

U.S. Fish and Wildlife Service
April 5, 2006

Short-tailed Albatross Recovery:

The Service continues to track short-tailed albatross foraging bouts as breeding adults head to sea to get food for their chicks on Torishima Island. These birds were captured and tagged with satellite transmitters on Torishima in February. Initial foraging bouts ranged about 500 km north of the island towards Tokyo. Foraging areas could well change as chicks become older and can go longer between feedings.

Ten Laysan Albatrosses have been translocated from Midway Island to Kauai. This is basically a dress rehearsal for Japanese scientists preparing for similar translocations with short-tailed albatrosses in Japan. The transfer went well, although the unusual and severe cold and wet weather on Kauai resulted in two Laysan albatross chick fatalities of the original ten that were translocated.

Funding has all but run out for the tori line distribution program. Pacific States Marine Fisheries Commission has a finite inventory and a small amount of money left with which to distribute lines to ports. No further funding for this program is anticipated. There is no known source for tori or streamer lines that will meet regulatory performance standards.

The Short-tailed Albatross Recovery Plan has been criticized by many for excessively low thresholds for reclassification and recovery. The final plan will likely not be published until a Population Viability Analysis is conducted and the recovery team passes judgement on whether and how to revise these criteria.

Southwest Alaska Distinct Population Segment of the Northern Sea Otter:

The Service has received all of the information necessary for reinitiating formal consultation with the National Marine Fisheries Service (NMFS) on Alaska commercial fisheries with respect to the Southwest Alaska Distinct Population Segment of the Northern Sea Otter. Formal consultation began on March 23, 2006. The Service's Final biological opinion is due to NMFS by August 4th, 2006. There remains uncertainty in how incidental take for sea otters will be granted to NMFS under the terms of the Marine Mammal Protection Act.

The first meeting of the Southwest Alaska Sea Otter Recovery Team (SWAKSORT) was held March 8-9, 2006, at the Service's Regional Office in Anchorage, Alaska. Nine members of the team were in attendance, and two more participated via teleconference. The meeting and teleconference were open to the public. The Team

reviewed the purpose of recovery planning under the Endangered Species Act, and developed a schedule for drafting the biological background and summary of threats sections of the plan. Meeting minutes and presentation materials will be made available to the public via the SWAKSORT web page (<http://alaska.fws.gov/fisheries/mmm/seaotters/recovery.htm>)

Pacific Walrus Survey:

A critical requirement for conservation and management of the Pacific walrus (*Odobenus rosmarus divergens*) is to estimate abundance with sufficient precision to track population trends. The Marine Mammals Management office, in cooperation with the Alaska Science Center of the U.S. Geological Survey, the Chukotka branch of TINRO (Pacific Research Institute of Fisheries and Oceanography, Russia), and GiproybFlot (Research and Engineering Institute for the Development and Operation of the Fisheries, Russia), will estimate the size of the Pacific walrus population with an infrared (thermal) scanner survey and associated aerial photography and satellite telemetry. The survey will be done in U.S. and Russian waters in the spring, when the walrus population is distributed near the southern edge of the Bering Sea ice pack.

The Bering Sea will be partitioned into survey blocks, and a systematic sample of transects within each block will be sampled with airborne thermal scanners using standard strip-transect survey methodology. Thermal signature intensities will be recorded for each detected walrus group, and a sample of the detected groups will be aerially photographed with digital cameras. Counts of walruses in photographed groups will be used to model the relationship between the amount of heat measured by the thermal scanner (thermal signature) and the number of walruses in the same group. Only walruses that are hauled out on the pack ice are detectable in thermal imagery. Therefore, the population estimate derived from thermal scanning will be corrected for walruses that are in the water and unavailable to the thermal scanner. Immediately prior to the aerial survey, satellite transmitters will be deployed on a representative sample of walruses distributed across the Bering Sea pack ice in both the U.S. and Russia. Transmitters will record the proportion of time each tagged walrus is hauled out on the ice or in the water, enabling estimation of an in-water correction factor. The final population estimate will be developed cooperatively by U.S. and Russian scientists.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

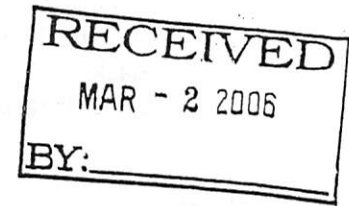
National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

