


MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver   
Executive Director  
DATE: September 25, 2010  
SUBJECT: Protected Resources Report

ESTIMATED TIME 4 HOURS
---------------------------

**ACTION REQUIRED**

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

**BACKGROUND**

**A. Pacific Walrus**

On September 10, 2010, the U.S. Fish & Wildlife Service (USFWS) announced that the deadline for the 12-month finding on whether to list Pacific walrus as threatened or endangered under the Endangered Species Act has been extended until January 31, 2011 (see Item B-7(a)). The deadline was extended to allow the USFWS to consider two recently-completed studies by the U.S. Geological Survey (USGS) that provide important new information that the agency will consider in determining whether to list the Pacific walrus.

The first study examined recent and projected changes in sea ice within the range of the Pacific walrus. The findings of this study are presented in an USGS Report titled "Arctic Sea Ice Decline: Projected Changes in Timing and Extent of Sea Ice in the Bering and Chukchi Seas". The second study projected the status of the Pacific walrus population at 4 time intervals in the 21<sup>st</sup> century based on a model that integrates information on factors that are likely to influence walrus numbers. The findings of this study are presented in a USGS report titled "Projected status of the Pacific walrus (*Odobenus rosmarus divergens*) in the 21st century." Both reports are available at the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R7-ES-2009-0051, or contact the USFWS for copies of the reports.

At its December 2010 meeting, the Council is scheduled to make an initial review of a proposal to establish a closure area around a newly-emerging walrus haulout on Hagemeister Island in northern Bristol Bay. The intent of establishing the closure area is to minimize disturbance by vessel traffic to walrus using the haulout. The closure area could potentially restrict federally-permitted vessels from transiting or fishing in the waters adjacent to the haulout, which is located on the southwest side of Hagemeister Island. A vessel transit corridor would allow vessels to continue to travel on the west side of the island at some prescribed distance from the haulout. The Joint Protocol committee is scheduled to review the alternative closure areas at its meeting on October 5, 2010.

## B. Eastern DPS Steller Sea Lions

NMFS has initiated a 5-year review of the status of the eastern Distinct Population Segment (DPS) of Steller sea lions. A 5-year review is a periodic process conducted to ensure that the listing classification of a species is accurate and based on the best scientific and commercial data available at the time of the review. Steller sea lions were initially listed as threatened throughout their range in 1990. In 1997, Steller sea lions were divided into two Distinct Population Segments based on genetic and demographic information. At that time, the western population was uplisted to endangered and the eastern population remained listed as threatened. The 5-year status review of the eastern population of Steller sea lions could potentially recommend delisting the eastern population if it is determined that the recovery plan criteria have been met. NMFS has extended the public comment period on the 5-year status review of the eastern DPS of Steller sea lions until October 14, 2010.

The States of Alaska, Washington, and Oregon have all petitioned the Secretary of Commerce to remove eastern DPS from the list of threatened and endangered species (see Items B-7(b) and B-7(c)). NMFS must make a 90-day finding as to whether the petitions contain substantial information indicating that delisting is warranted. If NMFS determines that the petitions present substantial information, NMFS will make a 12-month finding on the delisting determination. This finding would be issued 12 months from the date the first petition was filed on August 30, 2010. The information cited to support delisting includes:

- Steller sea lion numbers in the eastern DPS increased at over 3% per year between 1982 and 2009, more than doubling in Southeast Alaska, British Columbia, and Oregon (NMFS 2010, p. 85). Steller sea lion populations in southeast Alaska increased at 3% per year through 2002 and likely at greater rates than that between 2002 and 2009 (DeMaster 2009).
- In 2008, the population of Steller sea lions in the eastern DPS was estimated at 63,000 animals, and is estimated to be at its highest level in recent history (NMFS 2010).
- Pup production in southeast Alaska has increased at an average rate of 5% per year since 1996 and 3.6% since the late 1970s (DeMaster 2009).
- Based on the recovery criteria in the 2008 Steller Sea Lion Recovery Plan, the eastern DPS has likely recovered. The recovery criteria state that the eastern DPS of Steller sea lion will be considered for delisting if both of the following conditions are met:
  - 1) The population has increased at an average annual growth rate of 3% per year for 30 years.
  - 2) The 5 ESA listing factor criteria are met.

