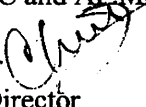


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: March 25, 2009
SUBJECT: Protected Resources Report

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Receive report on Protected Resources issues and take action as necessary.

BACKGROUND

A. Steller Sea Lions - Update on Consultation and Schedule for Release of the *Status Quo* Biological Opinion

At this meeting, the Council is tentatively scheduled to receive an update from the NMFS Protected Resources Division (PR) and Sustainable Fisheries Division (SF) on the schedule for preparation and release of the draft *status quo* Biological Opinion. Previously, during the Council's February 2009 meeting, NMFS indicated that the BiOp was proceeding on schedule (with the draft to be released in August) and that if a jeopardy or adverse modification conclusion was reached in the draft BiOp, NMFS would engage the Council to develop appropriate mitigation measures. At this meeting NMFS may have an update on the BiOp schedule. Item B-6(a) is a letter from MCA regarding potential new information for inclusion in the BiOp.

B. Update on Kittlitz's Murrelet

On March 5, 2009 the Center for Biological Diversity (CBD) filed a petition with the Commissioner of the Alaska Department of Fish & Game to list the Kittlitz's murrelet as an endangered species under the State of Alaska's endangered species law. A press release from CBD announcing the petition is attached as Item B-6(b). Adopted in 1971, Title 16, Chapter 20 of the Alaska Statutes provides that the State shall take measures to preserve species that are threatened with extinction (Item B-6(c)). The Kittlitz's murrelet has been declining in abundance, some believe partly due to climate warming and recession of glaciers. This seabird forages in bays near glaciers, and nests in glacial fjord areas. Kittlitz's murrelets are also taken in coastal gillnet fisheries.

It is unlikely any fishery managed by the Council (e.g. a State waters parallel fishery) would be affected by a State action since this species is not known to interact with groundfish or shellfish fisheries. A previous CBD petition to the U.S. Fish & Wildlife Service to list the Kittlitz's murrelet under the Federal Endangered Species Act was denied by that Agency.

considerable variability within subregions, and suggestions of movement back and forth between the WDPS and the Eastern Distinct Population Segment (EDPS). Data from this year's surveys can contribute substantially to a well-informed BiOp, especially to the extent the studies examine the potential movement of SSLs between and within subregions.

MCA recognizes there are questions regarding the EGOA population, where last year's count increased dramatically, and whether the additional 1,000 animals counted in that region were of WDPS origin or had migrated from Southeast Alaska. MCA believes that NOAA must consider both possibilities. In this regard, it is important, in MCA's judgment, that the studies evaluate both the movement of the WDPS between the Western Gulf of Alaska (WGOA), the Central Gulf of Alaska (CGOA), and the Eastern Gulf of Alaska (EGOA) as well as the movement of the EDPS between the EGOA and Southeast Alaska.

If it is found that the animals are part of the EDPS, a different set of questions needs to be investigated. Given that animals from the WDPS have been observed moving eastward into Southeast Alaska in the past, and with a finding of EDPS animals moving into the WDPS, there will be questions regarding not only the status of the EGOA population, but also the treatment of the WDPS and EDPS as separate population units. Without belaboring the point, MCA would again note that metapopulation considerations continue to be relevant and should be more thoroughly evaluated as recommended in the past by the NPFMC's Scientific and Statistical Committee.

3. Reproductive Rates. The question of overall reproductive success (natality) as a factor affecting population trajectory and recovery remains very much in debate. In developing the SSL Recovery Plan, NOAA relied primarily on one study (Holmes, *et al.*) which was based on work in the CGOA. Follow-up studies by Maniscalco and others are scheduled for release or publication in the near future. The results of these studies will in turn provide another critical piece of information for the BiOp analysis and determinations.

In sum, studies and surveys are either in progress or scheduled for completion with the data available this year which could have a profound influence on both the analysis and conclusions of the SSL BiOp. Given the importance of the results of these surveys and studies, we encourage the Council and NOAA to make every effort to integrate them in the draft BiOp currently being developed.