February 23, 2006

Ann Rappoport, Field Supervisor
USFWS/Anchorage Field Office
605 W. 4th Avenue, Rm. G-61
Anchorage, Alaska 99501



Re: Endangered Species Act (ESA) Section 7 Consultation for Alaska Fisheries and Northern Sea Otters

Dear Ms. Rappoport:

Due to the recent listing of the southwest Alaska distinct population segment (DPS) of northern sea otters as threatened (70 FR 46365, August 9, 2005), NMFS requests reinitiation of Endangered Species Act (ESA) section 7 consultation on the effects of the federally managed Alaska fisheries and State of Alaska fisheries implemented under Federal oversight on this DPS (50 CFR 402.16). In September 2003, your agency completed program and project level biological opinions (BiOps) on the effects of groundfish fisheries and the groundfish harvest specifications on USFWS managed species. Northern sea otters have now been added to the list of ESA-listed species that are managed by the U. S. Fish and Wildlife Service (USFWS). Northern sea otters may occur in the exclusive economic zone (EEZ) where Alaska fisheries are conducted and in near shore areas where fishing support activities occur. Therefore, sea otters may be affected by the Alaska fisheries. Critical habitat is not designated for this DPS. The following discussion addresses information required for formal consultation requests, as described in 50 CFR 402.14(c) and section 4.2 of the ESA Section 7 Handbook (March 1998). All references cited in this letter are either enclosed or available from your office. The best scientific and commercial information regarding northern sea otters and the Alaska fisheries is summarized below.

Action Considered

The action is the authorization and implementation of the following fishery management plans (FMPs):

- FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI)
- FMP for Groundfish of the Gulf of Alaska (GOA)
- FMP for Bering Sea/Aleutian Islands King and Tanner Crabs
- FMP for the Scallop Fishery Off Alaska

In the past, NMFS has consulted with the USFWS on the groundfish and crab fisheries managed under the FMPs. Informal consultations were used with the crab fisheries, with the most recent consultation completed with USFWS concurrence on January 13, 2003. This crab consultation found that the crab fisheries were not likely to adversely affect listed species or modify or destroy critical habitat. The following biological opinions have been developed by the USFWS for the groundfish fisheries regarding impacts on USFWS managed species:



- Biological Opinion on the Effects of the Total Allowable Catch-Setting Process for the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Fisheries to the Endangered Short-tailed Albatross (*Phoebastria albatrus*) and Threatened Steller's Eider (*Polysticta stelleri*), September 2003
- Biological Opinion on the effects of the Fishery Management Plans for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries on the endangered short-tailed albatross (*Phoebastria albatrus*) and threatened Steller's eider (*Polysticta stelleri*), September 2003

We request reinitiation of consultation on program and project levels for the groundfish FMPs and for the annual groundfish harvest specifications, respectively. The FMPs describe the management practices for these fisheries and are available at www.fakr.noaa.gov/npfinc/fimp. The groundfish programs authorized under the FMPs are implemented by regulations at 50 CFR part 679. These regulations control overall amounts, species, methods, locations, and timing of groundfish harvests. NMFS uses the annual harvest specifications to control the specific amounts and allocations for each target species or species group and timing of harvests during a fishing year. For the fisheries where otter takes have been observed (Pacific cod pot), little change in fishing effort occurs between years (less than 10 percent for BSAI between 2003 and 2005) so that the level of effort in a particular area is not likely to change substantially between years. For reasons further explained below, the locations of fishing and support activities are the only aspect of the groundfish fisheries that are likely to impact sea otters. Harvest specifications do not change harvest locations, and therefore, the program and project level effects on sea otters are the same.

The action includes the State of Alaska parallel groundfish fisheries (Pacific cod, Atka mackerel and pollock) which are managed by the State using the same harvest limits, seasons, and area restrictions as the Federal fisheries. These fisheries are established annually by emergency order issued by the Commissioner of the Alaska Department of Fish and Game. The management of the crab and scallop fisheries under their respective FMPs is deferred to the State with Federal oversight. A detailed description of the State managed fisheries and the potential interaction with the southwest DPS of sea otters is in Enclosure 1. This consultation is limited to those state fisheries that are managed under the FMPs listed above. A letter from the State agreeing to be a cooperative agency in the consultation is enclosed. (Enclosure 20) We request consultation on the crab and scallop FMPs.

