

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver ^{DO} _{LOS}
Executive Director
DATE: September 19, 2008
SUBJECT: Protected Resources Report

ESTIMATED TIME
1 HOUR

ACTION REQUIRED

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

BACKGROUND

A. Sea Otters

On April 15-17, 2008 the U.S. Fish & Wildlife Service's (USFWS) Southwest Alaska Sea Otter Recovery Team (SWAKSORT) met to continue work on developing a recovery plan for the Southwest Alaska Distinct Population Segment (DPS) of northern sea otter. The SWAKSORT has developed some initial concepts for designating critical habitat for this DPS, and the USFWS held a public meeting in June 2008 in Kodiak to seek public comment on sea otter critical habitat. The Council was given a briefing on this issue at its June 2008 Kodiak meeting. The SWAKSORT has recently released the draft minutes of its April 2008 meeting; these are attached as Item B-6(a). In these minutes is additional discussion and rationale behind the Team's suggested approach to designating critical habitat for this species.

B. Green Sturgeon

On April 7, 2006 NMFS listed the Southern Distinct Population Segment (DPS) of green sturgeon as threatened under the Endangered Species Act (ESA). Required to designate critical habitat for the green sturgeon, NMFS recently announced its proposed rule that makes that designation (Item B-6(b)).

Green sturgeon are anadromous fish that range from the Bering Sea to Pacific waters off Mexico. Two DPSs are recognized: Southern and Northern, based on genetic differences and geographic distribution, although the two may overlap. Green sturgeon occur in coastal estuaries and coastal marine waters off Southeast Alaska, but it is unknown which DPS. NMFS considers it likely the Southern DPS occurs in Southeast Alaska, but it is unconfirmed.

The recent designation of critical habitat for the Southern DPS excludes Alaskan waters as can be seen on the attached maps (Item B-6(b)). The Council may wish to comment on the proposed rule. The close of the comment period is November 7, 2008.

C. Cook Inlet Beluga Whales

On April 22, 2008, NMFS delayed the final decision on whether to list the Cook Inlet beluga whale under the ESA based on a need for an additional six months to prepare a 2008 population estimate to better inform their decision. Immediately after the NMFS notice, on April 23 the Center for Biological Diversity (on behalf of CBD and others) submitted a 60-day notice of intent to sue over violation of the Endangered Species Act by not making a final listing determination for this beluga stock, challenging the Agency's intent to delay their decision for six months. On June 30, 2008 the plaintiffs filed suit over the delay in the listing and, at present, the parties have agreed to allow NMFS until October 21, 2008 to file its answer to the complaint.

D. Steller Sea Lion BiOp and EIS Schedule

The Council received a report at its June 2008 meeting from the NMFS Office of Protected Resources that the draft *status quo* Biological Opinion on the effects of Alaska groundfish fisheries on the Steller sea lion would be delayed. NMFS outlined the reasons for this delay in a letter to the Council dated May 1, 2008 (see Item B-6(c)). In response, the Council sent a letter to NMFS requesting a new schedule and timeline for completion of the draft *status quo* BiOp, the proposed schedule for preparation of the draft EIS, and a description of how NMFS intends to interact with the Council and its SSL Mitigation Committee. The Council's June 11, 2008 letter is attached as Item B-6(d). NMFS has replied in a letter dated September 18, 2008 (Item B-6(e)). In this letter, NMFS provides two schedules: one, a schedule of milestones if no jeopardy or adverse modification of critical habitat (JAM) determination is made, and a second schedule showing the milestones if the Agency does make a JAM determination. NMFS will be available at this meeting to present the new schedule and answer questions.

E. Steller Sea Lion Recovery Plan

At its April 2008 meeting, the Council received a briefing from the NMFS Office of Protected Resources on the Final Revised Steller Sea Lion Recovery Plan. In development since the early 2000s, the Final Recovery Plan provides the Agency with a blueprint for "recovering" the endangered western SSL and the threatened eastern SSL. The Council expressed several lingering concerns with the Final Recovery Plan, and sent a letter to NMFS requesting that the Agency give a report to the Council on how it intends to implement the Recovery Plan's high priority recovery actions, particularly monitoring the growth of the SSL population in the Russian subarea and implementing an adaptive management program to evaluate fishery conservation measures. The Council also recommended that NMFS initiate the process for delisting the eastern SSL since this stock appears to have met the criteria required for delisting. The Council also requested that NMFS' marine mammal research permitting office rescind the prohibition on conducting research on adult female SSLs as soon as possible. The letter to NMFS was sent April 10, 2008 (see Item B-6(f)). NMFS' response, dated September 17, 2008, is attached as Item B-6(g). NMFS staff will present this to the Council at this meeting.

F. Ice Seal Status Review

In May 2008, the Center for Biological Diversity (CBD) filed a petition to list three Arctic ice seal species under the ESA: ringed, bearded, and spotted seals. [A fourth Arctic ice seal, the ribbon seal, was already under review by NMFS for possible listing (status review was announced March 28, 2008).] On September 4, 2008, NMFS responded and announced its 90 day finding that the CBD petition presents substantial scientific information indicating that a listing of the three ice seals may be warranted (Item B-6(h)). NMFS therefore has initiated status reviews of the three ice seals to determine if listing under the ESA is warranted.

SOUTHWEST ALASKA SEA OTTER RECOVERY TEAM

Meeting Minutes

for

15-17 April 2008

at the

North Pacific Research Board Conference Room

1007 West 3rd Avenue, Suite 100

Anchorage, Alaska 99501

Recovery Team Members in Attendance

David Benton, Jim Bodkin, Kathy Burek, Douglas Burn, Jim Curland, Jim Estes, Lloyd Lowry, Ken Pitcher, Kathy Ralls, Tim Tinker.

Other Meeting Attendees

Sonja Jahrsdoerfer, Dana Jenski, Doug Vincent-Lang, Rosa Meehan, Robert Small, Bill Wilson, Kristine Sowl (via teleconference).

Day One

The meeting agenda was reviewed and adopted without revision.

Update on SWAK SO management actions

Douglas Burn began by reminding the team that the Service has a court-ordered deadline to have a critical habitat proposal to the Federal Register by November 30, 2008. The proposal will be followed by a public comment period, which is typically 60 days. Once the Service knows the areas that will be proposed, they will also do an economic analysis of the impacts of designating critical habitat. The Service has been working on the proposal since December 2007, and has a draft ready to begin the review process.

The rationale behind the Service's approach to critical habitat designation is that features that provide cover and shelter from marine predators may be essential to the conservation of the DPS. During skiff surveys conducted in 2007, 90% of all otters observed were estimated to be within 100m of shore. Additional criteria under consideration are based on water depths that are either: 1) too shallow for marine predators to forage (less than 5m); and/or 2) where kelp forests occur (less than 20m). For all practical purposes, the 20m depth contour encompasses the 100m shoreline buffer, and completely encompasses the 5m depth contour.

Tim Tinker asked if there was any consideration of proximity to "refuge" habitats, such as Shagak Bay on Adak Island. Burn responded that knowledge of "refuge" habitats is limited to only a few areas, so this criteria would be difficult to apply throughout the DPS.

Burn also stated that due to the unique habitat characteristics within the Bristol Bay management unit, the 20m depth contour does not adequately identify these essential features (with the exception of Amak Island). Instead, areas that are known to support large numbers of sea otters

(Izembek Lagoon, Port Moller, and Herendeen Bay are being considered for inclusion as subunits of critical habitat.

Overall, the Service may propose approximately 15,000 km² of critical habitat. Much of this area is already designated as critical habitat for Steller sea lions. Although Section 7 consultation is already required for these areas, the features differ between the two species, so the outcome of jeopardy and adverse modification standards could differ.

Kathy Ralls asked if the area likely to be proposed has enough food to support a recovered population of sea otters. Burn responded that at densities from 1-2 otters per km², these areas would support between 15,000-30,000 otters.

Jim Estes stated his belief that although these criteria identify areas that are necessary, he was not convinced that they are sufficient. Burn asked what would be the essential physical and biological features that occur beyond the proposed areas, and what criteria would be used to define them. Robert Small asked how the term "conservation" was being defined in the context of critical habitat. Burn responded that both "conservation" and "recovery," mean the DPS no longer requires the protections of the ESA. Based on that definition, Estes re-stated that he did not think the proposed area was sufficient. Ralls asked if the area should be sufficient for recovery, or just enough to prevent extinction. There was additional discussion on this point without resolution. Estes stated that the statutory guidelines for critical habitat in this case could result in poor biological decisions.

Dave Benton asked how critical habitat relates to the jeopardy standard. Sonja Jahrsdoerfer responded that they are separate, but related, analyses.

Jim Curland asked if the Center for Biological Diversity (CBD) had given any indication to what they thought the essential features are, and if not, could they make suggestions during the comment period. Burn stated that he believed the CBD lawsuit was procedural, without making specific recommendations.