Thank you for taking our views into consideration.

Sincerely,



David Benton
Executive Director



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

For Immediate Release, March 5, 2009

SHARE
E-mail this page
More press releases

Contact: Shaye Wolf, (415) 632-5301 or (415) 385-5746 (cell)

State Endangered Species Protection Sought for the Kittlitz's Murrelet: *Glacier-dependent Alaskan Seabird Imperiled by Global Warming*

ANCHORAGE, Alaska— Today the Center for Biological Diversity filed a scientific petition with the Alaska Department of Fish and Game to protect the imperiled Kittlitz's murrelet under Alaska's Endangered Species Act due to threats from global warming, oil pollution, and fisheries bycatch mortality that have placed this seabird on a trajectory to extinction.

The Kittlitz's murrelet is a small seabird that nests on open ground near the tops of the rugged coastal mountains of Alaska and Siberia. Also known as "glacier murrelets," Kittlitz's murrelets concentrate in coastal waters next to tidewater glaciers and glacier outflows for foraging during the summer breeding season. The Kittlitz's murrelet has particularly large eyes that allow it to specialize in turbid glacial waters where its fish and zooplankton prey are concentrated. However, the Kittlitz's murrelet's dependence on glacially influenced waters makes it highly vulnerable to global warming.

Average surface temperatures in Alaska increased twice as much as the global average over the past century. In response to this rapid regional warming, Alaska's coastal glaciers are dramatically retreating and thinning, reducing the Kittlitz's murrelet foraging habitat. As coastal glaciers melt away, Kittlitz's murrelet populations in Alaska have plummeted by 80 to 90 percent in the past 20 years, prompting the World Conservation Union to list the seabird as critically endangered.

"Like the polar bear, the Kittlitz's murrelet is being pushed toward extinction by rapid global warming in Alaska," said Shaye Wolf, a biologist with the Center for Biological Diversity who studies the effects of global warming on seabirds. "If we are to save the Kittlitz's murrelet, we must halt global warming to protect this species' remaining habitat before it is too late. Reducing threats from marine oil spills and bycatch from gillnet fisheries are also imperative to reversing its decline toward extinction."

Compounding the impacts from global warming, the Kittlitz's murrelet is threatened by oil spills in Alaskan waters due to the high volumes of oil tanker and vessel traffic and current and proposed offshore oil and gas development within its foraging range in the Cook Inlet and the Bering and Chukchi Seas. Up to 10 percent of the worldwide population is estimated to have been killed by the 1989 *Exxon-Valdez* oil spill, highlighting its vulnerability to spills. In addition, hundreds of Kittlitz's murrelets are estimated to drown each year in coastal gillnet fisheries in Alaska. And ever-increasing volumes of boat and cruise ship traffic in the glaciated bays and fjords where the birds concentrate in summer disrupt the murrelets' ability to find food for themselves and their chicks.

Despite the multitude of threats, the Kittlitz's murrelet has yet to receive the critical protections of the Alaska State and federal Endangered Species Act. In 2001 the Center for Biological Diversity petitioned the U.S. Fish and Wildlife Service to list the species under the federal Endangered Species Act. As a result, in 2004 the Service determined that the Kittlitz's murrelet warranted protection but was "precluded" from listing, effectively denying this species any protections. Today's petition asks the commissioner of the Alaska Department of Fish and Game to place the Kittlitz's murrelet on the state list of endangered species and provide it needed protections in Alaska state lands and coastal waters.

"The Kittlitz's murrelet is one of the most imperiled birds in the United States, and we can't afford to delay any longer in providing it the strongest protections possible," said Wolf.

More information on the Kittlitz's murrelet and the petition is available at
http://www.biologicaldiversity.org/species/birds/Kittlitzs_murrelet/index.html.

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 200,000 members and online activists dedicated to the protection of endangered species and wild places.

