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Testimony to the House Natural Resources Committee Hearing on:
NOAA's Stellers Sea Lion Science and Fishery Management Restrictions:

Does the Science support the Decisions?

Seattle, Washington

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Good Morning. Thank you for the opportunity to speak with you today.

My name is Bill Tweit. I represent Director Phil Anderson on the North Pacific Fishery Management Council (NPFMC), and it is in that capacity that I provide our testimony to you today. I have worked for the Department since 1988; in addition to NPFMC representation my duties include salmon harvest management, Columbia River water management, hydropower mitigation, and tribal relations. I received my Bachelors degree in Ecology and Field Biology from The Evergreen State College in 1976.

In my testimony, I will describe the State of Washington concerns regarding the NMFS Biological Opinion that addresses potential impacts of the North Pacific groundfish fisheries on Stellers Sea Lions (BiOp), the operating guidelines developed by Washington and Alaska for the Independent Science Review that we commissioned to review this BiOp, and our suggestions for resolution of the science and management conflicts fostered by this BiOp.

The State's concerns are described by Governor Gregoire in a pair of letters to Secretary of Commerce Locke; copies of those letters are attached to my written testimony. The Governor expressed two fundamental and inter-related concerns: the high degree of scientific uncertainty and the "top-down" approach that NMFS adopted to developing the BiOp and its Reasonable and Prudent Alternatives (RPA). She noted that NMFS was proposing regulations that would have significant impacts to the fishing fleets, and that there was considerable scientific uncertainty concerning the need for and the effect of those regulations.

In view of the significance of both the impacts and the level of scientific uncertainty, in October 2010 she urged NMFS to adopt the interim measures proposed by the NPFMC and to initiate a collaborative approach to development of the long-term measures. NMFS decided that the Council's proposed interim measures were inadequate, implemented their own recommended measures on January 1 via an interim final rule that allows enactment without public comment,

and have yet to describe a collaborative approach for either resolution of the uncertainties or development of alternative measures.

In her January letter, following the NMFS interim final rule, Governor Gregoire reiterated her support for establishing a collaborative process, expressed her concern that the public process to-date had allowed little room for substantive public involvement, and emphasized her belief that controversial resource management issues with high levels of scientific uncertainty are best addressed through fair and transparent inclusion of all perspectives, and concluded that “there is great benefit in having all sides work together toward a solution”.

I am very familiar with the process for crafting another NMFS Biological Opinion, regarding the impacts of the operation of the Federal Columbia River Hydropower System on listed salmonids. While that process has some difficulties, the State of Washington strongly supports the current Federal approach for development of the most recent version. The approach is inclusive of all regional governments, including plaintiffs, acknowledges the scientific uncertainties, and is oriented to solutions that are robust to the uncertainties and sensitive to economic impacts. An Adaptive Management process was developed to alter the Columbia River BiOp provisions if the assumptions proved incorrect.

This approach has not ended all of the controversy or litigation surrounding this BiOp, probably an impossible task, but it has brought many of the parties together to focus on solutions and implementation of salmon recovery actions. It became a regionally-driven, bottom-up process, in considerable contrast to the Stellers Sea Lion BiOp, which has had virtually no constructive regional engagement, and is essentially an edict from NMFS.

Washington acknowledged that there are very significant scientific uncertainties concerning factors for decline for Stellers Sea Lions in the central and western Aleutians, and was hesitant to draw our own conclusions regarding the NMFS scientific and economic assessments until we had the benefit of an independent review. Consequently, we took a great deal of care in developing the guidelines for the independent science review, to ensure that science advice would be unbiased and credible. Alaska shared our objectives. We wished to avoid an ill-informed review due to lack of familiarity with Stellers Sea Lion biology and population dynamics, fisheries population assessments, or North Pacific fisheries. We also wished to avoid panelists that had already made their own conclusions about the BiOp.