There was more discussion, which Lloyd Lowry finished by clarifying that critical habitat provides the agency with an opportunity to pick some special places and provide them with extra protection, and that it really means nothing if they designate every bit of habitat that an otter may use. Burn reminded the team that even areas that are not designated as critical habitat will undergo a jeopardy analysis during Section 7 consultations.

Tinker stated that these criteria might be the best that can be done, and that the Service will likely get comments that the areas designated are both too much and too little. Estes asked what was the harm of proposing a broader area, given that most of it is remote. Lowry noted that in the case of manatees in Florida, the Service proposed all navigable waterways, which proved of little value when applying conservation actions.

Benton noted that critical habitat is going to be of interest to communities in the Aleutians. He also brought up the issues of seafood processor discharge, the Aleutian Islands risk assessment study, and entanglement in marine debris.

Jim Bodkin agreed with Estes that the statutory definition of critical habitat is not particularly applicable to this DPS, and asked what the consequences might be of "getting this wrong." Ralls responded that in the case of California condors, the essential features are nest sites. That is not to say that other threats that occur outside of these areas might not impact the population, but that those nest sites required additional protections.

Lowry stated that the team could write a letter to the Regional Director to offer recommendations for critical habitat designation, but the team has not decided to do this. Estes suggested that the team wait until the Service has proposed critical habitat, and then respond to that.

Moving on to other management actions, Burn reported that the plans for the Akutan airport and hovercraft seem to have been put on hold. The Service also had a Section 7 consultation with the Alaska Maritime National Wildlife Refuge for a rat eradication project at Rat Island in the western Aleutians. He also talked about the proposed oil and gas lease sale in the North Aleutian Basin, and said that there would be Section 7 consultations on that action

Plans for 2008 SWAK SO research

Burn reported that the Service had no plans for surveys within the DPS in 2008, but that they would be funding the U.S. Geological Survey (USGS) to survey Kamishak Bay. He also reported that there were still 42 radio transmitters on the air from otters captured in Kachemak Bay in summer 2007. Of the two mortalities in that sample so far, one was a boat strike (carcass recovered and necropsied) and the other a subsistence-harvested animal (tags were turned in, but not the carcass). The Service's highest priority project is to continue monitor these radios. In addition, they intend to do a small foraging observation study of these tagged otters, continue stranding network operations, and also issue a contract with the Aleut Marine Mammal Commission to conduct aerial surveys in the Shumagin and Pavlof Islands.

Lowry asked if there were any areas that the Service would like to survey in 2008, but did not have the funds to do so. Burn noted that there is a need to need to redesign some of the survey areas, and that perhaps Kodiak would be next in line for a survey. Bodkin thought Kodiak would be a good candidate for a survey, considering the uncertainty regarding the sea otter population there. There was a brief discussion about the Kodiak population trend, especially the decision to not use the 1989 helicopter survey result in the most recent analysis.

Tinker noted that it would be good to have additional skiff survey data from Unalaska, as there is a shortage of trend sites except in the western Aleutians. Burn noted that although that was a possibility, it was not going to occur in 2008 for funding and logistical reasons.

Bodkin informed the team that in 2008, the USGS Alaska Science Center would be conducting a joint study of kelp forest and sea otter ecology within the DPS with Jim Estes. Although the work plan has been refined somewhat, this is basically the same research that was described to the team at the October 2007 meeting. In addition, USGS will also continue their project in Katmai National Park that includes aerial surveys, diet information, and carcass collection for age analysis.

USGS will also have 2 people on Adak during the summer of 2008 studying sea otter distribution, diet, and activity budgets. They will also be conducting skiff surveys and looking for sea otter carcasses.

Estes reported that the Alaska SeaLife Center (ASLC) no longer has funding for their sea otter program. In 2008 they plan to return to Bering Island in Russia to recapture animals to recover time-depth recorders. This study is currently only partially funded, and they are working on finding money to make up the shortfall. The ASLC also requested a no-cost extension to their existing grant with the Service. Their final report is now due June 30, 2009.

Estes also added that researchers from Maine and Canada would be collecting specimens of coralline algae in the Aleutians this summer as part of a study that he reported on at the October 2007 meeting.

Threats Assessment

The team revisited the threats assessment tables from the October 2007 meeting. Since that time, there had been some e-mail discussion about the columns and categories in the tables. Specifically, the "Likelihood" column was changed to mean "the likelihood that the threat would occur" rather than "likelihood that the threat would impede recovery."

There was considerable discussion about the meaning of the "Severity" column, which was eventually changed to "Potential Impact" following the Steller sea lion recovery plan. Estes suggested that the tables needed a summary column that identifies the overall level of threat. Also following the Steller sea lion plan, the team agreed to add this column, which was titled "Importance to Recovery." The team also elected to delete the "Immediacy" column.

Day Two

Burn distributed copies of the revised threats assessment tables to the team, which led to additional discussion. Lowry instructed the team to focus on the importance to recovery of each threat.

There was not general agreement about the threat "Food Limitation." Some members interpreted this to mean external threats to sea otter foods, whereas others also included the potential effects of sea otter foraging. At this point, the team elected to change this threat to "Prey Base" which was to be interpreted as external threats.

The team discussed and rejected a suggestion to combine the "Potential Impact" and "Geographic Scope" columns.

After much discussion the western Aleutian Islands table was revised according to the agreed-upon columns and rankings. Successive tables were revised by identifying which threats differed from the western Aleutians table.

Recovery strategy and goals

The team reviewed nine bulleted points in the recovery strategy that need additional explanatory text drafted. There was agreement that the strategy was essentially complete with only some slight revision needed. Lowry agreed to draft text to explain the bulleted points.

Delisting and uplisting criteria

Estes presented proposed ecosystem-related delisting criteria based on the phase shift between urchin-dominated or kelp-dominated ecosystem states. One possible advantage of ecosystem-based criteria is that it may be easier to use measures of kelp and urchin densities to determine whether sea otters are at a "healthy" population level, than it would be to monitor the sea otter population itself. Most of the data used in the analysis are from the western Aleutian management unit, with some from the eastern Aleutian unit. Burek asked about what would happen if some other factor (besides otter predation) were to wipe out urchin populations. Estes replied that there was no information about any type of disease that might occur, and that in his opinion that was unlikely. He asked that team members read the document he provided and submit questions and or comments to him directly.

There was some question about the applicability of the potential ecosystem-based criteria to other areas. Estes noted that there are physiographic and oceanographic differences between the Aleutian Islands and other areas that affect settlement patterns of urchin larvae, and that it would be unwise to extrapolate an Aleutians-based ecosystem criterion to other areas.

Benton noted that we should think about conditions over the next 5-10 years, and what things other than otters that could lead to changes in urchin and kelp abundance. He advised that there should be consideration on how to address the possibility of a false signal, and wanted to make sure that this delisting criteria does in fact relate back to recovery of the sea otter population. Benton was also concerned about requiring an ecosystem-based criteria as well as demographic ones when considering delisting.

The team discussed ways to word the delisting criteria to indicate that once the population has recovered, there would be clear signs of ecosystem health. There was also some discussion about how the delisting criteria should be distributed, especially within the western Aleutian unit, so that the recovered population is distributed broadly.

The team next reviewed the draft threats-based criteria developed by Ralls and Burn during the Tuesday morning working session. The text was revised by the entire group.

Tinker presented a progress report on the population viability analysis (PVA) model he has been developing. There was discussion of quasi-extinction thresholds at individual islands, island groups, and for the entire western Aleutians unit. There was not any general agreement for the value to use probability of extinction within some foreseeable future, and the team decided to investigate what other examples of these criteria may exist for other mammalian and avian species.

Day Three

Burn provided the team with updated Threats Assessment tables, including a summary table that combines the overall threat values for each management unit. There was general agreement that the summary table and discussion of rationale for the conclusions belong in the text of the plan, and the individual management unit tables should be an appendix. Pitcher agreed to draft explanatory text to accompany the tables.

Tinker presented the results of some modeling simulations that he had run overnight that indicated that 20 years may be too short a timeframe to use as the "foreseeable future", as it is less than 3 sea otter generations. In the simulations, major changes began to appear somewhere in the 20-35 year time frame (3-5 generations).

Ralls agreed to review the state of the art of PVA-based criteria in other endangered species recovery plans. Burn agreed to contact Debby Crouse, Service Recovery Liaison for Region 7, and ask her for examples of PVA models and criteria used in other plans.

Tinker agreed to run various modeling scenarios over the next few months with 100-year time frames, as the data can be truncated to shorter periods if necessary. He also plans to review the PVA model parameters with Bodkin, Estes, and Ralls before proceeding. Tinker plans to write up a summary of the modeling procedures for review by this working group.

Ralls advised that the recovery plan should include an explanation why it does not use a genetic approach to calculating quasi-extinction levels, as they are generally much higher than the values the team had been discussing for use in the PVA model. The team agreed that there should be some discussion of genetics in the plan.