## C. Short-tailed Albatross

NMFS reported the incidental take of two endangered short-tailed albatross in August-September 2010 in the Bering Sea longline Pacific cod fishery (see Item B-7(d)). A map showing the location and date of the two recent takes, along with takes that occurred in 1995 and 1998, is attached as Item B-7(e). These are the first confirmed takes of short-tailed albatross since 1998, when the USFWS issued take limits for the longline groundfish and halibut fisheries. The take limits are 4 short-tailed albatross during a two-year period in the BSAI and GOA longline groundfish fisheries and 2 short-tailed albatross during a two-year period in the longline halibut fishery. The current 2-year period began September 1, 2009 and ends September 1, 2011. If the take limit is exceeded, formal consultation with USFWS would be reinitiated. At this time, no action is required on the part of the acting agency (NMFS) other than reporting the takes.

#### D. Cook Inlet Beluga Whales

A Cook Inlet beluga whale science workshop will be held in Anchorage on October 11-12, 2010. Information on the meeting schedule and location is attached (see Item B-7(f)). The workshop is hosted by NMFS, and is free and open to the public.

#### E. Steller Sea Lion Biological Opinion and Final RPA

At this meeting, the Council is scheduled to receive a report from NMFS on the Steller Sea Lion Biological Opinion and the revised draft Reasonable and Prudent Alternative (RPA). The draft Biological Opinion (BiOp) was released by NMFS on August 2, 2010, and concludes that the status quo BSAI and GOA groundfish fisheries jeopardize the continued existence of the endangered western Distinct Population Segment (DPS) of Steller sea lions and adversely modify designated critical habitat. In the draft BiOp, NMFS outlined a draft RPA that would modify management of the groundfish fisheries to ensure that the fisheries do not result in jeopardy or adverse modification. Specifically, the draft RPA would close the Atka mackerel and Pacific cod fisheries in the Western Aleutian Islands (Area 543) and restrict the Atka mackerel and Pacific cod fisheries in the Central Aleutian Islands (Area 542). The draft RPA is attached as Item B-7(g).

At the August 2010 meeting, the Council unanimously passed a motion recommending that NMFS consider another RPA with less restrictive fishery closures in the Western and Central Aleutian Islands. The Council recommended a 2-year sunset provision for the mitigation measures. The measures could potentially be replaced with another set of measures prior to the sunset date, or they could be renewed (attached as Item B-7(h)).

NMFS accepted public comments on the draft BiOp until September 3, 2010, and considered comments provided by the Council and the public in determining whether changes could be made to the draft RPA that are consistent with the principles and objectives of the draft BiOp. NMFS is scheduled to present the revised draft RPA to the Council at this meeting. There will be no opportunity for the Council to make adjustments to the RPA at the October meeting. NMFS will implement the mitigation measures as a Secretary of Commerce action under section 305(d) of the Magnuson-Stevens Act. The final BiOp and rulemaking to implement the management measures in the final RPA is scheduled to be completed by January 2011.

At this meeting, the Council could have preliminary discussions regarding the timing of a CIE or other independent scientific review process, as well as discuss the scheduling of potential Council development of alternative management measures during the next two years.

## U.S. Fish and Wildlife Service Considers New Information in Determining Whether Listing the Pacific Walrus Under the Endangered Species Act is Warranted

September 10, 2010

Contact: Rosa Meehan (907) 786-3800

Bruce Woods (907) 786-3695

The U.S. Fish and Wildlife Service today announced that two recently completed studies by the U.S. Geological Survey (USGS) provide important new information which we intend to consider in determining whether listing the Pacific walrus (*Odobenus rosmarus divergens*) as an endangered or threatened species under the Endangered Species Act (ESA) is warranted.

The first study examined recent and projected changes in sea ice within the range of the Pacific walrus. The findings of this study are presented in an USGS Open-file Report "Arctic Sea Ice Decline: Projected Changes in Timing and Extent of Sea Ice in the Bering and Chukchi Seas" by D.C. Douglas.