Location of Fisheries and Northern Sea Otters and Diet

Groundfish

Federally regulated groundfish species are harvested in the EEZ off Alaska in waters 3 nm to 200 nm from the shore. The State parallel groundfish fisheries occur in State waters from 0 nm to 3 nm from the shore. Otters primarily occur in the near-shore waters closer than 3 nm from shore where they forage in shallow, rocky areas on benthic invertebrates and fish. Otters also may feed on clams in the EEZ in the soft sediment substrate of Bristol Bay and the Kodiak archipelago. Before the population decline, large rafts of sea otters were seen up to 25 miles from shore in the shallow shelf area of Bristol Bay (Schneider 1976). In 2000, the USFWS found groups of sea otters up to 27 nm offshore in Bristol Bay (Burn and Doroff 2005). Otters rarely are seen offshore in other locations because foraging is limited to shallow areas. Federally permitted groundfish fishing vessels may transit and may perform loading or offloading activities in near shore areas.

Red King Crab

Red King Crab is generally fished in offshore waters in areas deeper than sea otters dive. Informal reports have identified red king crab as a potential prey item for sea otters. The crab may be available as prey during the late winter or spring as they move to shallow water to molt (Enclosure 1, page 26).

Tanner Crab

Tanner crabs in the federal fishery are harvested primarily offshore. Sea otters prey on Tanner crabs in the Aleutian Islands (Enclosure 1, page 34).

Deepwater and Offshore Crab Fisheries

Golden and scarlet king, grooved and triangle Tanner, and snow crab fisheries are conducted exclusively in offshore, deep waters. Because of the location of these fisheries, it is unlikely that sea otters would compete with these fisheries for prey or become entangled in gear (Enclosure 1, pages 40-43).

Weathervane Scallops

Weathervane scallops are not recorded as a prey item of sea otters. This fishery occurs in deeper, offshore waters from where sea otters are likely to occur.

Potential Effects from Prey Competition or Entanglement for Sea Otter by the Federally Managed Alaska Fisheries

Groundfish

Enclosure 2 is section 4.6 of the environmental assessment for the 2006 and 2007 harvest specifications for the groundfish fisheries. Section 4.6 analyzes the potential impacts of the groundfish fisheries on marine mammals, including sea otters.

Groundfish fisheries may impact marine mammals by incidental take, competition for prey, or disturbance. Because the groundfish fisheries primarily harvest groundfish species in the EEZ that are not eaten by northern sea otters, competition for prey is not likely between sea otters and the groundfish fisheries.

With sea otters primarily occurring in near shore areas, federally permitted groundfish fishing vessels are less likely to disturb sea otters while harvesting groundfish. Offshore sea otter groups found during the 2000 USFWS survey were located primarily in the Nearshore Bristol Bay Trawl Closure Area (NBBTCA) (Enclosure 3) (50 CFR 679.22(a)(9)). Except for a small portion during April 1 to June 15, the NBBTCA is closed to all types of trawling. The open portion is located on the northern shore of Bristol Bay, outside of the range of the southwest Alaska stock of northern sea otters (Angliss and Lodge 2004). NMFS observer data also shows that very little groundfish fishing by pot or hook-and-line gear occurs in the NBBTCA where the otter groups have been observed. The NBBTCA and the lack of fishing vessels in the area reduce potential interactions between fishing vessels and offshore sea otters. This trawl closure and the trawl closures near Kodiak Island (Enclosure 4) also limit the potential impact of the fishery on the benthic habitat that may support clam prey for sea otters. The Steller sea lion protection measures provide additional fishery closures in the EEZ and in the State parallel fisheries for

pollock, Atka mackerel, and Pacific cod. These measures also reduce the potential for interactions between fishing vessels and sea otters and reduce potential effects of bottom trawl on benthic habitat (Enclosures 5 and 6) in the EEZ. The North Pacific Fishery Management Council also has recommended closures of many near shore areas to certain bottom contact fishing gears to protect essential fish habitat and habitat areas of particular concern. These measures are expected to be effective in 2006, and maps of the potential closure areas are enclosed (Enclosures 7-10). Disturbances may occur in the near shore waters if vessels are transiting, loading or offloading in areas occupied by sea otters. The effect of such disturbance is unknown.