Recovery Action Outline and Implementation Schedule

The team reviewed the recovery action outline that they had revised at the previous meeting. Estes recommended deleting the item on ecosystem monitoring, and including it as a subheading under population monitoring instead.

Tinker suggested that there should be a review of the background and threats sections to reduce repetition. This brought up the subject about having an outside review/edit of the draft plan for overall consistency, which had general support from the team.

Burn committed to formatting the recovery action outline into a draft implementation schedule. It was decided that Burn, Bodkin, and Estes would make a first cut at filling in the schedule which would then be distributed to all team members.

The team finished the meeting by discussion what actions need to be completed in the draft plan and the need for future meetings. The proposed sequence of events is as follows.

- Continue drafting sections and compiling the plan (May-September 2008).
- Distribute compiled draft plan to team members at least one month prior to the next meeting.

- Recovery Team meeting to review and agree upon draft plan (November 2008).
- Modify draft plan as needed to reflect team comments and concerns.
- Submit draft plan for review by contracted independent expert.
- Revise plan as needed based on independent review.
- Draft plan submitted to team members for final approval.
- Team's final plan submitted to the Service (April 2009).

Action items

- All team members should review and revise the background and threats sections of the plan that they drafted and submit revisions to Lowry.
- Lowry will draft text to for the Recovery Strategy section of the plan.
- Pitcher will draft text to explain tables in the Threats Assessment section of the plan.
- Ralls and Burn will investigate PVAs, and values for probability of extinction and foreseeable future, used in existing ESA recovery plans.
- Estes will revise and finalize draft ecosystem-based recovery criteria.
- Tinker, Estes, Bodkin, and Ralls will meet to review parameter values being used in the current SWAKSORT PVA model.
- Tinker will continue to run scenarios through the PVA model.
- Burn will use the recovery action outline to make a draft implementation schedule, and he, Bodkin, and Estes will fill in the template with preliminary values.
- Burn will investigate contracting for an experienced scientist/editor to review the team's draft plan before it is submitted to the Service.



NOAA NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE

Contact: Jim Milbury
562-980-4006

FOR IMMEDIATE RELEASE
Sept. 5, 2008

**NOAA Proposes Critical Habitat for Southern Population
of North American Green Sturgeon**

NOAA's Fisheries Service is seeking public comment on a proposal that identifies critical habitat for a distinct group of North American green sturgeon that spawn in California's Sacramento River but migrate along the west coast of Mexico, the United States, and Canada.

In April 2006, NOAA's Fisheries Service listed what is known as the southern segment of North American green sturgeon as threatened under the Endangered Species Act and sought public input to assist in the identification of critical habitat for the species. The listing was due in part to the degradation of the primary spawning habitat in the Sacramento River and the declining numbers of green sturgeon.

The Endangered Species Act requires a review of critical habitat for designation whenever a species is listed for protection. A critical habitat designation only applies when federal projects, permits or funding are involved and does not apply to citizens engaged in activities on private land that do not involve a federal agency.

Using information previously provided by the public and the agency's own data, NOAA's Fisheries Service proposes the following areas as critical habitat:

- Coastal U.S. marine waters within 110 meters (361 feet) depth from and including Monterey Bay, Calif., north to Cape Flattery, Wash., including the Strait of Juan de Fuca, to the U.S. border with Canada.
- The Sacramento River, lower Feather River, lower Yuba River, the Sacramento-San Joaquin Delta and Suisun, San Pablo and San Francisco bays in California.
- The lower Columbia River estuary.
- Humboldt Bay, Calif.; Coos Bay, Winchester Bay and Yaquina Bay, Ore.; and Willapa Bay and Grays Harbor, Wash.

The areas proposed for designation comprise approximately 325 miles of freshwater river habitat, 1,058 square miles of estuarine habitat, 11,927 square miles of coastal marine habitat and 136 square miles of habitat within the Yolo and Sutter bypasses, part of the Sacramento River Flood Control Project.

Comments may be submitted for this proposed rule as listed below. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov>.

- Electronic: Go to the Federal eRulemaking Portal, <http://www.regulations.gov>, and follow instructions for submitting comments.
- Fax to 562-980-4027 Attn: Melissa Neuman
- Mail: Chief, Protected Resources Division, Southwest Region, NOAA's Fisheries Service, 650 Capitol Mall, Sacramento, CA 95814-4706

The proposed rule and supporting documents can be found at www.nmfs.noaa.gov/pr, look under "Recent News and Hot Topics."

NOAA understands and predicts changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and conserves and manages our coastal and marine resources. Visit <http://www.noaa.gov>.

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Proposed Critical Habitat Designation for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

Today's Action.

NOAA Fisheries has published a proposed rule in the *Federal Register* to designate critical habitat areas in Washington, Oregon, and California for the Southern Distinct Population Segment of North American green sturgeon (Southern DPS of green sturgeon), listed in 2007 as a threatened species under the Endangered Species Act (ESA). The proposed rule includes analyses of the economic and other impacts of this proposed designation, and seeks additional information and comment on the proposed designation. Public hearings will be held in at least 2 locations to receive comments and feedback on the proposal. Details of the public hearings will soon be posted on NOAA Fisheries' website: <http://www.swr.noaa.gov>. Following the public comment period and hearings, the final rule is scheduled to be completed by NOAA Fisheries by June 30, 2009.

The proposed rule and supporting documents can be found at www.nmfs.noaa.gov/pr, look under "Recent News and Hot Topics."

Background.

The Endangered Species Act (ESA) requires the federal government to designate "critical habitat" for any species listed under the ESA, in this case, the Southern DPS of green sturgeon. "Critical habitat" is defined as specific areas on which are found physical or biological features essential to the conservation of the species, and which may require special management considerations or protection. Critical habitat designations must take into consideration the economic impact, impact on national security, and any other relevant impact of such designation. Areas may be excluded from critical habitat if a determination is made that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the exclusion of such areas from critical habitat must not result in the extinction of the species.

Areas Proposed for Designation.

The proposed designation looks at certain factors called "primary constituent elements" (PCEs) that are essential to support one or more of the life stages of the Southern DPS. The proposal analyzes areas that will provide the greatest biological benefits for the Southern DPS and balances the economic and other costs for areas proposed for designation. Based on this balancing of benefits and costs, the following specific areas, known to be presently occupied by the listed species, are proposed for designation: coastal U.S. marine waters within 110 meters (m) depth from Monterey Bay, California (including Monterey Bay), north to Cape Flattery, Washington, including the Strait of Juan de Fuca, Washington, to its United States boundary; the Sacramento River, lower Feather River, and lower Yuba River in California; the Sacramento-San Joaquin Delta and Suisun, San Pablo, and San Francisco bays in California; the lower Columbia River estuary; and certain coastal bays and estuaries in California (Humboldt Bay), Oregon (Coos Bay, Winchester Bay, and Yaquina Bay), and Washington

(Willapa Bay and Grays Harbor). The areas proposed for designation comprise approximately 325 miles (524 km) of freshwater river habitat, 1,058 square miles (2,739 sq km) of estuarine habitat, 11,927 square miles (30,890 sq km) of marine habitat, and 136 square miles (352 sq km) of habitat within the Yolo and Sutter bypasses (Sacramento River, CA).

The proposed rule requests additional information regarding the historic, current and potential use of seven presently unoccupied areas in the Central Valley of California by the Southern DPS. These areas are: reaches upstream of Oroville Dam on the Feather River; reaches upstream of Daguerre Dam on the Yuba River; areas on the Pit River upstream of Keswick and Shasta dams; areas on the McCloud River upstream of Keswick and Shasta dams; areas on the upper Sacramento River upstream of Keswick and Shasta dams; reaches on the American River; and reaches on the San Joaquin River. Additional information will inform our consideration of these areas for the final designation as well as future recovery planning for Southern DPS green sturgeon.

The proposed rule also requests additional information on costs incurred by those planning to undertake activities in certain areas, in particular Coos Bay, OR, or other areas along the lower Columbia River estuary, as a result of this proposed critical habitat designation for the Southern DPS of green sturgeon that were not captured in our draft economic report. These activities include, but are not limited to, liquefied natural gas (LNG) projects, hydropower activities, and alternative energy projects. Additional information received will be incorporated into the development of our final determination to designate or exclude areas from critical habitat for the Southern DPS of green sturgeon.

Consideration of Impacts to National Security and Tribal Lands Based on this Designation.

The proposal includes the potential for exclusion of any military lands or tribal lands that may overlap with areas proposed for designation as critical habitat for the Southern DPS. We request information specifically pertaining to whether the designation for such sites as critical habitat for the Southern DPS would result in national security impacts or impacts to tribal lands that would outweigh the benefits of designation.

