



# NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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## Action Memo

File Number: REP 16-021

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**Agenda Date** 4/4/2016

**Agenda Number:** B6

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**Dan Hull, Chairman**  
**Chris Oliver, Executive Director**

**SUBJECT:**  
Protected Species Report

**STAFF CONTACT:** Steve MacLean

**ACTION REQUIRED:**  
Review protected species report; action as necessary.

### **BACKGROUND:**

#### Ringed Seal - Arctic subspecies Threatened listing vacated

On March 11 2016, the United States District Court for the District of Alaska filed a decision that vacated the final rule listing the Arctic subspecies of ringed seal (*Phoca hispida hispida*) as threatened under the Endangered Species Act, and remanded the rule to the National Marine Fisheries Service. The Court concluded that the agency's use of a 100 year timeline under which the Arctic subspecies of ringed seal may face threat of extinction was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". The Court also concluded that the agency's decision that protective regulations were not necessary or advisable at the time of the listing suggested that no serious threat of a reduction in the population of Arctic ringed seals exists prior to the last decade of the 21st century.

#### Polar Bear - Critical habitat decision reversed by 9th Circuit Court of Appeals

On February 29 2016, the 9th Circuit Court of Appeals reversed a decision by the US District Court for the District of Alaska vacating the US Fish and Wildlife Service (FWS) designation of critical habitat for the polar bear (*Ursus maritimus*) in Alaska. The panel held that the FWS' designation of denning habitat was not arbitrary and capricious and that the FWS drew rational conclusions from the best available scientific evidence.

The FWS published a final rule designating polar bear critical habitat on December 7 2010 that listed 187,000 mi<sup>2</sup> as critical habitat. Unit 2 includes denning habitat along the Alaskan coast, Unit 3 consists of barrier island habitat. Three groups filed complaints in 2011 challenging the final rule. The groups challenged the rule on several grounds that were rejected by the US District Court, but also challenged that the FWS did not identify specific areas containing the physical and biological features essential for polar bears. The district court agreed that the FWS designations were unsupported because the FWS did not show where Units 2 and 3 contain all of the required features of terrestrial denning and barrier island habitats. The 9th Circuit Court disagreed with the lower court and concluded that the FWS was not required by the ESA to show, specifically, where all constituent elements are found. The decision was, therefore, reversed and remanded for entry of judgement in favor of the Agency appellants.