Incidental take by the federal groundfish fisheries is not likely a concern. NMFS observers monitor incidental take in the groundfish trawl, longline, and pot fisheries. The observer data indicates that three otter take events occurred in the BSAI trawl fishery ~~between 1989 and 2004~~ but in each case, the otters were dead before encountering the trawl gear (Enclosure 11). In 1992, eight sea otters were observed taken in the Pacific cod pot fishery, resulting in an estimated annual mortality of 24 animals. These mortalities occurred in State waters near Attu Island. According to 1992 observer records, catcher processors harvested 5,000 mt of groundfish using pot gear in area 543 where Attu Island is located. In 2005, no pot vessels harvested Pacific cod in area 543. Based on this information, no otter injury or mortalities due to the federal groundfish fisheries conducted in the EEZ have been observed.

Because groundfish fishery observers are not required for vessels less than 60 feet, NMFS depends on small vessel operators to report the taking of marine mammals, as required by the Marine Mammal Protection Act. In 1997, a fisher reported one sea otter mortality in the BSAI trawl fishery. The self reporting form only provides for the reporter to indicate that the animal was "killed," but the fisher indicated that the animal was previously dead before encountering the trawl. NMFS has received no other sea otter mortality reports from the groundfish fisheries in the EEZ. The USFWS has determined that, based on available data, present commercial fishery interaction likely does not significantly affect ~~sea otter abundance~~, and commercial fishing is not likely to contribute to the population decline (70 FR 46365, August 9, 2005). Overall cumulative effects of future State, tribal, local, or private actions in combination with the groundfish fisheries were found to be insignificant for sea otters (Enclosure 2).

Tanner Crab Fisheries

Most of the Tanner crab fisheries occur in offshore waters that are not in the sea otter range. The Bering Sea Tanner crab fishery was closed in 2004 (Alaska Department of Fish and Game (ADF&G) data at <http://www.cf.adfg.state.ak.us/geninfo/shellfish/04value.php>), but this fishery opened west of 166° W longitude October 15, 2005 through March 31, 2006. The potential for entanglement in pot gear is unlikely because the tunnel opening must be less than 5 inches (Enclosure 1, page 34).

Red and Blue King Crab Fisheries

Currently, fishing for blue king crab is closed due to depressed stocks. Directed fishing is prohibited until the stocks are rebuilt to reach their maximum sustainable stock size level in two consecutive years (69 FR 17651, April 5, 2004). One sea otter drowning in a red king crab pot was recorded in the Aleutian Islands in 100 meters of water (Newby 1975, and Riedman and Estes 1990, available from Enclosure 1). The Aleutian Islands red king crab fishery was closed in 2004, and approximately 500,000 lbs of crab were taken in 2003 and 2002 (ADF&G data at <http://www.cf.adfg.state.ak.us/geninfo/shellfish/>).

Weathervane Scallops

Weathervane scallop fisheries occur further offshore and in deeper waters than those used by sea otters for foraging. It is unlikely that scallop dredging would impact sea otter prey by either removal of prey or disturbance of prey habitat. There is no record of sea otter interaction with scallop fishing gear (Enclosure 1, page 102).

Relevant Studies and Additional Information

The sea otter listing Federal Register notice contains the most comprehensive summary of the southwest Alaska DPS of northern sea otters demographic and biological characteristics and potential effects on the DPS (70 FR 46365, August 9, 2005). The following describes additional information requested by USFWS that may be considered in the consultation.

Sea Otter Carcasses

According to Angela Doroff, sea otters generally float when dead.¹ It is unknown at what point of decay the carcass may sink. Sinking is likely to occur at some stage considering the reports of bottom trawl gear bringing up sea otter carcasses, as described above.

Killer Whale Interaction

Predation by killer whales may be an important factor in the sea otter population decline. Williams et al. (2004) (Enclosure 12) studied the physiological and demographic characteristics of killer whales. Killer whales primarily occur in two ecotypes based on behavior, vocalization, geographic movements, morphological characteristics, pod size, social structure, and genetics (Bigg et al. 1987, Dahlheim and Heyning 1998). These ecotypes are marine mammal-eating transients and fish-eating residents. The decline in sea otters may be due to the transient killer whales broadening their prey selection to include smaller marine mammals (Estes et al. 1998) (Enclosure 13). Only transient killer whales likely broaden their prey selection to additional mammals because resident killer whales eat primarily fish. Successful foraging on either fish or marine mammals involves different behaviors, and we are not aware of any observation of a killer whale ecotype changing their foraging behavior.

