

Alaska Oil and Gas Association



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Kara Moriarty, President & CEO

December 17, 2018

Chief, Marine Mammal and Sea Turtle Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3226

Re: AOGA Comments on Draft 2018 Marine
Mammal Stock Assessment Reports

NOAA-NMFS-2018-0086

To Whom It May Concern:

These comments are made on behalf of the members of the Alaska Oil and Gas Association (“AOGA”), who account for a majority of the oil and gas production and related operations in Alaska. AOGA appreciates the opportunity to comment as well as the hard work and dedication of the agency employees necessary to generate these detailed assessments. AOGA’s members reiterate their commitment to working in peaceful coexistence, successfully, alongside species listed in these reports.

AOGA retained subject matter expert Eco49 to provide technical comments on the 2018 Marine Mammal Stock Assessment Reports. Eco49’s analysis is attached as Exhibit 1 to this letter (the “Analysis”) and adopted herein by reference. The Analysis discusses several key points, not the least of which is the failure to include ringed seals, a species with strategic status and of major concern in ongoing oil and gas activities in the Beaufort Sea. The Analysis also provides specific comments related to estimation of potential biological removal, the Northern Fur Seal and Cook Inlet Beluga Whales.

Finally, AOGA respectfully suggests that the purpose of a stock assessment report is to, in part, create a clear, user-friendly document that assists our members, other industry participants, and regulatory wildlife permitting agencies to accurately calculate marine mammal take estimates.

Respectfully submitted,

A handwritten signature in black ink that reads "Kara Moriarty".

KARA MORIARTY
President & CEO



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MEMORANDUM

Company: ECO49 Consulting, LLC
Date: 17 December 2018
Subject: Review of Draft 2018 Marine Mammal Stock Assessment Report (Muto *et al.* 2019, in press)

General Comments

Appendix 1 of the 2018 Alaska Marine Mammal Stock Assessment Report (SAR) summarizes by species substantial changes to the text or values in the 2018 report as compared to previous SAR's. Information on the following species has been updated: Western U.S. stock of Steller sea lions; Eastern Pacific stock of fur seals; Alaska bearded and ribbon seal stocks; Cook Inlet beluga whales; AT1 Transient killer whales; North Pacific white sided dolphins; all three stocks of harbor porpoise (Southeast, Gulf of Alaska, and Bering Sea); Dall's porpoise Alaska stock; North Pacific Sperm whales; Western and Central North Pacific humpback whales; Northeast Pacific fin whales; Alaska Minke whales; Eastern North Pacific right whales; and Western Arctic bowhead whales. Updates to stock definition, population size, Potential Biological Removal (PBR), fishery mortality subsistence mortality and/or status are reported for these species.

Note that information and updates on the Alaska stock of the ESA-listed Arctic subspecies of ringed seal is not provided in the 2018 SAR. The MMPA requires that stocks designated as "strategic" should be reviewed annually. Why are ringed seals not included in this draft SAR in light of their ESA threatened status and, as a result, their strategic status under the MMPA? The federal register notice also does not mention ringed seals. This is considered a significant oversight in that ringed seals are the most abundant marine mammal species in the Arctic throughout the year, and a species of major concern related to ongoing oil and gas activities in the U.S. Beaufort Sea. Specific comments related to topics and species of particular importance to AOGA's members follow.

Specific Comments

Topic: Estimation of Potential Biological Removal (PBR)

The draft assessment for the Bering Sea Stock of harbor porpoise (p. 77), is an example of long-standing inadequacy in the development of N_{\min} and PBR for stocks with abundance estimates older than 8 years. The guidelines for preparing the SARs state that abundance estimates older than 8 years should not be used to calculate either N_{\min} or PBR due to a decline in confidence in the reliability of an aged abundance estimate. As a result of applying this guidance, both N_{\min} and PBR are considered "undetermined" or "unknown" which is a mischaracterization that makes using SARs for permitting and management decisions very difficult. If N_{\min} can be identified, even from a survey that is outdated, it should be used to

calculate PBR using the best available science. This approach seems analogous to the practice of under-estimating a PBR based on a recent survey which covers only a portion of an animal's total range. Therefore, even a dated PBR estimate should be represented in SARs and can be done so without compromising the integrity of the guidelines or the "8-year rule" for estimating PBR. Those who rely on these documents for making management decisions use PBR as a proxy for sustainable or negligible levels of "take" (as defined in the MMPA) of marine mammals for many non-fishery activities such as oil and gas activities in the U.S. Arctic and Cook Inlet. It has become more common to use older survey data for management and permitting due to the reduced number of assessment surveys being conducted by NMFS in recent years.

We recommend that the guidelines be revisited and even if the "8-year rule" remains the threshold for estimating N_{\min} and developing current PBRs, the SAR should identify the most recent data and an estimate of PBR that results from those data. If necessary, the SAR can provide caveats regarding the data and include statements to acknowledge the potential risks of using such data. This seems a more reasonable approach rather than stating that "PBR is considered unknown"

Page 19 to 24: Northern Fur Seal, Eastern Pacific Stock

The most recent population estimate for the Eastern Pacific stock of northern fur seals based on pup production estimates is 620,660 animals. The draft SAR refers to the pup harvests on St. George Island from 2014 - 2016. A total of 157 pups were killed over that period. The SAR states on pg. 25 that there is no reason to believe that limiting mortality and serious injury to the level of the PBR will reverse the decline. The report would benefit from adding a brief explanation of the scientific analysis used to justify changes in the fur seal subsistence harvest regulations and any potential impacts as described in the recent Final Environmental Impact Statement published by NMFS (<https://www.fisheries.noaa.gov/action/notice-availability-final-supplemental-environmental-impact-statement>).

Pages 45 to 49: Beluga Whales, Cook Inlet Stock

The draft SAR refers to beluga whales in Yakutat Bay and correctly states that they are not included in the Cook Inlet Distinct Population Segment (DPS) of beluga whales under the ESA, but they are considered part of the depleted Cook Inlet stock under the MMPA (50 CFR 216.15; 75 FR 12498, 16 March 2010). At the time of the Cook Inlet designation, there was insufficient information to identify the Yakutat beluga whales as a separate population. However, designating the Yakutat group of whales as part of the Cook Inlet stock in light of information available at the time provided this stock the same protections from hunting afforded the Cook Inlet stock. There was significant concern that overhunting might further reduce the stock without such protections. Due to their continued small population size, the Yakutat Bay beluga whales remain part of the Cook Inlet stock and are still provided the same protections as the Cook Inlet stock including the limitations on hunting. Decision-makers relying on these reports would benefit from this important context. Therefore, we encourage you to include this information on the SAR.

On page 49, the draft SAR states that "the Cook Inlet beluga whale population is far below historical levels and yet, for unknown reasons, is not increasing. If the Cook Inlet beluga whale population was increasing at an expected rate of ~2-4%, it would currently be adding on average about 7-13 whales per

year to the population. Currently there is no known direct human-caused mortality (e.g., from fisheries bycatch, hunting, or other sources). If the PBR level (~1 whale every 2 years) was taken, this would have minor effects on the overall population trend, given the unexplained lack of increase by 7-13 whales per year". The SAR fails to mention the 164 observed dead stranded whales between 1998-2013 identified in the December 2016 Recovery Plan. The average, unexplained mortality during this period of approximately 11 whales per year may provide important context for the lack of recovery of this species.