

MMPA/ESA Exercise for FMC Training

Note – this is a fictitious scenario and does not represent the current situation with the AK BSAI flatfish trawl fishery.

The bottom trawl fishery targeting flatfish operates in the Aleutian Islands during the summer. The fishery has been classified under the MMPA List of Fisheries as a Category II due to documented bycatch of several marine mammals, including bearded seals, harbor porpoise, harbor seals, killer whales, northern fur seals, spotted seals, and Steller sea lions. In addition to being protected by the MMPA, the western Distinct Population Segment (DPS)¹ of Steller sea lion, which occurs in the Aleutian Islands, is listed as endangered under the ESA. Bycatch of spotted seals and bearded seals is currently occurring at unsustainable levels in excess of each stock's potential biological removal (PBR) level. The fishery also catches Atka mackerel and Pacific cod, which are prey species for Steller sea lions.

1. Is a Take Reduction Team required under the MMPA? If so, which marine mammals would be addressed by the Team?

Multiple choice:

- (a) Yes – spotted seals, bearded seals, Steller sea lions
- (b) Yes – spotted seals and bearded seals
- (c) No

Answer: (b) Yes. At a minimum, spotted seals and bearded seals should be addressed because bycatch exceeds PBR for both stocks. However, other stocks could be included as well depending on status (i.e., strategic stocks such as SSL) and whether mode of interaction is similar and bycatch would likely be reduced as a result of measures directed at spotted seals and bearded seals.

2. If NMFS convened a Take Reduction Team, which of the following would not be on the team?

Multiple choice:

- (a) Seal biologist
- (b) Alaska native
- (c) Fisherman from the AK Kodiak salmon purse seine fishery
- (d) Representative from the state of Alaska

Answer: (c) Fisherman from the AK Kodiak salmon purse seine fishery. That fishery is in a different area and uses a different gear type from the above example. The MMPA specifies that scientists with expertise in the conservation or biology of spotted seals, bearded seals, and other stocks covered by the Team, fishermen and industry representatives with expertise in bottom trawling in the Aleutian Islands and elsewhere, a North Pacific FMC representative, an Alaska Native representative,

¹ A DPS is considered to be a “species” under the ESA.

representatives from environmental organizations, representative from the state of Alaska, and the Marine Mammal Commission serve on Take Reduction Teams.

3. How long would the Team have to develop consensus measures to achieve the MMPA short-term goal (i.e., reduce bycatch below PBR levels)?

Multiple choice:

- (a) 90 days
- (b) 6 months
- (c) 1 year

Answer: (b) 6 months - mortality and serious injury exceeds PBR for at least 2 stocks. If that goal is not achieved within in 6 months, NMFS would reconvene the Team to develop additional measures to reduce mortality and serious injury.

4. What is the statutory timeframe for listing a species that has been petitioned for listing as threatened or endangered under the Endangered Species Act?

Multiple choice:

- (a) We'll get it done when we feel like getting it done.
- (b) 2 years after receipt of a petition, if listing is warranted.
- (c) 3 years and 3 months after receipt of a petition, if listing is warranted.

Answer: (b) If we accept a petition and conduct a status review, we are required to publish a 12-month finding (or proposed rule to list) within 1 year from the date of receipt of the petition. If at that stage, we propose to list a species, then we have a year from the publication date of the proposed rule to publish a final determination to list a species.

5. Is NMFS required to consult under Section 7(a)(2) of the ESA?

True/False:

- (a) Yes
- (b) No

Answer: (a) Yes, since the fishery may affect Steller sea lions, which is a species listed under the ESA, the Sustainable Fisheries Division of NMFS would be required to consult under **Section 7(a)(2)** of the ESA with the Protected Resources Division of NMFS to ensure that the proposed fishery is not likely to **jeopardize** the continued existence of the species or result in the **destruction or adverse modification** of its critical habitat.

6. Is NMFS required to confer under Section 7(a)(4) of the ESA? If so, under what circumstances?

Multiple choice:

- (a) Yes, the Sustainable Fisheries Division of NMFS would be required to confer under Section 7(a)(4) if the proposed fishery was likely to jeopardize the continued existence of Atka mackerel or result in the **destruction or adverse modification** of its critical habitat.
- (b) Yes, the Sustainable Fisheries Division of NMFS would be required to confer under Section 7(a)(4) if the proposed fishery was likely to jeopardize the continued existence of the Beringia DPS of the bearded seal or result in the **destruction or adverse modification** of its critical habitat.
- (c) No, no conferencing would be required.

Answer: (c) The Sustainable Fisheries Division of NMFS would not be required to **confer** under **Section 7(a)(4)** because there are no species in the area that are proposed for listing under the ESA. However, even if a species was proposed for listing in that area, **conferencing** would be required only if the proposed fishery were likely to **jeopardize** the continued existence of the proposed species.

7. How long does a formal section 7 consultation take?

Multiple choice:

- (a) 45 days
- (b) 90 days
- (c) 135 days

Answer: (c) Formal consultation can last 135 days (once initiated) unless extended by mutual agreement. It concludes within 90 days after initiation, and NMFS will deliver the biological opinion within 45 days after consultation concludes.

8. Could a Section 7 biological opinion issued by NMFS impose any additional restrictions on the fishery?

Multiple choice:

- (a) No, it is inappropriate for NMFS to impose any additional restrictions on the fishery. The fishery is already overregulated.
- (b) Yes, but NMFS could impose only reasonable and prudent measures.
- (c) Yes, NMFS could impose reasonable and prudent measures or reasonable and prudent alternatives, and terms and conditions.

Answer: (c) Yes. If NMFS determines that the proposed fishery is likely to jeopardize the continued existence of the western DPS of the Steller sea lion, or adversely modify its critical habitat, NMFS would suggest those **reasonable and prudent alternatives (RPAs)** which it believes would not result in jeopardy or adverse modification and could be taken by the agency

If NMFS concludes that the proposed fishery would not result in jeopardy or adverse modification, but that it may adversely affect the Steller sea lion, NMFS would

provide **reasonable and prudent measures (RPMs)** which it believes are necessary or appropriate to minimize impacts of the incidental take of Steller sea lion.

In either case, NMFS sets forth the **terms and conditions** that must be complied with to implement the measures or alternatives specified. NMFS also specifies those measures that are necessary to comply with section 101(a)(5) of the MMPA with regard to such taking.

9. Which of the following is an example(s) of an RPA?

Multiple choice:

- (a) NMFS will monitor the take of marine mammals in this fishery.
- (b) Prohibit retention of Atka mackerel by all federally permitted vessels in one subarea.
- (c) NMFS will monitor harvest of pollock, Pacific cod and Atka mackerel.

Answer: (b) is correct because RPAs result in a modification to the proposed fishery.

10. Which of the following is an example(s) of an RPM?

Multiple choice:

- (a) NMFS will monitor the take of marine mammals in this fishery.
- (b) NMFS will prohibit retention of Atka mackerel by all federally permitted vessels in one subarea.
- (c) NMFS will prohibit retention of Pacific cod by all federally permitted vessels in two subareas.

Answer: (a) is correct because RPMs are measures necessary or appropriate to minimize impacts, not modifications to the proposed fishery.