A "cascade hypothesis" has been presented in The Bering Sea Ecosystem (National Research Council 1996) to explain the changes in abundance of different vertebrate and invertebrate species and trophic levels in the Bering Sea over time. A large portion of the large whale biomass was removed during commercial whaling before the mid 1970s. In addition, commercial fisheries intensely exploited certain fish stocks to the point of reducing abundance below commercially viable amounts in the 1960s and 1970s. In the mid 1970s, a climatic shift to warmer temperatures occurred which may have further resulted in improving conditions for some species over others (increasing pollock and flounder abundance and decreasing herring and crab abundance). As far as the effects of fishing on the groundfish stocks of the Bering Sea, the National Research Council concluded that "the effects of overfishing on the spatial distribution of these species outside the fishing area, yet still within the Bering Sea ecosystem are unknown." Information on the cause of the Steller sea lion decline is also limited. The National Research Council concluded that for Steller sea lions "we do not have the data to assess the relative importance of fishery effects...and environmental effects on food availability, but both have

¹ Angela Doroff, Wildlife Biologist. Personal communication, October 25, 2005. USFWS/Anchorage Field Office, 605 W. 4th Avenue, Rm. G-61 Anchorage, Alaska 99501

likely been involved in the decline of sea lion numbers." Not enough information exists to conclude the extent to which commercial fisheries have reduced the abundance of Steller sea lions causing transient killer whales to switch prey from sea lions to sea otters.

Oil Spills from Fishing Activities

Fishing vessels, seafood processing, and seafood product transport activities release oil into the marine environment. If these activities occur in the near shore areas, sea otters and their foraging areas may be affected. The potential impact of oil spills depends on the type of oil, weather conditions, amount, and location of the spill in relation to the occurrence of sea otters. Sea otters are not known to seasonally migrate and can occur at any time in the near shore waters in the southwest range. For this reason, detailed location information for sea otters should be collected at the time of the spill to accurately gauge the potential direct impact of the spill on the animals.² Fishing vessels primarily use diesel fuel and also may have hydraulic and lubricating oils on board. These fuels are considered non-persistent, having less likelihood of long term environmental harm compared to heavier fuels. Large fish processing vessels and fish trammers may use heavier oils such as bunker C fuels (No. 6 fuel oil). Both diesel and bunker fuels would have immediate adverse effects on contact with sea otters by oiling their fur and preventing the animal from maintaining its temperature. Both fuels also would cause acute toxicological effects on the animals from inhalation and ingestion.¹

Enclosures 14 and 15 describe the NOAA spill response histories from 1981 through 1999 in the Aleutian Islands and in the Gulf of Alaska from 1985 through 1995. Most spills are diesel fuel from a fishing vessel (Whitney, 1996 and 2000). Large spills also have been released from fish cargo vessels (e.g. Kuroshima, November 1997). No sea otter impacts were reported with the Kuroshima spill. Of the 29 spill events responded to by NOAA between 1981 and 1999 in the Aleutian Islands, 24 were from either vessels or processors participating in fishing activities. Of these 24, approximately half of these were participants in groundfish fishing activities. Quantities of oil spilled range from a few gallons to over 110,000 gallons with an average of 23,000 gallons. Thirteen out of 23 spill events in the Gulf of Alaska were from fishing vessels or support activities. Spills in the Aleutian Islands can be a concern due to the area's remote location and longer response times. The infrastructure to rapidly respond currently is located only in Dutch Harbor.³ Many of the spills in the Aleutians occurred near islands that are a large distance from Dutch Harbor.

The causes of oil spills are primarily from shipwrecks due to poor weather or human error. Some spills at or near onshore fish processing facilities have entered marine waters and likely impacted otters (diesel spill at Trident Seafoods Facility at Sand Point, January 15, 1990 and an unknown source of a petroleum spill at King Cove Lagoon December 4, 1992). In 1995, a spill from a fishing vessel also was reported at a fueling dock in Dutch Harbor (Alaska Department of Environmental Conservation September 1999 Aleutian Spill Contingency Plan).

Kiska Island and Tanaga Island are locations where offloading of Atka mackerel may occur in the sheltered bays. These areas also may be important foraging areas for sea otters. The receiving vessel (trammer) is normally anchored and the fishing vessel is bumpered to the trammer during offloading. Though no oil spills in this area have been reported, the U. S. Coast Guard has been

² Douglas Burns, Wildlife Biologist. Personal communication, Oct. 25, 2005. USFWS/Anchorage Field Office, 605 W. 4th Avenue, Rm. G-61 Anchorage, Alaska 99501.

