

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,  Plaintiff,  v.  JANE LUBCHENCO, et al.  Defendants.	Case No.: 3:10-cv-00271-TMB
ALASKA SEAFOOD COOPERATIVE, et al.,  Plaintiffs,  v.  NATIONAL MARINE FISHERIES SERVICE, et al.,  Defendants.	Case No.: 3:11-cv-00001-TMB
FREEZER LONGLINE COALITION,  Plaintiff,  v.  JANE LUBCHENCO, et al.,  Defendants.	Case No.: 3:11-cv-00004-TMB

**DECLARATION OF ROBERT D. MECUM**

I, Robert D. Mecum, Deputy Regional Administrator, National Marine Fisheries Service, Alaska Region, upon personal knowledge, declare as follows:

1. I am the Deputy Regional Administrator of the National Marine Fisheries Services (NMFS), Alaska Region (AKR). In that position, I directly supervise the operations that occur in the AKR, including the divisions that would be involved in the development of an Environmental Impact Statement (EIS) evaluating the impacts of management

measures implemented to respond to the 2010 Biological Opinion on endangered Steller sea lions off Alaska.

2. The NMFS, AKR, has experience in developing EISs, including an EIS that specifically evaluated the impacts of management measures to protect endangered Steller sea lions (e.g., Steller Sea Lion Protection Measures, Final Supplemental Environmental Impact Statement, National Marine Fisheries Service, Alaska Region, November 2001). The projected timelines for completion of an EIS are based on the knowledge and experience of the NMFS, AKR, in preparing such documents.

3. I requested the Sustainable Fisheries Division, with advice from the Protected Resources Division, to provide estimated timelines for completion of an EIS that would meet the requirements outlined by the U.S. District Court in its January 19, 2012 decision. I asked the divisions to provide two timelines. The first timeline (Timeline 1) is the amount of time needed for NMFS to develop the EIS required by the court in conjunction with the North Pacific Fishery Management Council's (Council) meeting schedules. This timeline is the longer schedule because it would include the scheduled council meetings in the process. However, including the Council in that process would provide a more expansive public process and allow direct Council input into development of the EIS. As this EIS schedule is designed to coordinate public participation during Council meetings, more time was needed (23 months) to complete the EIS and release it to the public.

4. Timeline 2 is the amount of time needed for NMFS to develop the EIS without coordination with the Council meeting schedule (15 months). Given the specific procedural requirements of the National Environmental Policy Act (NEPA) and its regulations, this is the absolute minimum time the NMFS believes it needs to complete a final EIS and release it to the public (Issuance of a Notice of Availability for a Final EIS). That schedule assumes all requests to extend required public comment periods will be denied and that nothing will occur that requires additional public notice and comment.

5. The NMFS prefers the longer schedule as it emphasizes the greater public participation, including input from the Council. Under either timeline the NMFS would prepare and circulate the draft EIS for public comment and provide meaningful responses to comments. The difference is that Timeline 1 has additional time added so that the key documents (e.g., scoping report and preliminary draft EIS) could be presented to the Council during its scheduled meetings. Timeline 1 also would allow information that would result from the College of Independent Expert (CIE) review of the 2010 Biological Opinion and of scientific data about Steller sea lions to be used by the public to inform their recommendations to NMFS by keeping the scoping period open during those reviews. NMFS uses the CIE to peer review scientific information used by NMFS to make decisions. The timing of the scoping period would also accommodate incorporating recommendations from Council's Steller Sea Lion Mitigation Committee (SSLMC). The SSLMC is a committee established by the Council to review potential fishery interactions with Steller sea lions and to make recommendations to the Council.

6. As required by NEPA, NMFS will develop and analyze a range of alternatives based on the purpose and need for action, the information that is available, and public comments. NMFS will also use input from the Council in developing the EIS. It is not possible to predetermine before the NEPA process has begun what the preferred alternative will be or whether a new Record of Decision or rulemaking process will be required. Such predetermination may compromise the purpose of NEPA to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” Therefore, NMFS decided not to propose a time certain for a Record of Decision.