The second study constructed a model to integrate information about the most important factors influencing the future status of the Pacific walrus and then projected the status of the walrus at 4 intervals in the 21<sup>st</sup> century. The findings of this study are presented in an administrative report provided to the Service by USGS. The report, by C.V. Jay, B. G. Marcot, and D.C. Douglas, is entitled "Projected status of the Pacific walrus (*Odobenus rosmarus divergens*) in the 21<sup>st</sup> century."

Both reports are available at the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R7-ES-2009-0051, or by contacting the Service.

Because these two reports represent new information regarding both the Pacific walrus and the habitat upon which it depends, we are interested in any information the public may provide on these reports which we should similarly consider in our listing determination.

Pacific walruses in the U.S. are currently managed under and protected by the Marine Mammal Protection Act of 1972. On February 8, 2008, the Center for Biological Diversity (CBD) filed a petition with the U.S. Fish and Wildlife Service to list the Pacific walrus as threatened or endangered under the ESA and to designate critical habitat. The petition states that global warming will impact the Pacific walrus by degrading and eliminating critical sea-ice habitat, decreasing prey availability, altering interactions with predators and disease, and increasing human disturbance throughout the range. It claims that, without sea ice, the Pacific walrus will be forced into a shore-based existence for which it is not adapted.

The Service is required to submit to the Federal Register its 12 month finding on whether the listing of the Pacific walrus as a threatened or endangered species under the ESA is (a) not warranted; (b) warranted; or (c) warranted but precluded by January 31, 2011. Therefore, in order to fully consider any information you may wish to provide us regarding these two reports, we request you submit your information to the Service by September 24, 2010. You may submit information by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R7-ES-2009-0051 and then follow the instruction; or
2. U.S. mail or hand delivery to: Public Comments Processing, Attn: FWS-R7-ES-2009-0051; Division of Policy and Directives Management, U.S. Fish & Wildlife Service, 4401 N, Fairfax Drive, Suite 222; Arlington, VA 22203.

For more information about the U.S. Fish and Wildlife Service, visit our home page at <http://www.fws.gov>

*The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service. For more information on our work and the people who make it happen, visit [www.fws.gov](http://www.fws.gov).*

-FWS

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

AGENDA B-7(b)  
OCTOBER 2010

SEAN PARNELL, GOVERNOR

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
PHONE: (907) 465-4100  
FAX: (907) 465-2332

August 30, 2010

The Honorable Gary F. Locke  
Secretary of Commerce  
United States Department of Commerce  
1401 Constitution Avenue, NW, Room 5516  
Washington, D.C. 20230

Re: Petition to Remove the Eastern Distinct Population Segment of the Steller Sea Lion (*Eumetopias jubatus*) from the List of Endangered and Threatened Species under the Endangered Species Act

Dear Secretary Locke:

Petitioner State of Alaska petitions the Secretary of Commerce ("Secretary"), pursuant to 16 U.S.C. § 1533(b) and 50 C.F.R. § 424.14, to remove (delist) the Eastern distinct population segment ("DPS") of the Steller sea lion (*Eumetopias jubatus*) from the List of Endangered and Threatened Species under the Endangered Species Act ("ESA"), 16 USC §§ 1531 *et seq.* The Steller sea lion was listed as threatened by rules dated April 5, 1990 and November 26, 1990. 55 Fed. Reg. 12645 (Apr. 5, 1990) (emergency interim rule); 55 Fed. Reg. 49204 (Nov. 26, 1990) (final rule). In 1992, a recovery plan ("1992 Recovery Plan") for the Steller sea lion was completed and implemented. *See* National Marine Fisheries Service ("NMFS"), "Final Recovery Plan for Steller Sea Lions, *Eumetopias jubatus*" ("1992 Recovery Plan"), NMFS, Silver Spring, Maryland, (Dec. 1992) pp. i-viii, 1-92.

The Eastern and Western distinct population segments of Steller sea lion were designated on May 5, 1997. 62 Fed. Reg. 24345 (May 5, 1997). The Eastern DPS maintained a threatened listing. *Id.* In 2008, a recovery plan for the Eastern and Western distinct population segments of the Steller sea lion was completed and implemented. *See* 73 Fed. Reg. 11872 (Mar. 5, 2008) (notice of availability); NMFS, "Recovery Plan for the Steller Sea Lion, Eastern and Western Distinct Population Segments (*Eumetopias jubatus*), Revision" ("2008 Recovery Plan"), NMFS, Silver Spring, Maryland (Mar. 2008) pp. i-xvi, 1-1 through VIII-31.