³ Lt. Cmdr. Chris Woodley, Assistant Chief for Compliance and Investigation Branch. Personal communication, October 25, 2005. USCG 13th District, 915 2nd Ave., Ste. 3506, Seattle, WA 98174.

concerned that during poor weather, an anchor coming loose may allow the vessels to collide or allow a grounding, both potentially resulting in an oil spill.⁴ The trampers are more likely to be using bunker C fuel which potentially would cause more long-term impacts in the case of a spill. NMFS 2005 vessel monitoring system data indicate that substantial offloading activities occur in Kiska Harbor and infrequent offloading occurs on the west side of Tanaga Island. The offloading activities at Kiska Harbor are in the vicinity of locations where sea otters have been observed during USFWS skiff surveys in 2003 and 2005 (Enclosure 16).

Because oil releases are frequently caused by shipwreck, the spills are likely to occur in near shore waters. Any diesel release in offshore waters may be dissipated before reaching near shore areas, depending on currents, distance and weather conditions. Approximately 90 percent of a 500-5,000 gallon spill is either evaporated or dispersed in the water column within a few hours to a couple days (Whitney, 2000). Heavier oils spilled offshore are more likely to exist long enough to reach near shore areas. Approximately 70 percent of the heavy oil would persist for a week or longer (Whitney, 2000).

If either diesel or bunker C oils are wind driven to the shore during a low tide, contamination of the intertidal zone is likely to occur. The diesel contamination is likely to persist for 2 years and the heavier oils may persist in the intertidal zone up to several decades.⁵ Persistent oil contamination was found in the subsurface of some middle and lower intertidal areas sampled in Prince William Sound (Short, et al. 2004, Enclosure 17). Sea otters in Prince William Sound after the *Exxon Valdez* oil spill were reported to use the low intertidal areas for clam foraging. The animals would dig pits into the intertidal sediment to remove the clams. Some locations of Prince William Sound continue to have oil present in the low intertidal sediments, and it is likely that foraging sea otters may be impacted if they encounter this oil.⁶ Bodkin, et al. 2002 has reviewed the sea otter population status in Prince William Sound since the *Exxon Valdez* spill and has hypothesized that chronic exposure to oil at Knight Island may be constraining the recovery of the otters in this area by elevated mortality and emigration (Enclosure 18). If foraging behavior of the southwest stock of sea otters is similar to otters in Prince William Sound and if an oil spill contaminates a foraging area, it is also likely the southwest stock of sea otters may be impacted by foraging in oil contaminated areas. Stressed sea otters also may encounter oil in the intertidal zone when traveling through this area to haul out on land.¹

Several current and future actions may mitigate some potential impacts of oil spills from fishing activities. As fisheries are rationalized in the future, fewer vessels are likely to participate in the fisheries, reducing the potential for spills. More information on the rationalization of the groundfish fisheries is in the harvest specifications EA under cumulative effects (Enclosure 2). The proposed nearshore closures for protection of essential fish habitat and habitat areas of particular concern may also reduce activities in these near shore waters that may result in oil spills. State and Federal regulations require minimum standards and inspections to prevent oil spills (18 AAC 75.075) at onshore oil storage facilities.⁴ State regulations also specify the actions to take in the event of a spill, reducing potential impacts (18 AAC 75.300-75.396).

⁴ Charlie Medlicott, Fishing Vessel Safety Program Coordinator. Personal communication, October 25, 2005. Marine Safety Office, USCG, 510 L St., Ste 100, Anchorage, AK 99501.

⁵ Dr. John Whitney, NOAA Scientific Support Coordinator. Personal Communication, October 27, 2005. Hazardous Materials and Response Division, Office of Response and Restoration, National Ocean Service, NOAA, Anchorage, AK.

⁶ Dr. Jeff Short, Supervisory Research Chemist. Personal communication, Oct. 27, 2005. Auke Bay Laboratory, Juneau, AK.