Comments

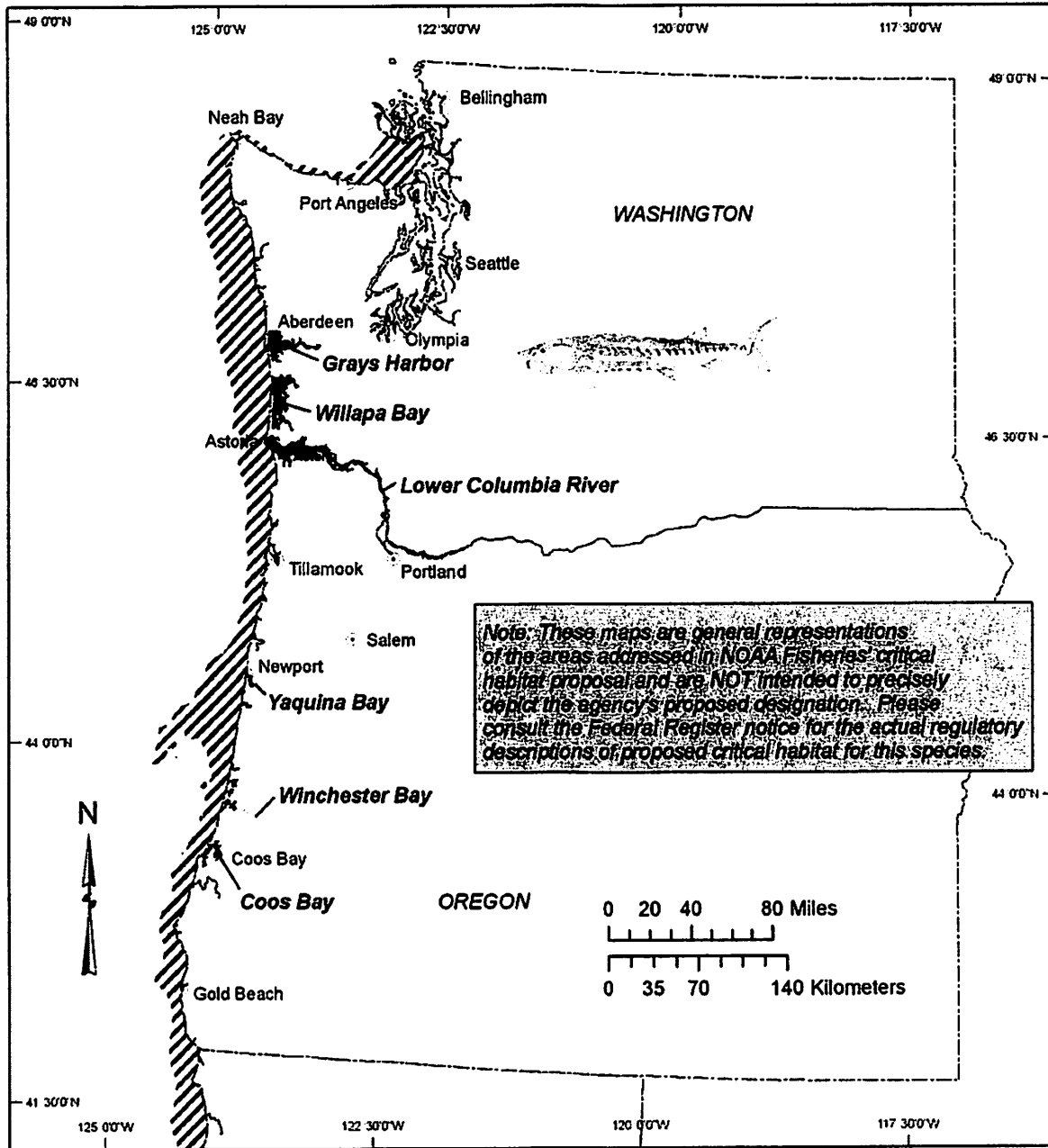
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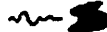

NOAA understands and predicts changes in the Earth's environment, from the depths of the ocean to the surface of the sun, and conserves and manages our coastal and marine resources.

Proposed Critical Habitat for the Southern DPS of Green Sturgeon

Washington & Oregon

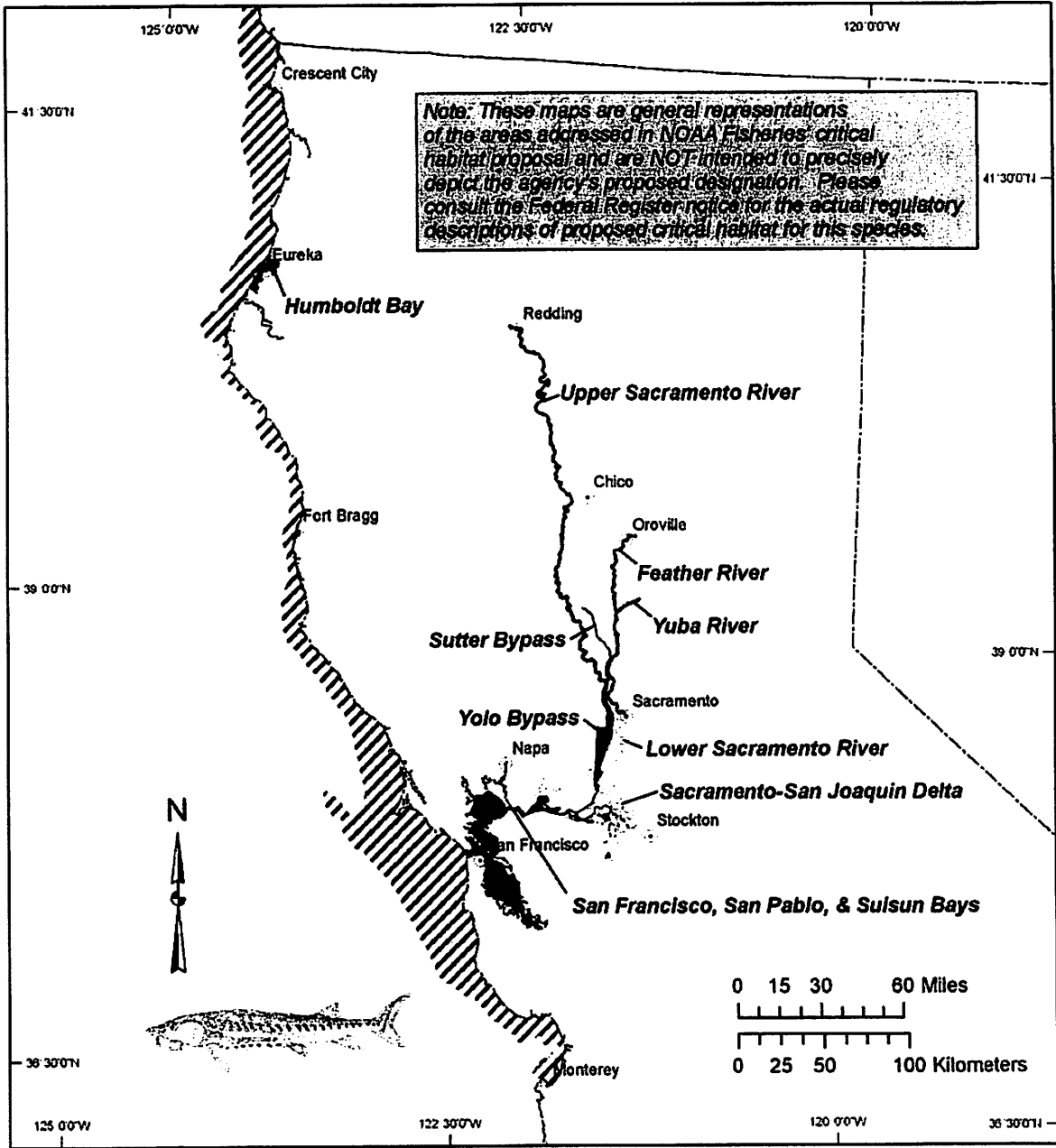


Legend

- Cities / Towns
- State Boundary
-  Riverine and Estuarine Areas Proposed as Critical Habitat
-  Nearshore Marine Areas Proposed as Critical Habitat (offshore to 110 meters depth)

Proposed Critical Habitat for the Southern DPS of Green Sturgeon

California



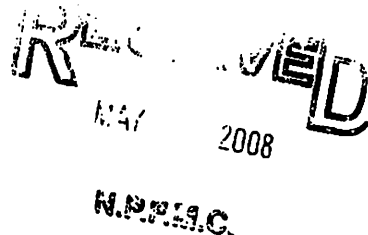
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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P O Box 21668
Juneau, Alaska 99802-1668

May 1, 2008



Eric A Olson, Chair
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Mr Olson

The National Marine Fisheries Service has been developing a draft Endangered Species Act (ESA) Biological Opinion regarding the effects of the status quo Alaska groundfish fisheries on the western and eastern Alaskan Distinct Population Segments of Steller sea lions and on other ESA listed species in the Bering Sea and Gulf of Alaska We were scheduled to provide the draft to the North Pacific Fishery Management Council by May 7, 2008 Regrettably, we are not able to meet that deadline The amount and complexity of data involved requires that we take additional time to complete a thorough analysis using the best available scientific and commercial data, and that we subject the draft analysis to a sufficient internal scientific review Likewise, more time is required to apply the analysis to evolving legal standards for determining effects on listed species and their critical habitat. In short, we need time to complete the required analysis and make sure it is technically and legally sufficient before we can deliver a draft to the Council At this time we do not have a specific estimated completion date but we will update you on the progress of the draft Biological Opinion this summer

I realize this delay will be a concern for the Council, the fishing industry, and other stakeholders Nevertheless, given the significance of this analysis for the conservation of both populations of Steller sea lions that occur in waters off Alaska, as well as the implications for the Alaska groundfish fisheries, we need to make sure the draft Biological Opinion is sufficiently developed to provide reasonable guidance to the Council and the public before we release it

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Mecum".