On the basis of substantial scientific and commercial information available since the Steller sea lion's original listing and as summarized in this petition, the delisting of the Eastern DPS of the Steller sea lion is now warranted for the principal reason that the Eastern DPS of the Steller sea

lion has recovered to the point that it is no longer threatened with extinction and protection under the ESA is no longer required.

The State of Alaska requests that the National Marine Fisheries Service ("NMFS" or "Service") make a determination as to whether this petition presents substantial scientific or commercial information indicating that this petitioned delisting action may be warranted within 90 days by publishing that determination in the Federal Register and acknowledging, in writing, receipt of this petition within 30 days. *See* 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. §§ 424.14(a), (b)(1). NMFS should find that delisting may be warranted and propose the Eastern DPS of the Steller sea lion for delisting.

### **I. Background and Regulatory History**

On November 21, 1989, NMFS was petitioned by the Environmental Defense Fund and 17 other environmental non-governmental organizations to list the Steller sea lion as endangered under the ESA. Under Section 4 of the ESA, NMFS determined that the petition contained substantial evidence suggesting the listing may be warranted, and requested comments. 55 Fed. Reg. 6301 (Feb. 22, 1990).

The Steller sea lion was listed as threatened throughout its range under the ESA by an emergency rule published by NMFS on April 5, 1990 which expired December 3, 1990. *See* 55 Fed. Reg. 12645. A subsequent rule published on November 26, 1990 listed the species as threatened rangewide effective December 4, 1990, with no set expiration date. *See* 55 Fed. Reg. 49204. As cause for the listing, NMFS cited observed Steller sea lion population declines of 63% since 1985, and 82% since 1960 on certain Alaska rookeries. Significant declines were also cited for the Kuril Islands, USSR. The declines appeared to be accelerating and moving into areas that previously contained stable populations. The cause or causes for the declines were undetermined at the time of initial listing.

A Steller Sea Lion Recovery Team was appointed in March 1990, just prior to the emergency threatened listing. The team was responsible for drafting the recovery plan and providing NMFS with recommendations regarding protective regulations for the species. At the time of initial listing in 1990, NMFS established an incidental take quota, and several observer programs were put in place to monitor incidental take of sea lions by Federally-licensed vessels in fisheries off of Alaska. In addition, NMFS prohibited any harassment or shooting near Steller sea lions and established three nautical mile buffer zones around principal rookeries in the Gulf of Alaska and the Aleutian Islands as protective regulations associated with Federal listing under the ESA.

On August 27, 1993 critical habitat was designated for the Steller sea lion by NMFS in parts of coastal Alaska, Oregon, and California. *See* 58 Fed. Reg. 45269. Critical habitat was determined based on the location of terrestrial rookery and haul-out sites, spatial extent of foraging trips, and availability of prey.

Overall abundance of the eastern portion of the Steller sea lion (Southeast Alaska, Canada, Washington, Oregon, and California, combined) increased at an average annual rate of 3.1%

since the 1970s. Pitcher et al. 2007.<sup>1</sup> The eastern portion of Steller sea lions continued to increase while western portion continued to decrease through the 1990s, leading NMFS to designate two DPSs based on genetic discreteness and differences in population demographics. 62 Fed. Reg. 24345 (May 5, 1997). The Eastern DPS, which occurs east of 144° W longitude (a line near Cape Suckling, AK), retained its threatened status in the May 5, 1997 rule. Due to continued population declines, the Western DPS (west of 144° W longitude) was reclassified as endangered, effective June 4, 1997.

Two separate Steller Sea Lion Recovery Teams completed three Recovery plans for this species. The first plan was drafted by the Team established in 1990, and was published in 1992. The second Team wrote a draft Recovery Plan that was published in draft form in 2006. The second Team significantly revised the 2006 draft plan and published the new draft in 2007, with the revised final Recovery Plan published in 2008. These plans summarized the status of both Western and Eastern DPSs and outlined goals and recommended recovery actions. The 1992 plan addressed the Steller sea lion species in its entirety, while the 2006 and 2008 plans addressed the Eastern and Western DPSs separately.