Alaska Statute 46.04.055 requires all operators of self-propelled nontank vessels over 400 gross tons to file oil spill contingency plans (18 AAC 75.425) and certificates of financial responsibility (18 AAC 75.271) with the Alaska Department of Environmental Conservation (ADEC). Many of the larger fishing vessels hold these plans and certificates. Of the 95 fishing vessels with contingency plans, 94 carry less than 630,000 gallons of fuel (Nuka 2005, Enclosure 19) and typically carry 30,000 gallons of non-persistent fuels. State regulations for general oil pollution prevention requirements are at 18 AAC 75.007. Fuel transfer procedures also are used to prevent spills.

Foreign trampers are limited to operations in ports, roadstead or internal waters (bays and inlets) that meet the port or roadstead definitions under the International Law of the Sea, limiting potential areas where oil spills may happen during fish product transfers. These ports and roadstead are generally places of historical use by fishery participants. Requests for new locations are reviewed through the U. S. State Department which may take up to a year to complete a decision. A comprehensive list of designated locations is not available, and many near shore areas of Alaska likely meet the definition of ports and roadsteads.⁷

The State of Alaska also is developing Geographic Response Strategies (GRS) for potential spills in coastal areas. The GRSs are oil spill response plans tailored to protect a specific sensitive area from oil impacts following a spill. These are a series of maps that spill responders can use to quickly identify sensitive areas and determine where to place spill protection resources. These strategies are available on the ADEC website at <http://www.dec.state.ak.us/spar/perp/grs>. Candidate GRS sites have been identified in the Aleutian Islands and Kodiak areas and several sites have been approved on the west side of Kodiak Island. Selection criteria include consideration of fishing vessel activity and sea otter occurrence.

Chronic oil exposure from fueling operations and bilge water in harbor areas has also been identified by the USFWS as a potential threat to sea otters (G. Balogh, USFWS, personal communication, 1/6/06). The US Geological Survey (USGS) has examined oil biomarkers (P450) in California sea otters of Monterey Bay, California and has compared these results to oil biomarkers in northern sea otters of Prince Williams Sound. They found levels of P450 in otters in Prince William Sound in oiled areas in the late 1990s were similar to the range and variation of amounts of P450 in the Monterey Bay sea otters. This indicated that otters in both locations were experiencing similar types of oil exposure. The PWS data suggested that the oil in the late 1990s was having a deleterious effect on sea otters. By inference, the USGS believes that the Monterey Bay sea otters may also be experiencing deleterious effects from oil exposure (Brenda E. Ballachey, USGS, personal communication, 1/18/06). It is possible that sea otters chronically exposed to low levels of oil releases in harbor areas of Alaska may experience adverse effects. The level of effect may depend on the duration of occurrence of sea otters in areas where low levels of oil may be released, the type of oil, and the conditions during the release. The behavior of northern sea otters and California sea otters may also influence how the animals are exposed to oil releases.

The USFWS completed a biological opinion on the Effects of the Construction of a Harbor at Little South America-South, Unalaska, Alaska on Steller's Eiders (August 29, 2005). This document details the known release and amounts of oil in the Dutch Harbor Area and determined that the acute and chronic oil exposure to Steller's Eiders would result in one animal taken. Based on physiology and behavior, we are unsure that the potential adverse effects of chronic

⁷ Ron Antaya, Assistant Special Agent in Charge. Personal communication, October 26, 2005. NMFS Office of Law Enforcement, Alaska Region, P. O. Box 21668, Juneau, AK 99802.

oiling for Steller's Eiders can be inferred to northern sea otters. The southwest Alaska DPS of northern sea otters was considered in this biological opinion but was determined to be not likely to be jeopardized by the project and not further analyzed in the biological opinion regarding any effects, including chronic oiling. No additional information could be found on this topic.

Conclusion

NMFS will continue to collect sea otter and fisheries interaction information and provide that to the USFWS. Based on the information provided, the Alaskan fisheries may have an impact on sea otters through disturbance during near shore activities. In addition, adverse effects on sea otters and their foraging habitat may occur from potential oil spills during fishing activities. An adverse impact through incidental take also may occur in rare circumstances in nearshore waters fisheries, but the effect of incidental take on the DPS is likely to be minor.

Because potential adverse impacts may result in take, an incidental take statement (ITS) is likely needed. 50 CFR 402.14(i) provides for an ITS to allow for exemptions from the ESA section 9 takings prohibition. An ITS to allow for takings during a federal action is part of a biological opinion. Before an ITS may be given, a negligible impact determination (NID) under section 101(a)(5)(E) of the Marine Mammal Protection Act needs to be completed. Because the Alaska fisheries may incidentally take a listed sea otter, participants in these fisheries likely will need a biological opinion and an ITS for ESA-authorized incidental takes of the southwest Alaska DPS of northern sea otters.

