be as high as 44% of gross revenue. Certainly the loss of access for valuable Aleutian Islands cod will have long-term, unrecoverable damages to the freezer longline fleet.

This Committee has asked: Does the Science Support the Decisions? **No, Mr. Chairman, it does not.** My testimony and documents we have submitted for the record show how NMFS has used incomplete and misleading science to impose sweeping and unnecessary restrictions on the Freezer longline fleet.

Mr. Chairman, NMFS's biological opinion supporting the interim final rule was not reviewed by *any* independent science panels or independent individual experts before the rule's implementation, despite NMFS's public statements that it would undergo such a review. In fact, the *only* peer reviewed analysis of the science supporting NMFS's decision was recently conducted by a panel of well-established scientists commissioned by the states of Washington and Alaska. This review panel found, and we concur, "*That the determination of jeopardy by NMFS is not supported by the best available science.*"

It is unbelievable to us that the scientific underpinnings of the BiOp and RPA's were never peer reviewed, even though thousands of pages of testimony were received by the agency much of it questioning and directly criticizing the science. This is about bad science, costing jobs and driving well-managed sustainable fisheries out of business. The freezer longline fleet has been forced into litigation because the agency has made an irresponsible decision that if allowed to stand, will set a new legal precedent in a very fundamental respect. We have also challenged the rule because we cannot idly sit by while the agency proposes to unreasonably and unlawfully regulate sustainable American fisheries based upon bad science to support the political agenda of a select few.

As to the content of the biological opinion, the single basis for NMFS's "jeopardy and adverse modification" determination is the agency's hypothesis that fisheries compete with Steller sea lions for food, otherwise known as the "nutritional stress theory." However, the agency's stated position in the biological opinion is that it "does not know" whether nutritional stress is even occurring in the sea lion population. And, even if the evidence showed that nutritional stress is occurring, NMFS states in the biological opinion that it does not know whether the fisheries are the cause of any such stress. As acknowledged by the agency the biological opinion's findings and supporting information are at best "*equivocal*". Good science and the legal requirements of the ESA do not permit the imposition of highly burdensome regulations based on this type of speculation.

NMFS's statement that it does not have sufficient evidence to determine whether fisheries affect Steller sea lions is contradicted by current studies that were ignored by the agency. As an example, a study mandated and specifically funded by Congress, (Calkins 2008), found that there is *no correlation* between the freezer-longline cod fishery and Steller sea lion

population dynamics. Unfortunately this study receives essentially no attention in the agency's biological opinion *and* this is just one case. Throughout the BiOp the agency ignored good science for no other reason than the science did not support the agency's preconceived conclusion.

Additionally, the agency's conclusion that the entire Steller sea lion Western Distinct Population Segment (WDPS) is "jeopardized" is not consistent with the fact that the WDPS as a whole is experiencing a robust increase in abundance. In fact, again according to NMFS, the pup count in the WDPS has increased 14% (from 2001-02 to 2009) and the non-pup trend site count has increased 12% (from 2000-2008). The NMFS population estimate of the WDPS as of 2009 is greater than 75,000 with 50,040 in the U.S. portion. Other estimates used in the past such as (Trites and Larkin 1996) suggest a population of 56,712 for the U.S. portion in 2009. For reference, the ESA downlisting criteria for the U.S. portion is 53,100 by 2015. We do not understand how a DPS that is increasing in abundance, and is indisputably in better condition than it was a decade ago, can also be said to be "jeopardized" by a single action that has been occurring over the course of the same decade. Indeed, there is no legal or scientific support for such a conclusion. The agency's decision is not consistent with the evidence and its conclusions are illogical, arbitrary, and unreasoned.

Mr. Chairman, given the best scientific information available, there is little factual basis to support the restrictions on the fisheries in the Aleutian Islands. More generally, the scientific record does not support NMFS's findings of jeopardy and adverse modification, as set forth in the 2010 BiOp. Those findings are flawed because, among other things:

- they are based only on a small subsection of the WDPS and not the WDPS as a whole;
- they are based on the agency's assessment of whether the DPS is meeting recovery criteria, and not ESA's Section 7 standards;
- they are unsupported by *any* determination that any fisheries *cause* "jeopardy and adverse modification" ; and
- they are not consistent with the best available science and were made without consideration of scientific data and information that are directly relevant to the issues addressed in the BiOp.

The BIOP failed to present a careful analysis of all relevant factors and information and then failed to arrive at a reasoned conclusion that is supported by factual evidence. The BiOp focuses upon a foregone conclusion that is built largely on advocacy rather than science. The authors of BiOp then make selective use of data and scientific papers to support their conclusion while at the same time ignoring or dismissing any data that might not support the adopted position.

In closing I would like to quote Dr. Ian Boyd, a leading marine mammal researcher. *“The document lacks a rigorous approach to the assessment of ‘evidence’ and fails to use evidence consistently; information that has much associated uncertainty when first introduced in the analysis gradually drifts to information of high certainty as the document develops”* Dr. Boyd continues *“one should not condone the twisting of data to achieve what is, in essence, a political objective.”* This view was echoed by the North Pacific Fishery Management Council’s Scientific and Statistical Committee, which concluded upon review of the draft biological opinion that *“...the conclusion chapter has retained some tone of advocacy, stating in fact as some conclusions that still have a great deal of uncertainty about them.”*

Thank you again for the Committee’s time and resources and the opportunity to speak on behalf of the FLC.

David Little
President
Freezer Longline Coalition

The Freezer Longline Coalition submitted for the record the following documents:

- 1.) Comments on SSL 2010 Biological Opinion submitted to the Scientific Review Panel, June 2, 2011. These comments also contain public comments to date submitted by the FLC to NMFS on the draft and final BIOP.
- 2.) Comments on SSL 2010 Biological Opinion submitted by the to the Scientific Review Panel, August 22, 2011
- 3.) State of Washington and Alaska Scientific Review Panel, final report
- 4.) Legal filings Freezer Longline Coalition v. Lubchenco et al.