## II. Statutory and Regulatory Framework for Delisting

The ESA and its implementing regulations set out five criteria to be considered, either singly or in combination, to determine whether a listed species should be reclassified or removed from the list. *See* 16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11. The five factors are:

- (1) present or threatened destruction, modification, or curtailment of habitat or range;
- (2) overutilization for commercial, recreational, scientific, or educational purposes;
- (3) disease or predation;
- (4) inadequacy of existing regulatory mechanisms; or,
- (5) other natural or manmade factors affecting its continued existence.

16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11(c). The Secretary may delist or reclassify a species on the basis of any one of these five factors. *See id.*

The ESA provides that “after receiving the petition of an interested person under” 5 U.S.C. § 553(e) to “remove a species” from “either of the lists published under subsection (c)” of 16 U.S.C. § 1533, the Secretary “shall make a finding as to whether the petition presents

---

<sup>1</sup> Pitcher, K.W., P.F. Olesiuk, R.F. Brown, M.S. Lowry, S.J. Jeffries, J.L. Sease, W.L. Perryman, C.E. Stinchcomb, and L.F. Lowry. 2007. Abundance and distribution of the eastern North Pacific Steller sea lion (*Eumetopias jubatus*) population. *Fishery Bulletin* 107: 102-115.



substantial scientific or commercial information indicating that the petitioned action *may be warranted.*” 16 U.S.C. § 1533(b)(3)(A) (emphasis added).

The regulations adopted by NMFS largely track the relevant statutory provisions, while elaborating on the standards the Secretary should apply. The regulations specify that “substantial information” means “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” 50 C.F.R. § 424.14(b)(1).

The petition process establishes “mandatory bright lines of both timing and behavior that are readily open to judicial review.” *See Wyoming v. U.S. Dep’t of Interior*, 360 F. Supp.2d 1214, 1229 (D. Wyo. 2005). In those cases in which the Secretary determines that a petition does present “substantial scientific or commercial information” that indicates that the requested delisting “may be warranted,” the Secretary is then required to “promptly commence a review of the status” of the species at issue. *See id.* § 1533(b)(3)(A).

Thereafter, the Secretary must, within 12 months of initially receiving the petition, make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action . . . .

(iii) The petitioned action is warranted, but that –

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action . . . is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections [under the ESA] are no longer necessary;

in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

*See* 16 U.S.C. § 1533(b)(3)(B)(i)-(iii). A finding that the petition is “not warranted” under clause (i), or that the petition is “warranted” but “precluded” under clause (iii), is subject to judicial review. *See id.* § 1533(b)(3)(C)(ii).

While the Secretary is not required to undertake a status review for every petition it receives, the “standard for evaluating whether substantial information has been presented by an ‘interested person’ is not overly-burdensome,” in that “conclusive information” is not required at this stage of the process, and a “reasonable person” standard is used to determine whether “substantial information has been presented to indicate that the action may be warranted.” *See Moden v. U.S. Fish and Wildlife Service*, 281 F. Supp. 2d 1193, 1204 (D. Or. 2003).

In assessing whether a petition meets the “may be warranted” threshold, the Secretary is directed to consider whether the petition:

- (1) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;
- (2) contains 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;
- (3) provides information regarding the status of the species over all or a significant portion of its range; and,
- (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

*See* 50 C.F.R. § 424.14(b)(2)(i)-(iv).

The regulations indicate that a species may be delisted if the petition-submitted information “substantiate[s] that [the species] is neither endangered nor threatened for one or more of the following reasons:” (1) the species is considered to be extinct; (2) the species has recovered to the point that “protection under the Act is no longer required;” or (3) the initial classification of the species as endangered or threatened was in error. *See* 50 C.F.R. § 424.11(d)(1)-(3). The Secretary must take into account the efforts of States in protecting the species. *Id.* § 424.11(f).