Robert D Mecum
Acting Administrator, Alaska Region



North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
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June 11, 2008

Robert D. Mecum
Acting Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Mecum:

At its June 2008 meeting, the North Pacific Fishery Management Council received a report from your staff indicating that the draft Biological Opinion on the effects of the *status quo* Alaskan groundfish fisheries on Steller sea lions (SSL) would be delayed substantially. Reasons for the delay included the need for more time to complete data analyses, complete internal reviews, and apply the analyses to "evolving legal standards for determining effects on listed species and their critical habitat". Your staff reported to the Council that this work would take additional time beyond the anticipated June 2008 date for release of the draft BiOp, and that the new timeline for releasing the draft BiOp would be late 2009.

The Council is disturbed to learn of this delay, since the BiOp has been in preparation since late 2006 and it has been delayed a number of times, most recently to allow the Agency time to complete the final Revised SSL Recovery Plan. But this new delay is particularly alarming as it will delay the Council's consideration of proposals for changes in SSL protection measures that have been developed by the SSL Mitigation Committee (SSLMC), it may change options available to the State of Alaska to move forward with some of the State's previously-postponed groundfish fishery actions in State waters, and it will apparently delay possible initiation of a delisting process for the eastern SSL stock.

The Council requests that NMFS prepare for the Council's October 2008 meeting a new schedule and timeline for completion of the BiOp, including anticipated dates for completion of the various reviews of the BiOp your staff indicate are necessary, a new schedule for the EIS process, new milestones for how NMFS intends to interact with the Council and its SSL Mitigation Committee in this process, and an expected date when potential alternatives to *status quo* groundfish fishery management could be evaluated.

We look forward to a discussion of this new schedule with you and your staff at the Council's October 2008 meeting.

Sincerely,



Eric A. Olson
Chairman

Cc: Dr. Jim Balsiger



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

September 18, 2008

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue Suite 306
Anchorage, AK 99501-2252

Dear Mr. Olson:

Thank you for your letter dated June 11, 2008, in which you request that the National Marine Fisheries Service (NMFS) provide a new schedule and timeline for completion of the Biological Opinion (BiOp) on the federal groundfish fisheries under the Fishery Management Plans for Groundfish of the Bering Sea and Aleutian Islands and for Groundfish of the Gulf of Alaska. You also request a new schedule for the National Environmental Policy Act (NEPA) process and new milestones for our interactions with the Council and its Steller Sea Lion Mitigation Committee (SSLMC) in this process, as well as an expected date when potential alternatives to the status quo groundfish fishery management measures can be evaluated.

We have provided our revised time line for the BiOp process in the two attached spreadsheets. The two spreadsheets reflect the potential for either a conclusion of no jeopardy or adverse modification of critical habitat or a conclusion of jeopardy or adverse modification of critical habitat, each of which may dictate different schedules.

If the draft status quo BiOp released by the agency reaches a conclusion of jeopardy or adverse modification of critical habitat, we have constructed a timeline to accommodate interaction with the Council on the development of specific reasonable and prudent alternatives. The draft status quo BiOp would be released on August 1, 2009 to the Council, the SSLMC, the public, and the Center for Independent Experts (CIE). The CIE would review the BiOp during the month of August, and the final report containing the CIE's comments would be made available to the Council and SSLMC on September 1, 2009. This would allow time for the SSLMC to meet and formulate their comments prior to the Council's October 2009 meeting. Both revised schedules would provide for the new draft status quo BiOp to be available for Council discussion at its October 2009 meeting.

Should the draft BiOp conclude jeopardy or adverse modification of critical habitat, NMFS will include in the draft BiOp the agency's general recommendations for needed changes to the fisheries to avoid this conclusion. NMFS has built into the schedule our anticipated collaboration with the Council on the specific mitigation measures for the Reasonable and Prudent Alternatives, as required by the Endangered Species Act for



jeopardy or adverse modification conclusions. The attached schedules also outline the NEPA process and the development of regulations for any modifications to the federal groundfish fisheries. Depending on the conclusions of the draft status quo BiOp, a final rule revising protection measures would be effective either in December 2011 or in May 2012.

Thank you for your interest in the process. We look forward to continuing to work with the Council on these important issues.

Sincerely,



Doug Mecum
Acting Administrator, Alaska Region

Enclosures: Timeline spreadsheets

		Draft Steller Sea Lion Measures Development Timeline if Jeopardy or Adverse Modification Determination in Status Quo BiOp (9/17/08)											
		2010											
SSL Project Components	Accomplished Milestones	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July
		Special Meeting? To Task SSLMC		Review draft Status Quo BiOp, proposal review process for SSLMC, and provide scoping comments		Review Scoping Report				Review recommendations from SSLMC. Recommend preliminary preferred Alternative and alternatives for DSEIS			
			Review Status Quo BiOp, CIE report, and develop request for proposals	Request for proposals, 60 days			Review scoping report, rank proposals and develop SSLMC recommendations						
ESA Documentation	Final Recovery Plan released	Release draft Status Quo BiOp for CIE review and SSLMC review	CIE comments provided to SSLMC, Council, and public	Status quo BiOp available for Council discussion at the October 2009 meeting						Develop Action Biological Assessment based on Council preim preferred alternative			Develop draft Action BIO
	Scoping period from December 2007, to April 2008. JAM required new scoping.		New scoping period opened for 90 days		Scoping report to Council and SSLMC								Develop draft SEIS/RIR/IRF

North Pacific Fishery Management Council

Eric A. Olson, Chairman
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April 10, 2008

Doug Mecum
Acting Regional Administrator
National Marine Fisheries Service, Alaska Region
709 West 9th Avenue
Juneau, AK 99802-1668

Dear Mr. Mecum:

During its April 2008 meeting, the North Pacific Fishery Management Council and its Scientific and Statistical Committee (SSC) received a briefing from the National Marine Fisheries Service on the Final Revised Steller Sea Lion Recovery Plan (Plan). The Plan is an important guidance document that describes the actions NMFS believes are necessary for recovery of the western and eastern Distinct Population Segments (DPS) of the Steller sea lion (SSL). The Council and SSC have previously reviewed two drafts of the Plan, convened a special Council and SSC meeting in August 2007 specifically to review the May 2007 draft Plan, and provided extensive comments on these drafts of this Plan. While improvements have been, the Plan remains substantially the same as the previous draft, and still contains recovery criteria that the Council believes are inappropriate given available information on the western stock of SSL. At the April 2008 meeting, the Council passed three motions that state some of its remaining concerns. This letter transmits the Council's concerns.

1. The first concern relates to a series of issues raised by the Council's Steller Sea Lion Mitigation Committee (SSLMC). The Council concurs with the SSLMC's comments, and these are outlined below. The Council's SSC provided comments on some of these and other issues, and the Council recommends that NMFS review the SSC minutes (attached).

(a) Recent legal actions have resulted in restrictions on scientific research on SSLs, and in particular prohibit most kinds of research involving female SSLs. The permitting office of NMFS will not issue permits to conduct this needed research. Yet the recovery of SSLs in the North Pacific will require data on pup production, the physiology of pregnant or nursing females, and adult female vital rates. While this permitting restriction may sunset at the end of 2009, the Council is very concerned that this restriction will hinder or perhaps make unattainable the successful completion of research that could lead to downlisting or delisting the western DPS. **Therefore, the Council requests that the NMFS marine mammal permitting section again allow permits for handling and tagging or branding of adult female SSLs. Though the prohibition against allowing such permits to handle adult female SSLs is scheduled to sunset in 2009, the Council requests that this restriction sunset sooner, as soon as possible but at least during 2008, if possible. If the sunset can not be in place this year, the prohibition surely should not be reinstated or extended after the 2009 sunset. Scientists can only understand many of the proposed natality and population health issues by having these permits available to allow study reproducing female SSLs.**

(b) The Plan specifies that for downlisting and delisting the western DPS, this population must increase in size in all areas of its range, including SSLs in the Russian portion of its range. However, the U.S. has little to no control over actions taken in Russia that may affect SSLs. Yet the Plan includes the Russian subarea in the recovery criteria. The Council believes that including the Russian SSL subarea as an element in the Recovery Criteria was an agency policy decision that could have been made differently. While it is expected and required that NMFS consider the Russian segment of the wDPS under the five listing factors of the ESA, it was a discretionary choice for NMFS to adopt Russia as one of the seven subareas where SSLs must increase at a specified rate to enable down- or delisting the western DPS. This criterion is particularly troubling since: (a) the Russian segment has shown no rebuilding in recent counts and may be subject to ongoing mortality from Russian fishing activities over which the U.S. has no control; (b) there is no international agreement with Russia that they will protect these SSL stocks (particularly from SSL mortality occurring in their herring fisheries); and (c) formulation of such an international protection agreement was an uncompleted Recovery Action from the 1992 Recovery Plan.

