

**AGENDA B-7
DECEMBER 2006**

U.S. Fish and Wildlife Service
December 6, 2006

Northern Sea Otter: The second northern sea otter recovery team meeting was held at the North Pacific Research Board office on October 24 and 25, 2006, in Anchorage with nearly full attendance. Progress has been made on drafting sections of the plan including background information and threats. The next meeting is tentatively scheduled for April 2007.

On October 3, 2006, the Center for Biological Diversity filed a 60-day Notice of Intent to sue the Service for failure to designate critical habitat for the southwest Alaska Distinct Population Segment of the northern sea otter. During the final listing rule, we stated that critical habitat was not determinable at that time, which gave the Service an additional year, which has since passed. The Service has not ignored the subject of critical habitat, however. It has been a topic of discussion at both the first and second recovery team meetings, where we hoped to draw upon the team's expertise to help define what areas and/or features might be important or essential to the conservation of the listed population. Attached is Critical Habitat Guidance that was provided to the recovery Team.

Short-tailed Albatross: The Service is applying for a NPRB grant to facilitate translocation of short-tailed albatross chicks. Establishing a new colony on a non-volcanic island is a prerequisite to delisting the species.

The Service in cooperation with our Japan partners intends to track breeding short-tailed albatrosses from their nesting colony to Alaska again in 2007. This will be our second year tagging breeding adults. Results from year one indicate that nearly all breeding adults spend significant time foraging in heavily fished waters near Tokyo prior to their departure from the island and subsequent journey to Alaskan waters (and to a lesser extent, to Russian and Canadian waters).

Endangered Species Act Consultation: By letter dated November 14, 2006, the U.S. Coast Guard initiated informal Section 7 consultation with the Service. Through an interactive process the Coast Guard and the Service will evaluate which Coast Guard activities may affect which endangered or threatened species under the jurisdiction of the Fish and Wildlife Service. The vast majority of evaluated actions have no effect on listed species or their designated habitat. In those instances where it appears that there may be an effect, we will work closely with the Coast Guard to assure that they can continue to accomplish their mission while protecting those species that we have trust responsibilities for under the Endangered Species Act.

Critical Habitat Guidance (*Quotations in italics*)

Pertinent Definitions:

50 CFR 424.02(c) *Conservation, conserve, and conserving mean to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures included, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition, and maintenance, propagation, live trapping and transplantation, and, in the extraordinary case here population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.*

50 CFR 424.02(d) *Critical habitat means (1) the specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species*

50 CFR 424.02(j) *Special management considerations or protection means any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.*

Section 4(f)(1) of the Act: *The Secretary shall develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the **conservation** and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species.*

FWS Recovery Planning Guidance defines "Recovery" as: *The process by which the decline of an endangered or threatened species is arrested or reversed, and the threats to its survival are neutralized, so that its long term survival in nature can be ensured.*

On October 3, 2006, the Center for Biological Diversity submitted a 60-day Notice of Intent to sue for failure to designate critical habitat for the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter within the specified 1-year period following the final rule listing the DPS as threatened.

Additional guidance for the development of critical habitat:

50 CFR 424.12(b) *In determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following:*

- (1) Space for individual and population growth, and for normal behavior;*

- (2) Food water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally:
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of such a species.

When considering the designation of critical habitat, the Secretary shall focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description. Primary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

As stated in the final rule, "*Habitat destruction or modification are not known to be major factors in the decline of the southwest Alaska DPS of the northern sea otter.*" (70 FR 46380)

Potential habitat threats described in the final listing rule included competition from commercial fisheries for sea otter prey items. A thorough analysis by the Alaska Department of Fish and Game concluded that this is not a significant threat to the southwest Alaska DPS (Funk 2003). Recent studies of sea otter body condition indicate that individual otters are both longer and heavier than they were prior to the onset of the decline (in the 1970s), strongly suggesting that the population is not food resource limited (Laidre et al. 2006).

Other activities that may affect sea otter habitat include the development of harbors and channels by dredging. These activities typically occur as modifications to existing facilities, and the size of the areas impacted by such activities (50 hectares less).

An additional threat to habitat comes from oil spills. The vulnerability of individual sea otters to oil spills is well documented. The impact of oil spills on their habitat is less clear, although studies in Prince William Sound suggest that sea otters have yet to recover to pre-spill abundance in areas that were heavily oiled (Peterson et al. 2003).

As "conservation" and "recovery" are intricately related, the Service is looking to the Recovery Team to consider if there are "*physical or biological features essential to the conservation (recovery) of the species*". If so, it will also be important to identify the primary constituent elements (PCEs) that are used to define areas of critical habitat. From a recovery perspective, it may be helpful to think in terms of what actions might be included in a recovery plan that would involve habitat management and/or protection measures.

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November 14, 2006

Greg Balogh
Endangered Species Branch Chief
USFWS Anchorage Fish and Wildlife Field Office
605 W. 4th Ave., Rm G-61
Anchorage, AK 99501

Dear Mr. Balogh:

This is in response to your informal inquiry concerning consultations between the Fish and Wildlife Service and the United States Coast Guard pursuant to Section 7 of the Endangered Species Act of 1973, 16 U. S. C. §§ 1531-1544. As you are aware, the Act provides that Federal agencies are to consult with the Service to ensure that actions that they fund, authorize, permit, or otherwise carry out will not jeopardize the continued existence of any listed species or adversely modify designated critical habitat.

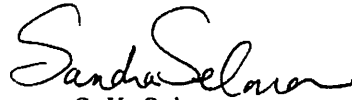
The consultation process usually takes place in the context of specific actions, and is done by the office within the agency that handles the action. For example, the issuance of regulations by Coast Guard Headquarters would engender consultation at that level.

Through our informal communications and information exchanges to date, we understand that there are a number of threatened and endangered species in Alaska that are, or may be, affected by Coast Guard activities. We would appreciate your advising us of the nature and extent of these species, and the concerns that the Service may have regarding them.

As provided in Chapter 3 of the Fish and Wildlife Consultation Handbook at paragraph 3.1, most consultations are conducted informally. Under the provisions of 50 C. F. R. § 402.13, informal consultation includes all discussion, correspondence, etc. between the Service and the Federal agency concerned, designed to assist the Federal agency in determining whether formal consultation or a conference is required. During informal consultation, the Service may suggest modifications to the action that could be implemented to avoid the likelihood of adverse impacts to listed species or critical habitat. As you know, the vast majority of evaluated actions have no effect on listed species or their designated critical habitat. See U. S. Fish and Wildlife Service, *Consultations with Federal Agencies*, February 2002, p. 2. However, in those instances where it appears that there may be some effect, we look forward to working out mutually agreeable solutions to enable the Coast Guard to accomplish its missions while we meet our responsibilities as environmental stewards.

The consultations that we envision are not usually conducted by the legal office. We are currently in the process of identifying the specific office and personnel who will be representing our Agency in any further consultations. However, this office may remain as your point of contact until specific project personnel are designated to consult on specific projects.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Selman". The signature is written in black ink and is positioned above the printed name.

S. K. Selman
Commander, U.S. Coast Guard
Staff Judge Advocate