The Secretary’s decision to delist a species for these reasons “should be based on the information presented by the petitioner.” *See* U. S. Fish and Wildlife Service and NMFS, “Endangered Species Petition Management Guidance” (“1996 Petition Guidance”), Division of Endangered Species, (July 1996) 21 pp., at 14. The Secretary “will make a ‘substantial’ 90-day finding if information submitted with and referenced in the petition and unassessed information added to the Service’s files after a species was listed indicates that the species may have achieved the

recovery objectives for . . . delisting.” *Id.* at 15 (emphasis added). Similarly, the Secretary will make a “substantial” 90-day finding if information submitted with and referenced in the petition indicates that the original data for listing the species may be in error. *Id.* at 16.

A species is considered to have recovered if the best scientific and commercial data available indicate that it is no longer endangered or threatened. *See* 50 C.F.R. § 424.11(d)(2); see also “Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Information Standards Under the Endangered Species Act,” 59 Fed. Reg. 34271 (July 1, 1994) (discussing “best scientific and commercial data”). “Threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). “Endangered species” means “any species that is in danger of extinction throughout all or a significant portion of its range . . . .” *Id.* at § 1532(6).

A species reaches “recovery” when there is “improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in [16 U.S.C. § 1533(a)(1)].” 50 C.F.R. § 402.02.; *see also* NMFS, “Interim Endangered and Threatened Species Recovery Planning Guidance Version 1.3” (“2010 Recovery Guidance”), (June 2010), 122 pp. at § 1.1 (“Recovery is the process by which listed species and their ecosystems are restored and their future is safeguarded to the point that protections under the ESA are no longer needed.”). Importantly, recovery does not mean that all threats to a species have been eliminated. Rather, recovery means that threats to the species have been “controlled.” 2008 Recovery Plan at VII-4; *see also* *Center for Biological Diversity v. Kempthorne*, 607 F. Supp. 2d 1078, 1088 (D. Ariz. 2009) (recovery is “the process that stops or reverses the decline of a species and neutralizes threats to its existence”) (*quoting* *Defenders of Wildlife v. Babbitt*, 130 F. Supp. 2d 121, 131 (D.D.C. 2001)). Thus, recovery represents the point at which a species is no longer declining and threats to its survival have been controlled or neutralized, but not necessarily eliminated.

### III. Endangered Species Act Delisting Factors

The five factors to be considered in determining whether a listed species should be reclassified or removed from the list of endangered and threatened species are discussed below. This analysis indicates that the delisting of the Eastern DPS of the Steller sea lion is warranted.

#### Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range has been sufficiently reduced

Human disturbance has been shown to impact Steller sea lions, even leading to the abandonment of a rookery. Pitcher et al. 2007, 2008 Recovery Plan at VI-7. However, rookeries are located at remote sites, normally isolated offshore reefs and islands unsuitable for development. *Id.* at VI-1. Many rookeries are in protected areas such as parks, refuges, wilderness areas, and ecological reserves where development is unlikely. In the 2008 Recovery Plan, NMFS concluded that “terrestrial habitat for the eastern population [of Steller sea lions] has been either protected or not impacted to any large degree based in large part on the remote areas occupied by sea lions.” *Id.* at VII-4.

Moreover, “[p]rey resources currently appear to be adequate to support recovery.” *Id.* “[N]o evidence suggests that Steller sea lions in the eastern DPS were nutritionally limited during the 1970s and 1980s.” *Id.* at VI-6.

Currently, both the MMPA and ESA provide protection for sea lions and their habitat. The Magnuson-Stevens Fishery Conservation and Management Act, and Fisheries Act of Canada provide further protection and provide for appropriate fisheries management. Following delisting of the Eastern Steller sea lion DPS, the MMPA and the fisheries Acts will continue to provide protections for sea lions and their habitat, and further conservation actions can be pursued by Federal, State, and local governments to ensure that rookery and haul-out sites are adequately protected for the Eastern DPS. In addition, Section 4(g), added to the ESA in the 1988 reauthorization, requires that NMFS cooperate with states to implement a system to monitor for at least five years that status of all species that have recovered and been removed from the threatened and endangered species lists. This post-delisting monitoring plan will provide data on the delisted DPS.

The decline of the Steller sea lion is largely attributed to direct mortality from predator control programs and shooting by fishermen. Pitcher et al. 2007, 2008 Recovery Plan. And as the 2008 Recovery Plan points out, “[t]he most important protection has likely been prohibitions on lethal takes.” 2008 Recovery Plan at VI-1. Such protection will continue under the MMPA after delisting.

