

MEMORANDUM FOR: BilrKarp

FROM: Robyn Angliss

DATE: 15 September 2007

SUBJECT: Input from NMML on new MSA data confidentiality language

Thank you for the opportunity to provide information to the AFSC on the implications of the new data confidentiality language in the Magnuson Stevens Act. In response to the tasking memo and our meeting in late August, I provide the following information:

The tasking memo specifically asks: "Can we maintain our historic practice of releasing detailed information on marine mammal-fishery interactions."

The strict interpretation of the MSA language made as of the date of this summary will prevent NMML from releasing the following data from fishery observer programs authorized under the MSA:

- o Locations of all injuries, serious injuries, or mortalities of marine mammals that occur incidental to federally-regulated fisheries in Alaska.
- o Locations of sightings of marine mammals that were collected by observers on MSA-authorized fisheries.
- o Locations of interactions between marine mammals and commercial fisheries that are non-injurious in nature.

In the short term (within the next 6 mo), until this issue can be addressed at a national level, I recommend that NMML staff be advised to not release any of the above types of information. I recommend that the sole collaborator (D. Goodman, Montana State University) who has a copy of the entire POP database will also be advised that the data may not, under any circumstances, be released to anyone. Over the short term, there will be no ill effects of not releasing these types of data, as I do not anticipate that marine mammal injury/mortality data for Alaska federally-managed fisheries will be needed for management purposes until mid-FY08.

I remain very concerned that extending this level of confidentiality to rare events, such as the locations of marine mammal injuries, serious injuries, and mortalities, will negatively impact the agency's ability to manage incidental take of marine mammals in commercial fisheries under the Marine Mammal Protection Act and the Endangered Species Act. The following issues are key, although not all will be equally valid for marine mammal stocks and fisheries in Alaska.

- iii The precise location of a marine mammal serious injury/mortality is sometimes needed to determine the stock of origin of the marine mammal. Should this location have to be somehow combined with other locations, the stock identity may be less clear.
- e Federally-managed commercial fisheries in Alaska were recently separated into small fisheries based on area, gear type, and fish target species. As currently defined, the fisheries may not have sufficient effort per strata to allow averaging across vessels.



without substantial loss of information **OOeyent** location. NMML will have to look at the data more closely to determine how much of an issue this will be.

- e For some marine mammal stocks, the frequency of observed incidental serious injury/mortality is on the order of 1-2 animals per 5 year period, and take locations could be hundreds of miles apart. While combining locations for events that occurred in different years or across hundreds of miles could technically be done, it would mean that any management under the MMPA would lose significant transparency, as the public and the affected communities would not have a reasonable understanding of the data being used to support management actions.
- Some federally-observed commercial fisheries are being carefully managed to reduce serious injuries and mortalities of marine mammals via Take Reduction Teams convened pursuant to the MMPA. These teams include representatives from the affected commercial fishing communities, state agencies, NGOs, etc. In the course of reviewing data and recommending management measures, detailed information on locations of take are routinely provided in order to allow for evaluation and discussion of management options. A requirement to keep the locations of marine mammal serious injuries/mortalities confidential will greatly impair the agency's ability to address important management problems under the MMPA.

In addition, it would be helpful to get legal advice on the following:

- Does the MSA confidentiality language apply to data that may not have been collected during actual fishing operations? For instance, NMML has a database that includes marine mammal sightings collected by observers in MSA-authorized programs. Hundreds of sightings are collected annually; some sightings are collected during fishing operations, while others are likely collected during periods when the vessel is not actively fishing. Although these data are not used for fishery management purposes, they are used by NMFS, MMS, the U.S. Navy, and various researchers at universities to better understand marine mammal distribution. The utility of this information - particularly for rare sightings - will be reduced if locations of data from MSA observers must be averaged to "hide" actual locations of fishing vessels.
- Does the MSA confidentiality language apply to data that are collected in 2007 and beyond, or is the language retroactive? If the latter, is it retroactive for all time?

If additional information is needed prior to the National Data Confidentiality Workshop in November, please let me know.