

April 16, 1997

P. Michael Payne, Chief
Mammal Division Office of Protected Resources
NMFS/NOAA 1315 East-West Highway
Silver Spring, Md. 20910

Dear Mr. Payne,

On behalf of the over 5 million members and constituents of The Humane Society of the United States, Earth Island Institute, and the International Wildlife Coalition, I would like to submit the following comments on the Draft Report to Congress containing "Recommendations to Mitigate Pinniped Interactions with Salmon Aquaculture Resources in the Gulf of Maine" (Draft Report). We commend the National Marine Fisheries Service (NMFS or the Service) for supporting the Pinniped Interaction Task Force's findings that the aquaculture growers in Maine did not provide sufficient information to substantiate claims of damage to their industry and that they did not demonstrate adequate use of non-lethal measures to deter predation. We are, however, extremely concerned that despite information contained in the Gulf of Maine Aquaculture-Pinniped Interaction Task Force Report, and in the Draft Report itself, the Service has suggested that lethal measures should be re-considered. This recommendation seems unfounded and premature. It appears premised on poorly documented loss figures, a misrepresentation of the industry's use of non-lethal measures and a misinterpretation of the intent of sections of the Marine Mammal Protection Act (MMPA).

Problems Documenting Losses

The Draft Report reiterates the findings of the task force that the industry did not document its losses nor the degree to which predation is a problem. The task force also found that the industry had apparently not complied with requirements under the interim exemption to the MMPA (Section 114), when growers were allowed to kill seals provided these killings were reported to NMFS. In spite of this requirement, and the industry's unofficial acknowledgment that it is likely that several hundred might have been killed each year, less than 5 animals were reported killed during the six years of the interim exemption. This does not argue for a commitment by the industry to full disclosure nor for allowing open access to information that would allow a full understanding of the issue of predation. The Draft Report also states "[t]he industry's stated urgency for lethal take authority has not been substantiated. Neither the extent of predation losses

OFFICERS

David O. Wiebers, M.D.
Chairman of the Board

Anita W. Coupe, Esq.
Vice Chairman

Amy Freeman Lee, Litt.D.
Secretary

Paul G. Irwin
President, CEO

G. Thomas Waite III
Treasurer, CFO

Patricia A. Forkan
Executive Vice President

Roger A. Kindler, Esq.
Vice President/General Counsel

STAFF VICE PRESIDENTS

John W. Grandy, Ph.D.
*Senior Vice President
Wildlife Programs*

Wayne Pacelle
*Senior Vice President
Communications and
Government Affairs*

Andrew N. Rowan, Ph.D.
*Senior Vice President
Research, Education, and
International Issues*

Martha C. Armstrong
*Companion Animals and
Equine Protection*

Katherine Benedict
*Administration, Information
Services, and Technology*

Richard M. Clugston, Ph.D.
Higher Education

Randall Lockwood, Ph.D.
Research and Educational Outreach

Robert G. Roop, SPHR
Human Resources and Education

Martin L. Stephens, Ph.D.
Animal Research Issues

Richard W. Swain Jr.
Investigative Services

DIRECTORS

Patricia Mares Asip

Peter A. Bender

Donald W. Cashen, Ph.D.

Anita W. Coupe, Esq.

Judi Friedman

Alice R. Garey

Jennifer Leaning, M.D.

Amy Freeman Lee, Litt.D.

Franklin M. Loew, D.V.M.

Eugene W. Lorenz

Jack W. Lydman

William F. Mancuso

Joan C. Martin-Brown

Judy J. Peil

Joe Ramsey, Esq.

Jeffery O. Rose

James D. Ross, Esq.

Mary L. Schapiro

Marilyn G. Seyler

John E. Taft

David O. Wiebers, M.D.

Marilyn E. Wilhelm

K. William Wiseman

John A. Hoyt

President Emeritus

Murdaugh Stuart Madden, Esq.

Vice President/Senior Counsel

NGO in general consultative status
with the Economic and Social Council
of the United Nations

Promoting the protection of all animals

2100 L Street, NW, Washington, DC 20037 ■ 202-452-1100 ■ Fax: 202-778-6132 ■ www.hsus.org

nor the sustainability of those losses have been demonstrated."(p.7). Despite this, NMFS has apparently accepted the industry's claim that seals enter net pens "an estimated dozen times per year--with dramatic results"(p.8). The task force and NMFS were presented with NO INFORMATION to substantiate this claim. Furthermore, the report does not make it clear that this dubious claim is for the entire industry, not for each grower. We find it incomprehensible that the Service acknowledges the inaccuracy and/or the paucity of information from the industry, yet accepts its claims of "dramatic" damage that may necessitate lethal take.