###

Arizona • California • Nevada • New Mexico • Alaska • Oregon • Illinois • Minnesota • Vermont • Washington, DC
P.O. Box 710 • Tucson, AZ 85702-0710 tel: (520) 623.5252 fax: (520) 623.9797 www.BiologicalDiversity.org

Alaska (adopted in 1971)

Title 16. Fish and Game. Chapter 20. Conservation and Protection of Alaskan Wildlife Article 3. Endangered Species.

Citation: AS § 16.20.180 - 210

Summary: This Alaska statute provides that the state shall take measures to preserve the habitat of species or subspecies which, are threatened with extinction due to habitat loss, overutilization, disease, predation, or other human or natural factors. Species recognized as endangered or threatened also gain habitat protection on state lands. Taking of a listed species without permit incurs a misdemeanor.

Statute in Full:

§ 16.20.180. Declaration of purpose

The legislature recognizes that, due to growth and development, certain species or subspecies of fish and wildlife are now and may in the future be threatened with extinction. The purpose of AS 16.20.180 - 16.20.210 is to establish a program for their continued conservation, protection, restoration, and propagation.

SLA 1971, ch. 115, § 1.

§ 16.20.185. Protection of habitat

On land under their respective jurisdictions, the commissioner of fish and game and the commissioner of natural resources shall take measures to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction.

SLA 1971, ch. 115, § 1.

§ 16.20.190. Determining endangered species

(a) A species or subspecies of fish or wildlife is considered endangered when the commissioner of fish and game determines that its numbers have decreased to such an extent as to indicate that its continued existence is threatened. In making this determination the commissioner of fish and game shall consider (1) the destruction, drastic modification, or severe curtailment of its habitat; (2) its overutilization for commercial or sporting purposes; (3) the effect on it of disease or predation; (4) other natural or man-made factors affecting its continued existence.

(b) After making a determination under (a) of this section, the commissioner of fish and game shall, in accordance with AS 44.62 (Administrative Procedure Act), publish a list of the species or subspecies of fish and wildlife that are endangered. The commissioner shall, at least once every two years thereafter, conduct a thorough review of the list to determine what changes have occurred concerning the species or subspecies listed. Consideration of existing species or subspecies of fish and wildlife for listing under this

section shall be made on a continuing basis. The review of listed species or subspecies conducted under this section shall be submitted in writing to the governor and the legislature and shall be made available to the public.

(c) In making the determination and review under (a) and (b) of this section, the commissioner of fish and game shall seek the advice and recommendation of interested persons and organizations, including but not limited to ornithologists, ichthyologists, ecologists, and zoologists.

SLA 1971, ch. 115, § 1.

§ 16.20.195. Permit for taking endangered species

A species or subspecies of fish or wildlife listed as endangered under AS 16.20.190(b) may not be harvested, captured, or propagated except under the terms of a special permit issued by the commissioner of fish and game for scientific or educational purposes, or for propagation in captivity for the purpose of preservation. Sec. 16.20.200 Penalty. A person who, without a permit issued under AS 16.20.195, harvests, injures, imports, exports, or captures a species or subspecies of fish or wildlife listed under AS 16.20.190, is guilty of a misdemeanor.

SLA 1971, ch. 115, § 1.

§ 16.20.200. Penalty

A person who, without a permit issued under AS 16.20.195, harvests, injures, imports, exports, or captures a species or subspecies of fish or wildlife listed under AS 16.20.190, is guilty of a misdemeanor.

SLA 1971, ch. 115, § 1.

§ 16.20.210. Birds included

In AS 16.20.180 - 16.20.210 "fish or wildlife" includes birds.

SLA 1971, ch. 115, § 1.

§ 16.20.220. Renumbered as § 16.20.500

§ 16.20.230. Renumbered

§§ 16.20.240 to 16.20.260. Renumbered as §§ 16.20.510 to 16.20.530

§ 16.20.270. Renumbered as § 16.20.690