Consequently, we chose the two co-chairs for their extensive knowledge of their subjects, and their professional integrity and credibility. We gave them free reign to choose the remaining panelists, develop their terms of reference and conduct their review. Dr. David Bernard, a retired quantitative scientist, has a long and distinguished history in international arenas and knows population modeling and exploitation issues. Steve Jeffries, a researcher for WDFW, is a coast-wide authority on pinnipeds. They chose two additional panel members; Dr. Andrew Trites and Dr. Gunnar Knapp, finalized their terms of reference, and did their review without further policy direction from either state. The panel conducted their work in an open and transparent process, holding several public meetings to solicit public input. Until we reviewed their draft report, we had no advance knowledge of their findings, or even whether they would be able to reach consensus on any or all of the issues that they examined. The fact that these four scientists were able to provide us with a consensus final report is very convincing to us. Their findings are Washington's position on the economic and scientific underpinnings of the BiOp and its RPAs.

I understand that Dr. Knapp and Dr. Trites will provide the Committee with an overview of the panel's finding at this hearing, so I will focus on a few highlights from our perspective. The panel was critical of the science used in the NMFS finding of Jeopardy with Adverse Modification for the groundfish fisheries, for two reasons. They characterized the NMFS logic as a classic fallacy, confusing correlation with causation. The panel noted there was very scant scientific evidence supporting the fishery induced nutritional stress hypothesis, and that evidence is now over a decade old and not supported by more recent years' data, so it appears that NMFS applied the precautionary principle to fisheries simply because they believed that something had to be done.

As state managers, we value consistency in application of the ESA, and we appreciate that this extreme version of the precautionary approach has not been applied more broadly. The panel found that there is little overlap between sea lion prey and fishery catches; the fishery typically harvests larger fish than sea lions eat. NMFS acknowledges that reproduction of the primary prey species is not affected by fishing, and the science panel notes that the sea lions are eating younger fish than the fishery harvests. We conclude that the BiOp fishery restrictions are misdirected, will not benefit sea lions, but clearly are detrimental to the fishery.

This hearing comes shortly after the release of the science panel final report; I am sure that we will have more suggestions for BiOp revisions as we study their report. One conclusion that we draw from their report is that the BiOp is very flawed, and we believe that is likely a consequence of the "top-down" Federal process. In concluding, I'd like to return to a primary

theme of both of the letters from Governor Gregoire: that NMFS commit to an open and transparent process, to be implemented as quickly as possible, for revisions to the BiOp that are responsive to the panel findings and regional comments. NMFS used an interim final rule process to implement this BiOp, and while we are still uncertain what that means, we hope that it provides more flexibility and timeliness for modification than a permanent final rule.

The North Pacific Council remains willing to facilitate a process for engaging all stakeholders in what Governor Gregoire terms a “regional collaborative process”. In our view, that process should start now, and not wait for the results of a NMFS CIE review, or for litigation to be settled. NMFS needs to engage in this process with staff from their Sustainable Fisheries Division, not just the Protected Resources staff responsible for this flawed BiOp, and most importantly, NMFS should be told that their “top-down” approach, with a one-sided and erroneous application of the precautionary approach, is not acceptable.

The ingredients for a successful regional collaboration are present here. The North Pacific Council is a leader in applying ecosystem management principles to fishery management; the States of Washington and Alaska are experienced with and very supportive of collaborative approaches to thorny resource management issues; and the stakeholders are willing to engage when the science is solid. The long-list of sustainable fishing practices that North Pacific industry has supported includes development of seabird avoidance gear, protection of coral gardens, bottom trawl gear modifications, bycatch reduction programs, and support for scientifically established allowable catch levels. The only missing ingredient appears to be NOAA interest in collaborative development of measures that will support sea lion recovery.

We urge the committee to express its support for NOAA to immediately initiate a regional, collaborative process to revise the BiOp to address the errors and shortcomings identified by the state’s independent science review.

Thank you, I would be pleased to answer any questions the Committee may have.