The Council has been informed that changing this requirement will not be possible until the Plan is revised. NMFS has stated that recovery plans are generally reviewed and revised every five years. However, there is no clear direction or guidance in the Plan as to what NMFS intends to do at the 5-year review of this recovery plan. As the Council understands, NMFS does not envision appointing new recovery team or conducting a major rewrite five years from now, but rather envisions only small revisions at the 5-year review. This does not seem to afford the Council or the public an opportunity to suggest changes in recovery criteria or other elements in the plan should new information reveal changes are necessary. Thus, it appears that changing a recovery criterion such as a mandated performance of the Russian subarea population will likely not be possible at the 5-year review. Thus, this criterion, which may be unattainable, will linger for years, and the Council and the public are left with a great deal of uncertainty and frustration over apparent reticence on the part of NMFS to provide an opportunity for a full review and revision to the Plan in five years. **The Council requests that NMFS commit to a formal process and timeline for a 5-year review of the Plan where all recovery criteria can be re-evaluated.**

(c) The Plan specifies certain rates of population increase that must occur for downlisting or delisting the western DPS. The Council notes that adopting a specific western DPS population increase rate and target population size for delisting was another agency policy decision that could have been made differently. In the Plan, NMFS has made a discretionary choice to adopt a 3% rate of increase over 30 years and a target of 103,000 animals as a metric to determine if delisting the western DPS can occur. The Council believes that the Agency could have adopted the same metric as in down-listing (that there would be a statistically significant increase in the SSL population over a 15 year period). The justification for the 3% metric was discussed in the Plan, but some believe this justification is predicated on very conservative assumptions in the PVA model used by the recovery team and assumes that carrying capacity has not limited the population trajectory. Furthermore, NMFS does not provide a firm strategy for ensuring the western DPS is counted at sufficient frequency to monitor progress toward this recovery goal. And the Council is aware that funding for continued Russian SSL counts may not likely continue into the future, potentially jeopardizing the monitoring of the western DPS, and thus the attainment of this recovery goal. **The Council requests that NMFS provide the opportunity to revisit the delisting criteria for the western DPS as soon as possible, at a minimum five years from now, and provide a strong commitment to ensure Russian SSL counts are continued.**

(d) The Council is aware that NMFS and the U.S. Fish & Wildlife Service each have developed recovery plans for other listed species that provide recovery criteria that appear to be far less severe than those specified in the SSL recovery plan. The Council has previously brought this issue to

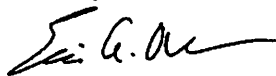
NMFS, noting that recovery of the Hawaiian monk seal or the Northern Rocky Mountain gray wolf require far fewer animals for delisting, yet in the current SSL recovery plan the western DPS cannot be delisted until it doubles in size, irrespective of the current carrying capacity of its environment. **The Council expresses its continued concerns with the apparent inconsistency in the application of ESA standards for delisting species within the Agency and between Agencies.**

2. The Council's second major concern relates to the four actions the Plan considers especially important to ensure recovery of the western DPS. These are provided in Chapter V of the Plan, and in brief are (1) continue population monitoring and research, (2) maintain current or equivalent fishery conservation measures, (3) design and implement an adaptive management program to evaluate fishery conservation measures, and (4) develop a Recovery Implementation Plan. The Council has already stated its concerns over monitoring the Russian subarea of the western DPS. The required adaptive management program to evaluate the efficacy of fishery mitigation measures is also troubling; no adaptive management experiment approach has been successfully developed even though many have attempted to do so. If adaptive management is not feasible, yet it is mandated in the recovery plan, the Council questions how NMFS can carry out such an action. And all of these high priority recovery actions appear to require substantial funding, an agreement with Russia for monitoring the Russian subarea SSL population, and an approach for an adaptive management experiment; the Council is very concerned that these actions may not all be feasible. **The Council requests that NMFS bring to an upcoming Council meeting, either in June or October 2008, a detailed plan and schedule for accomplishing each of these recovery actions, and how funding will be secured and applied to these actions. The report should include how NMFS will work with the State Department to ensure adequate monitoring of the Russian subarea.**

3. Finally, the Council believes that NMFS could immediately initiate a process for delisting the eastern DPS. This segment of the SSL population appears to have already met the necessary recovery criteria, and therefore could be delisted after a status review and the appropriate rulemaking process. **The Council requests that NMFS initiate the process for delisting the eastern DPS as soon as possible.** The Council does not wish this delisting process to delay completion of the upcoming status quo BiOp, but to the extent possible, as a high priority, the eSSL should be subject to a status review and other actions needed to complete the delisting process.

Thank you for the opportunity to review the Final Revised SSL Recovery Plan. While the Agency has not specifically invited comments on this Plan from the Council, the Council hopes that we can continue dialogue on SSL issues, and in particular work together to craft meaningful and successful measures to ensure conservation and eventual delisting of the entire SSL population in the North Pacific.

Sincerely,



Eric A. Olson
Chairman

Attachment: SSC Minutes, April 2008

Cc: Dr. Jim Balsiger, Kaja Brix, Dr. Lisa Rotterman, Dr. Doug DeMaster, Mr. David Balton



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

September 17, 2008

Eric A. Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Mr. Olson:

The National Marine Fisheries Service (NMFS) released a Final Revised Steller Sea Lion Recovery Plan (Plan) in March 2008 for both the western and the eastern distinct population segments (DPS) of Steller sea lions (SSLs). NMFS briefed the North Pacific Fishery Management Council (Council) and its Scientific and Statistical Committee (SSC) on the Plan during its April 2008 meeting. In a letter to NMFS dated April 10, 2008, the Council expressed its concerns about elements of the Plan. We address these concerns below.

Current restrictions on scientific research on Steller sea lions.-- The Council expressed its concerns that current restrictions on scientific research on SSLs, especially restrictions that prohibit many kinds of research on adult female SSLs, will hinder or make unattainable the completion of research that could lead to downlisting or de-listing the western population. The Council requested that NMFS again allow permits for handling and tagging or branding of adult female SSL. The Council specifically requested that the restriction for handling adult females be lifted in 2008 if possible and not extended beyond 2009.

NMFS agrees that research on Steller sea lion females is needed to fully understand the status of the western population and the potential factors that might affect the recovery of this population. Some of the methodologies to study adult females are currently prohibited as a result of a settlement following a lawsuit against NMFS. Following the requirements specified by a district court in May 2005, NMFS completed a Programmatic Environmental Impact Statement (EIS) on the effects of research on SSLs and Northern Fur Seals (NFS) and issued its Record of Decision in June 2007. The current research permits were issued at that time, but were limited to just over two years' duration. Current scientific research permits on SSLs and NFSs expire August 1, 2009. In the Record of Decision, NMFS stated its intent to engage in a review, to include convening an independent panel, to assess selected components of the research program and the issuance of research permits for the program.



NMFS has initiated this review and has convened an independent panel of 5 members. The primary goal of convening the panel is to seek the recommendations of independent experts on issues pertinent to NMFS' implementation of the permit program for research on SSL and NFS. The independent panel consists of members from outside NMFS with expertise and knowledge relevant to the objective of the task. This panel is still actively working on its task and no recommendations or reports have been produced. Upon completion of the independent review, NMFS will consider the recommendations of the panel and propose guidance to improve the implementation of the SSL and NFS research permit program. This guidance will be considered in a Supplemental EIS (SEIS) and Biological Opinion that will be required prior to the issuance of permits in August 2009. The resulting Record of Decision will contain the new guidance. NMFS must wait for the completion of this review process before issuing any new permits or permit amendments. NMFS has been providing to researchers updates about this process and the timetables for getting permit applications to NMFS for research activities beyond August 2009.

Russian subareas inclusion in the recovery criteria for the western DPS. - The Council expressed concerns about the inclusion of the Russian SSL subarea as an element in the recovery criteria. Relatedly, the Council also requested that NMFS provide a strong commitment to ensure Russian SSL counts are continued. NMFS understands the Council's concerns about including the Russian subarea in the delisting criteria. The Russian subgroup is, however, a part of the whole population and the status of the entire population must be considered in future assessments relevant to the listing status under the ESA.