7. Furthermore, the nature or timing of any further agency action cannot be known with certainty prior to the initiation of the NEPA process because of the need for any action to be compliant with the mandates of the Endangered Species Act (ESA). As the agency develops a range of reasonable alternatives, none of those alternatives can be implemented until a Final EIS is issued, any alternatives that meet the purpose and need of the EIS are found to be consistent with the 2010 Biological Opinion and its reasonable and prudent alternatives, and a Record of Decision has been issued consistent with NEPA requirements. NMFS, however, cannot issue a record of decision for an action until it can “insure that [the] action authorized, funded, or carried out by [NMFS] . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [designated critical habitat].” Any action similar to the current action would need at least a determination of whether a formal ESA section 7 consultation should be initiated. Moreover, if the current action is modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the 2010 Biological Opinion, 50 CFR sec. 402.16 requires NMFS to reinstate formal consultation on the action.

8. Timeline 1 (23 months):

- Notice of Intent (NOI) to Prepare an EIS— NOI Issued by NMFS in April 2012, after consultation with the Council at its April 2012 meeting.
- Scoping Period—6 months. This would accommodate completion of the CIE Review of the 2010 Biological Opinion and other data concerning Steller sea lions and use of the CIE Review information by the Council’s Steller Sea Lion Mitigation Committee for its recommendations to the Council. The timing of the Scoping Period would also facilitate holding a scoping meeting in conjunction with the Council’s October 2012 meeting.
- Scoping Report—1 month.
- NMFS provides Scoping Report to Council and works with the Council on a range of alternatives, NMFS writes a preliminary draft EIS and provides a preliminary draft EIS to the Council for review—5 months.

- Council and the Council's Scientific and Statistical Committee review the preliminary draft EIS, Council makes recommendations, NMFS revises preliminary draft—1 month. The timing of this review is coordinated with the Council's April 2013 Council meeting.
- Draft EIS is published with a 60-day comment period, NMFS reviews comments and develop responses—5 months
- NMFS provides responses to Council and completes EIS—4 months. Council reviews comments and responses and makes recommendations to NMFS at its October 2013 meeting.
- Print final EIS and publish Notice of Availability (NOA) for a final EIS by Friday, March 2, 2014—1 month. (Note: The Environmental Protection Agency only publishes NOAs on Fridays)

9. Timeline 2 (15 months):

- NOI to Prepare an EIS— NOI Issued by NMFS in April 2012.
- Scoping Period—2 months.
- NMFS develops the draft EIS—6 months
- Draft EIS published with 45-day public comment period—2.5 months
- NMFS reviews comments, develops responses, and completes Final EIS—3.5 months
- Print Final EIS and publish NOA for a final EIS by Friday, June 29, 2013—1 month.

10. NMFS has provided its best estimate on how long it would need to develop an EIS under alternative schedules; however, there are other factors that must be considered. One factor is that the amounts of fish that can be caught are established on an annual basis by regulations. As there is an overall limit on the amount of fish that can be caught annually and that limit is less than the sum of all individual fisheries added together, any changes to amount of fish that can be caught in one fishery will have impacts on other fisheries and will require regulatory action to change. Another factor is this proposed schedule extends beyond the current fiscal year. The foregoing estimates assume that NMFS will have essentially the same level of resources (funding and personnel) that it currently has, and that it can devote those resources to this task. Further, NMFS also cannot commit to the use of resources beyond authorized appropriations. Finally, NMFS may be required to submit its work product for various reviews (e.g., Office of Management and Budget). NMFS cannot factor in these contingencies in the timelines provided herein and may require additional time if these contingencies, or others, arise.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on February 7, 2012.

Robert D. Mecum

ROBERT D. MECUM

Deputy Regional Administrator  
National Marine Fisheries Service  
Alaska Region