Thank you for your attention to this matter, and we look forward to working with you on this consultation. If you have any questions, please contact Melanie Brown of the Sustainable Fisheries Division at 907-586-7006 or Melanie.brown@noaa.gov.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Enclosures



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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March 23, 2006

Robert D. Mecum
 Acting Administrator, Alaska Region
 US Department of Commerce
 National Oceanic and Atmospheric Administration
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, Alaska 99802

Re: Endangered Species Act Section 7 Formal Consultation addressing the effects of the Alaska Groundfish Fishery on the threatened southwest distinct population segment of northern sea otters (*consultation number 2006-117*)

Dear Mr. Mecum,

Thank you for your February 23, 2006 letter, received in this office on March 2, 2006, in which you request formal section 7 consultation on the effects of the proposed Groundfish Fishery as authorized and implemented in the Exclusive Economic Zone (EEZ) Fishery Management Plans (FMPs) on the southwest distinct population segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*). A follow-up telephone call with Ms. Melanie Brown on March 21, 2006, confirmed that the National Marine Fisheries Service (NMFS) determined this proposed action was likely to adversely affect the listed northern sea otter DPS. The U.S. Fish and Wildlife Service (USFWS) has reviewed the information on this project and is providing the comments below in accordance with section 7 (a) (2) of the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended, 16 U.S.C. 1531 *et seq.*).

Because the threatened southwest DPS of the northern sea otter occurs in the EEZ where Alaska fisheries are conducted and in near-shore areas where fishing support activities occur, and because sea otters have been known to become entangled in fishing nets; have drowned in red king crab and Pacific cod pots; are occasionally taken incidentally in near-shore groundfish fishing activities; are adversely affected by diesel and bunker fuels from spills – both from immediate and chronic exposure; and their foraging habitats are negatively impacted from oil spills; we concur with your determination that the listed species is likely to be adversely affected by the Alaska Groundfish Fishery. The specific federal actions for which our concurrence applies includes the following FMPs:

- FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area
- FMP for Groundfish of the Gulf of Alaska

- FMP for the Bering Sea and Aleutian Islands King and Tanner Crabs
- FMP for the Scallop Fishery off Alaska

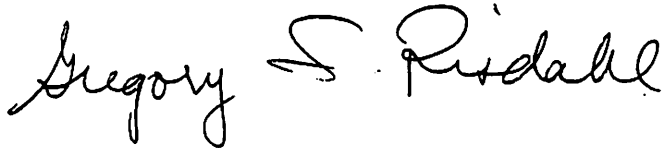
There is no critical habitat designated for the threatened southwest DPS of the northern sea otter at this time.

We agree with NMFS, because of the reasons listed above, that an incidental take statement (ITS) is needed in order to comply with ESA. As you stated, 50 CFR 402.14(i) provides for an ITS, which allows for exemptions from ESA section 9 'take prohibitions'. The USFWS will prepare a Biological Opinion to determine if the proposed federal action will jeopardize the continued existence of the listed southwest DPS of northern sea otters. The Biological Opinion will include an ITS, non-discretionary Reasonable and Prudent Measures and Terms and Conditions. We intend on having the completed Biological Opinion to you by August 4, 2006, 135 days from the date of this letter. NMFS must also seek a negligible impact determination (NID) under 101(a)(5)(E) of the Marine Mammal Protection Act before a take permit may be granted.

This letter relates only to species listed or proposed under ESA and/or designated or proposed critical habitat under our jurisdiction. It does not address species under the jurisdiction of NMFS, or other legislation or responsibilities under the Fish and Wildlife Coordination Act, Clean Water Act, National Environmental Policy Act, Bald and Golden Eagle Protection Act, or Migratory Bird Treaty Act.

Thank you for your cooperation in meeting our joint responsibilities under section 7 of the Endangered Species Act. We look forward to continuing work with you in the future on this consultation. If you have any questions, please contact me by phone at (907) 271-2807, or by email at Greg_Risdahl@fws.gov. Please refer to consultation number 2006-117 in future correspondence on this project.

Sincerely,



Greg Risdahl
Fish and Wildlife Biologist