NMFS recognizes that the U.S. does not control activities that could impact Steller sea lions within Russian waters and cannot have certainty that monitoring will occur. However, currently U.S. and Russian scientists are collaborating closely on Steller sea lion research and monitoring efforts in Russia. These efforts are primarily funded by, and coordinated through, the National Marine Mammal Laboratory in Seattle and the Alaska Sealife Center. The continuation of regular monitoring, sufficient to enable analysis of the status of Steller sea lions in Russia, is a high priority for NMFS. Contingent on funding availability, NMFS intends to continue to work with Russia on such monitoring and to attempt to obtain better information about current threats to Steller sea lions in Russia. NMFS will present our research and management concerns to the upcoming biannual meeting of the US/Russia marine mammal working group. NMFS is also exploring, via the State Department, other avenues of interaction with our Russian counterparts.

Process and timeline for a five-year review of the Steller Sea Lion Recovery Plan. - The Council requested that NMFS provide the opportunity to revisit the delisting criteria for the western DPS as soon as possible, at a minimum five years from now. Relatedly, the Council requested that NMFS commit to a formal process and timeline for a 5-year review of the Plan where all recovery criteria can be re-evaluated. NMFS has developed Interim Endangered and Threatened Species Recovery Planning Guidance that addresses reviews and revisions related to Recovery Plans. NMFS has also developed guidance

related to five-year reviews that contains reference to evaluation of listed species relative to recovery criteria, as well as assessment of whether recovery criteria are up to date and adequately address threats to the species. In accordance with our guidance and contingent on available resources, NMFS expects to review Recovery Plans on a 5 year cycle.

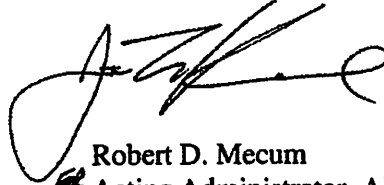
Standards for Delisting. -The Council expressed its continued concerns with the apparent inconsistency in the application of ESA standards for delisting species within the Agency and between Agencies. As noted above, NMFS has recently released Interim Endangered and threatened Species Recovery Planning Guidance (Version 1.2) in which standardized agency guidance for the development of recovery criteria is given in Section 5.1.8.3. This guidance notes that "...each species has unique characteristics and threats. For these reasons, the ESA and this guidance do not dictate either the specific objectives or criteria for recovery of any species, but leave that to the discretion of NMFS, as informed by experts familiar with the species and their needs." However, the guidance also notes that "The ESA does...provide sideboards for criteria development" which the guidance discusses. The delisting and the downlisting criteria for the SSL are consistent with this guidance.

High Priority Recovery Actions. -The Council expressed its concerns about the four actions identified in the Plan as being especially high priority: 1) continue population monitoring and research, 2) maintain current or equivalent fishery conservation measures, 3) design and implement an adaptive management program to evaluate fishery conservation measures, and 4) develop a Recovery Implementation Plan. The Council requested that NMFS present a detailed plan and schedule for accomplishing each of these recovery actions, how funding will be secured and applied to these actions, and how NMFS will work with the State Department to ensure adequate monitoring of the Russian Subarea. In preceding paragraphs, we have described some of the steps that NMFS is taking to support long-term monitoring of the status of SSLs in Russia and the acquisition of better information about threats to SSLs in Russia. NMFS intends to create an Implementation Plan that will provide the detailed plan and schedule the Council is requesting for the high priority (and other) tasks outlined in the Recovery Plan. Development of an Implementation Plan is, however, a complicated undertaking that will require some time to accomplish. With limited staff resources we have been unable to develop an Implementation Plan to provide to the Council at this time.

Delisting of the eastern DPS. -The Council requested that NMFS initiate the process for delisting the eastern DPS as soon as possible. NMFS hopes to conduct a status review of the eastern DPS within the next year during which the status of the eastern DPS, relative to the delisting criteria, would be evaluated. With limited staff resources we must prioritize between the schedule for the Biological Opinion and the status review. NMFS agrees with the Council that the status review and potential delisting activities should not delay completion of the development of the status quo Biological Opinion on the effects of the groundfish fisheries in the Gulf of Alaska, Bering Sea, and Aleutian Islands.

NMFS appreciates the Council's continued interest and input on issues related to the conservation of the Steller sea lion. NMFS looks forward to continuing work with the Council to ensure the recovery of the Steller sea lion.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Mecum', written in a cursive style.

Robert D. Mecum
Acting Administrator, Alaska Region

Chapter 62-256 Open Burning and Frost Protection Fires

- 62-256.200 Definitions (Effective 7/6/05)
- 62-256.300 Prohibitions (Effective 7/6/05)
- 62-256.700 Open Burning Allowed (Effective 7/6/05)

Chapter 62-296 Stationary Sources—Emission Standards

- 62-296.100 Purpose and Scope (Effective 3/13/96)
- 62-296.320 General Pollutant Emission Limiting Standards (Effective 3/13/96)
- 62-296.340 Best Available Retrofit Technology (Effective 1/31/07)
- 62-296.341 Regional Haze—Reasonable Progress Control Technology (Effective 2/7/08)
- 62-296.401 Incinerators (Effective 1/10/07)
- 62-296.402 Sulfuric Acid Plants (Effective 3/13/96)
- 62-296.403 Phosphate Processing (Effective 3/13/96)
- 62-296.404 Kraft (Sulfate) Pulp Mills and Tall Oil Plants (Effective 3/13/96)
- 62-296.405 Fossil Fuel Steam Generators With More Than 250 Million Btu Per Hour Heat Input (Effective 3/2/99)
- 62-296.406 Fossil Fuel Steam Generators With Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units (Effective 3/2/99)
- 62-296.407 Portland Cement Plants (Effective 1/1/96)
- 62-296.408 Nitric Acid Plants (Effective 1/1/96)
- 62-296.409 Sulfur Recovery Plants (Effective 1/1/96)
- 62-296.410 Carbonaceous Fuel Burning Equipment (Effective 1/1/96)
- 62-296.411 Sulfur Storage and Handling Facilities (Effective 1/1/96)
- 62-296.412 Dry Cleaning Facilities (Effective 10/7/96)
- 62-296.413 Synthetic Organic Fiber Production (Effective 2/12/06)
- 62-296.414 Concrete Batching Plants (Effective 1/10/07)
- 62-296.415 Soil Thermal Treatment Facilities (Effective 3/13/96)
- 62-296.416 Waste-to-Energy Facilities (Effective 10/20/96)
- 62-296.417 Volume Reduction, Mercury Recovery and Mercury Reclamation (Effective 3/2/99)
- 62-296.418 Bulk Gasoline Plants (Effective 5/9/07)
- 62-296.470 Implementation of Federal Clean Air Interstate Rule (Effective 4/1/07)
- 62-296.480 Implementation of Federal Clean Air Mercury Rule (Effective 9/6/06)
- 62-296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Emitting Facilities (Effective 1/1/96)
- 62-296.501 Can Coating (Effective 1/1/96)
- 62-296.502 Coil Coating (Effective 1/1/96)
- 62-296.503 Paper Coating (Effective 1/1/96)
- 62-296.504 Fabric and Vinyl Coating (Effective 1/1/96)
- 62-296.505 Metal Furniture Coating (Effective 1/1/96)
- 62-296.506 Surface Coating of Large Appliances (Effective 1/1/96)

- 62-296.507 Magnet Wire Coating (Effective 1/1/96)
- 62-296.508 Petroleum Liquid Storage (Effective 1/1/96)
- 62-296.510 Bulk Gasoline Terminals (Effective 1/1/96)
- 62-296.511 Solvent Metal Cleaning (Effective 10/7/96)
- 62-296.512 Cutback Asphalt (Effective 1/1/96)
- 62-296.513 Surface Coating of Miscellaneous Metal Parts and Products (Effective 1/1/96)
- 62-296.514 Surface Coating of Flat Wood Paneling (Effective 1/1/96)
- 62-296.515 Graphic Arts Systems (Effective 1/1/96)
- 62-296.516 Petroleum Liquid Storage Tanks with External Floating Roofs (Effective 1/1/96)
- 62-296.570 Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_x-Emitting Facilities (Effective 3/2/99)
- 62-296.600 Reasonably Available Control Technology (RACT)—Lead (Effective 3/13/96)
- 62-296.601 Lead Processing Operations in General (Effective 1/1/96)
- 62-296.602 Primary Lead-Acid Battery Manufacturing Operations (Effective 3/13/96)
- 62-296.603 Secondary Lead Smelting Operations (Effective 1/1/96)
- 62-296.604 Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations (Effective 1/1/96)
- 62-296.605 Lead Oxide Handling Operations (Effective 8/8/1994)
- 62-296.700 Reasonably Available Control Technology (RACT) Particulate Matter (Effective 1/1/96)
- 62-296.701 Portland Cement Plants (Effective 1/1/96)
- 62-296.702 Fossil Fuel Steam Generators (Effective 1/1/96)
- 62-296.703 Carbonaceous Fuel Burners (Effective 1/1/96)
- 62-296.704 Asphalt Concrete Plants (Effective 1/1/96)
- 62-296.705 Phosphate Processing Operations (Effective 1/1/96)
- 62-296.706 Glass Manufacturing Process (Effective 1/1/96)
- 62-296.707 Electric Arc Furnaces (Effective 1/1/96)
- 62-296.708 Sweat or Pot Furnaces (Effective 1/1/96)
- 62-296.709 Lime Kilns (Effective 1/1/96)
- 62-296.710 Smelt Dissolving Tanks (Effective 1/1/96)
- 62-296.711 Materials Handling, Sizing, Screening, Crushing and Grinding Operations (Effective 1/1/96)
- 62-296.712 Miscellaneous Manufacturing Process Operations (Effective 1/1/96)