Inadequacy of Efforts to Use Non-Lethal Deterrents

The Draft report notes that "at some pen sites the task force observed predator netting which was hung improperly and which afforded little protection"(p.4). This was, in fact, the case at the majority of pen sites that were visited by the task force and this fact should be highlighted in the Draft Report. The Report goes on to state that "predator nets are commonly hung improperly, and the latest and best AHDs are not employed at every site. Under such conditions, shooting seals seems to be an expedient alternative to more capital-intensive and labor-intensive predator control measures." (p. 8) We wish to point out that these predator nets are considered the most cost effective measure, and feel that this should be included in the Report. In the only systematic evaluation of the efficacy of lethal and non-lethal deterrents in aquaculture, Pemberton and Shaughnessy (1993) stated "[f]rom the farmers' perspective, the value judgment they should make is that the financial cost of protection by netting and by non-lethal deterrents is far less than the financial loss that seals could cause. Because shooting is an inefficient and ineffective means of protection, it should not be used." Despite this finding (which is noted in Task Force documents), and despite noting in the Draft Report that non-lethal predator measures have not been fully explored by the industry, NMFS has made the misleading statement that "non-lethal deterrence has not proven completely effective or efficient to control damage to property or other interference with human activities by abundant pinnipeds along both coasts primarily because safe, effective non-lethal methods to deter marine mammals have not been developed" (p.10). This statement is simply not true with regard to aquaculture in Maine, and it should be removed from this Draft Report. The Task Force Report and the Draft Report itself both state that there ARE effective and safe measures that can be used. They have not been used by the industry because the industry has not chosen to focus its efforts on non-lethal means of resolving conflicts. Effective strategies for use in aquaculture, such as net tensioning, effective use of anti-predator netting, or use of AHDs, already exist here or in other parts of the world. It is incorrect to state in this draft that "[d]eveloping such technologies will require a substantial investment of resources, and the current commitment of both the Congress and the Administration to reduce Federal spending would mean that progress in the development of these technologies will be slow, or other vital conservation actions will be delayed". This statement should be removed. As stated above,

these technologies already exist. Furthermore, these fish are raised as a multi-million dollar farmed commodity; they are not a wild resource. It is the job of the industry to fund any research and development of additional technologies necessary to protect itself from predation. The final sentence of the conclusion on page 11 that "non-lethal deterrence has not resolved conflicts between marine mammals and human users of marine environments for a variety of reasons, including lack of coordinated efforts or safe technologies that prove effective over time" is highly misleading. As is stated earlier in the Draft Report, these methods have not been fully used or explored by the industry; it is not that they are unavailable or have failed, as this statement implies. The statement should be modified to reflect these facts. We strongly disagree with the final clause of the sentence that "therefore, a reexamination of lethal methods is warranted", as it is predicated on the false assumption that non-lethal methods have failed.

Seals Inside Pens and Section 109(h)

In this Draft Report, NMFS describes the situation in which a seal actually enters a net pen. Growers have stated that industry-wide this occurs "rarely". The Task Force Report found, and the Draft Report to Congress reiterated, the fact that "predator nets are commonly hung improperly, and the latest and best AHDs are not employed at every site"(p.8). Clearly, little is being done to keep animals from entering the pens, yet they rarely do so. If adequate measures are taken to assure that they are kept out of pens, one might conclude that they would not enter pens at all. We are, therefore, baffled that the NMFS has focused so much of its discussion of predation on this "rare" scenario. The solution to the problem is preventing the seal from entering in the first place. It is, therefore, inappropriate to suggest killing a seal that takes advantage of a grower's refusal to use all means to deter the seal from entering a net pen. In an attempt to find a means of authorizing growers to kill seals, the Draft Report refers to Section 109(h) of the MMPA. This section authorizes the lethal take of marine mammals by Federal, State or local government officials or employees or a person designated under section 112(c) if it is for the protection or welfare of the mammal or the protection of public health and welfare. NMFS has not presented any information in the Draft Report to suggest that such a situation is occurring in Maine. A healthy seal's "protection and welfare" are not served by killing it instead of attempting to remove it or leaving it alone. This portion of the Act (109(h)(1)) was amended in discussions of the Marine Mammal Health and Stranding Response Act, and is therefore clearly referring to the occasional need to euthanize an animal that has stranded and is in distress. That is not the case in aquaculture. Nor is "public health and welfare" jeopardized by a seal in the pen. If left alone, the seal will leave. We feel that it is inappropriate for the agency to suggest killing these animals. Section 109 does not appear to intend the granting of authority to kill animals in net pens. Furthermore, if growers are given a priori authority to kill animals in pens, we believe that their history of non-reporting of kills and poor substantiation of losses suggest that this authority is likely to be

abused. We believe that because this situation is rare and that little is being done to deter seals from entering pens, NMFS has suggested an inappropriate solution to the problem. Changing the law or distorting its purpose are not necessary. The solution to the problem is in preventing a seal from entering the pen in the first place. Given the information presented in the Draft Report, it would be best to recommend that Congress grant funds for NMFS to provide low or no interest loans to growers to help them implement use of the most effective predator deterrent strategies. This would likely result in this rare scenario becoming non-existent, and would be a cost effective strategy that would mitigate numerous problems.

In sum, we believe that this Draft Report to Congress has appropriately reiterated the Task Force's finding that the industry is doing little to deter predation and little to document its losses. The Draft Report's focus on mitigating damage from a seal entering a pen and eating or releasing large numbers fish is inappropriate, as it is a rare circumstance that is best dealt with by preventing seals from entering pens. We believe that a primary recommendation of this report should be that Congress and the Service provide assistance to growers to purchase the readily available deterrents such as net tensioning devices, anti-predator nets and AHDs. This recommendation is likely to solve most of the problems faced by the industry and make any discussion of how to allow growers to kill seals unnecessary. We are, frankly, surprised that such a simple, successful and cost effective strategy has not been recommended by the Service.

Thank you for this opportunity to comment on the Draft Report. We look forward to seeing the changes in the Final Report to Congress.

Sincerely,

Sharon B. Young
Marine Mammal Consultant
The Humane Society of the United States

cc: John Twiss, Marine Mammal Commission
Dr. Andrew Rosenberg, NMFS/ NER

Reference Cited

Pemberton, D., and P. Shaughnessy. 1993. Interaction Between Seals and Marine Fish-Farms in Tasmania, and Management of the Problem. *Aquatic Conservation: Marine and Freshwater Ecosystems*. 3:149-158.