Chapter 62-297 Stationary Source—Emissions Monitoring

- 62-297.100 Purpose and Scope (Effective 3/13/96)
- 62-297.310 General Compliance Test Requirements (Effective 3/2/99)
- 62-297.320 Standards for Persons Engaged in Visible Emissions Observations (Effective 2/12/04)

- 62-297.401 Compliance Test Methods (Effective 3/2/99)
- 62-297.440 Supplementary Test Procedures (Effective 10/22/02)
- 62-297.450 EPA VOC Capture Efficiency Test Procedures (Effective 3/2/99)
- 62-297.520 EPA Continuous Monitor Performance Specifications (Effective 3/2/99)
- 62-297.620 Exceptions and Approval of Alternate Procedures and Requirements (Effective 11/23/94)

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[FR Doc. E8-20385 Filed 9-3-08; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 0808201128-81129-01]

RIN 0648-XJ97

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition to List the Three Ice Seal Species as a Threatened or Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 90-day petition finding; request for information.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list three ice seal species, [ringed (*Phoca hispida*), bearded (*Erignathus barbatus*), and spotted (*Phoca largha*)] as threatened or endangered under the Endangered Species Act (ESA). Although the petition identifies ringed seals as *Pusa hispida*, at this time we believe that the ringed seal is more properly identified as *Phoca hispida*. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action of listing the ice seals may be warranted. Therefore, we have initiated status reviews of the ice seals to determine if listing under the ESA is warranted. To ensure these status reviews are comprehensive, we are soliciting scientific and commercial information regarding all of these ice seal species.

DATES: Information and comments must be submitted to NMFS by November 3, 2008.

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN), 0648-XJ97, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>,

Mail: Assistant Regional Administrator, Protected Resource Division, NMFS, Alaska Regional Office, P.O. Box 21668, Juneau, Alaska 99802-1668,

Facsimile (fax): (907) 586-7012.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only interested persons may obtain a copy of the ice seal petition from the above address or online from the NMFS Alaska Region website: <http://www.fakr.noaa.gov/protectedresources/seals/ice.htm>.

FOR FURTHER INFORMATION CONTACT: James Wilder, NMFS Alaska Region, (907) 271 6620; Kaja Brix, NMFS Alaska Region, (907) 586-7235; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires, to the maximum extent practicable, that within 90 days of receipt of a petition to designate a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Joint ESA-implementing regulations between NMFS and U.S. Fish and Wildlife Service (50 CFR 424.14) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the

species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information is presented in the petition, we are required to promptly commence a review of the status of the species concerned. Within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether the petitioned action is warranted.

Under the ESA, a listing determination may address a species, subspecies, or a distinct population segment (DPS) of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA-USFWS policy clarifies the agencies' interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" (ESA section 3(16)) for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). The joint DPS policy establishes two criteria that must be met for a population or group of populations to be considered a DPS: (1) the population segment must be discrete in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the population segment must be significant to the remainder of the species (or subspecies) to which it belongs. A population segment may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management, conservation status, or if regulatory mechanisms exist that are significant in light of section 4(a)(1) (D) of the ESA. If a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it

belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species. A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, or "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively).

Background

On March 28, 2008, we issued a 90-day finding in response to a petition to list the ribbon seal as threatened or endangered (73 FR 16,617). We found that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. We therefore initiated a status review for the ribbon seal. Concurrent with that decision, we announced that we were also initiating a status review of three other ice seals (ringed, bearded, and spotted).

On May 28, 2008, we received a petition from the Center for Biological Diversity to list three species of ice seals (ringed, bearded, spotted) as threatened or endangered species under the ESA. The petitioner also requested that critical habitat be designated for ice seals concurrent with listing under the ESA. As described in this petition, the spotted seal is monotypic. The bearded seal contains two currently recognized subspecies, and the ringed seal contains five currently recognized subspecies: *Phoca hispida hispida*, *Phoca hispida botnica*, *Phoca hispida ochotensis*, *Phoca hispida ladogensis*, and *Phoca hispida saimensis*. Although the petition identifies ringed seals as *Pusa hispida*, we believe that the ringed seal is more properly identified as *Phoca hispida*. According to the petitioner, each of these subspecies meets the definition of a "species" eligible for listing under the ESA. In the event that we do not find that the entire species of ringed seal or bearded seal meets the requirements for listing, the petitioner requests that we evaluate whether each subspecies of bearded and ringed seals is eligible for listing. In the event that

we do not recognize the taxonomic validity of the bearded and ringed seal subspecies or the spotted seal species as described in this petition, the petitioner requests that we evaluate whether the spotted, ringed and bearded seals of the Bering, Chukchi, and Beaufort seas that are the subject of this petition constitute a DPS of the full species and/or represent a significant portion of the range of the full species and are therefore eligible for listing on such basis.

It is the petitioner's contention that ice seals face global extinction in the wild, and therefore, constitute a threatened or endangered species as defined under 16 U.S.C. 1532(6) and (20). The petition presents information on (1) "global warming which is resulting in the rapid melt of the seals' sea-ice habitat;" (2) "high harvest levels allowed by the Russian Federation;" (3) "oil and gas exploration and development;" (4) "rising contaminant levels in the Arctic;" and (5) "bycatch mortality and competition for prey resources from commercial fisheries." The petition also presents information on the species' taxonomy, distribution, habitat requirements, reproduction, diet, natural mortality, and demographics, as well as a discussion of the applicability of the five factors listed under ESA section 4(a)(1). We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on our review of the petition and other available information, we find that the petition meets the aforementioned requirements of the regulations under 50 CFR 424.14(b)(2) and therefore determine that the petition presents substantial information indicating that the requested listing action may be warranted.

Status Review

As a result of this finding, we will continue our ongoing status review to determine whether listing ringed, bearded, and spotted seals under the ESA is warranted. We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we are opening a 60-day public comment period to solicit comments, suggestions, and information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of the ice seals throughout their range, including:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and

trends, habitat trends, and effects of management on ice seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ice seals, and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, poaching, and changes in the distribution and abundance of ice seals and their principal prey over the short-term and long-term;

(4) Information on management programs for ice seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ice seals; and

(5) Information relevant to whether any populations of the ice seal species may qualify as distinct population segments.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 29, 2008.

James W. Balsiger,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. E8-20544 Filed 9-3-08; 8:45 am]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0808051052-81144-01]

RIN 0648-AW85

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Grouper and Tilefish Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to provide potential participants information concerning a referendum for an individual fishing quota (IFQ) program for the Gulf of Mexico (Gulf) commercial grouper and tilefish fisheries. This rule informs the potential participants of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. If the IFQ program, as developed by the Gulf of Mexico Fishery Management Council (Council), is approved through the referendum process, the Council may choose to submit the IFQ program to the Secretary of Commerce (Secretary) for review, approval, and implementation. The intended effect of this proposed rule is to implement the referendum consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before October 6, 2008.

ADDRESSES: You may submit comments on the proposed rule, identified by "0648-AW85", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Susan Gerhart.
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments. Attachments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727-824-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic

																2012				
				2011												Jan	Feb	March	April	May
Sept	October	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May
			(1) Review preliminary DSEIS/RIR/IRFA, draft Action BiOp, and CIE review. SSLMC recommendation, and (2) Chose preferred alternative				Take final action based on final Action BiOp, DSEIS/RIR/IRFA, and CAR													
		SSLMC review of draft Action BiOp and CIE report, DSEIS, and make preferred alternative recommendation																		
Release draft Action BiOp for CIE review	CIE Review	Release draft Action BiOp with CIE Report		Complete final Action BiOp		Final Action BiOp to Council														
	Preliminary DSEIS/RIR/IRFA to SSLMC and Council		Revise DEIS/RIR/IRFA based on Council comments	Publish DSEIS/RIR/IRFA, 45-day comment period		Develop Comment Analysis Report (CAR) and submit to Council	Revise DSEIS/RIR/IRFA to incorporate final action, CAR, and final action BiOp						Publish Final SEIS/RIR/IRFA						Sign ROD with final rule	
							Develop proposed rule						Publish proposed rule, 30-day public comment period	Respond to comments and develop final rule		Publish final rule	Final rule effective			