*Factor B: Overutilization for commercial, recreational, scientific, or educational purposes is no longer a threat*

Commercial and recreational harvest of Steller sea lions is not allowed under the MMPA. Human-caused mortality does occur due to subsistence harvest, incidental take in fisheries, illegal shooting, and take during scientific research. 2008 Recovery Plan at VII-5. Subsistence harvest data collected during 1992-1998 in over 60 coastal communities throughout the range of Steller sea lions found only 20 animals taken from the Eastern DPS during this time period. Wolfe and Mishler 1998,<sup>2</sup> Wolfe and Hutchinson-Scarborough 1999.<sup>3</sup>

Observer programs required by amendments to the MMPA in 1988 and 1994 estimated that 1.2 Steller sea lions were killed each year during 1993-1997 in the California/Oregon thresher shark and swordfish drift gillnet fishery. Hill and DeMaster 1999.<sup>4</sup> Three Steller sea lion mortalities were reported in the California/Oregon/Washington groundfish trawl fishing in 1994 and 1997,

---

<sup>2</sup> Wolfe, R.J., and C. Mishler. 1998. The subsistence harvest of harbor seal and sea lion by Alaska Natives in 1997. Alaska Department of Fish and Game, Juneau, AK, Subsistence Division. Technical Paper No. 246. 70 pp.

<sup>3</sup> Wolfe, R.J., and L.B. Hutchinson-Scarborough. 1999. The subsistence harvest of harbor seal and sea lion taken by Alaska Natives in 1998. Alaska Department of Fish and Game, Juneau, AK, Subsistence Division. Technical Paper No. 250. 72 pp.

<sup>4</sup> Hill, P.S., and D.P. DeMaster. 1999. Alaska Marine Mammal Stock Assessments, 1999. NOAA Technical Memo. NMFS-AFSC-110. 166 pp.

and one was recorded in the northern Washington marine set gillnet fishery. 2008 Recovery Plan. Injuries to sea lions have been recorded in logbooks from Southeast Alaska and California/Oregon/Washington salmon troll fisheries. Hill and DeMaster 1999.

Shooting of sea lions is illegal, and permits are required from the NMFS Protected Resources Division for educational and scientific uses of this species. NMFS determined in the 2008 Recovery Plan that “the MMPA provides adequate protection for sea lions from the eastern population.” 2008 Recovery Plan at VII-5. NMFS concluded that “[n]one of these factors now appear to be preventing recovery at this time,” although these causes of mortality should be closely monitored and reduced when appropriate. *Id.*

*Factor C: Disease or predation is not a threat*

Although Steller sea lions are taken by killer whales throughout their range (2008 Recovery Plan), and by white sharks in California (Long et al. 1996<sup>5</sup>), there is no indication that this predation is outside of normal levels expected in this DPS at this abundance level. 2008 Recovery Plan at VI-1 through VI-2, VII-5. Predation does not appear to be limiting the strong recovery observed over the last 30 years. As NMFS concluded in the 2008 Recovery Plan, “[t]he final evaluation is that *predation is not limiting recovery.*” *Id.* at VII-5 (emphasis added).

Diseases are known to occur within this DPS but appear to be limited to those endemic to the population and are unlikely to have population level impacts. *Id.* “No evidence has been found of disease limiting population growth.” *Id.* at VI-4. NMFS concluded in the 2008 Recovery Plan that no further actions are needed to achieve reductions in disease or predation. *Id.*

*Factor D: Existing regulatory mechanisms are adequate to conserve the species*

The MMPA provides adequate protections for the Eastern DPS of the Steller sea lion. Existing regulatory mechanisms, including the ESA, have led to the strong recovery of this DPS, resulting in the achievement of all recovery goals. We now have a better understanding of this species including necessary management and conservation actions that keep this species healthy. Through continued monitoring and management under the MMPA, the Magnuson-Stevens Fishery Conservation and Management Act, and the Fisheries Act of Canada, the potential threat from human disturbance can be controlled. Further, conservation actions by Federal, State, and local governments can be implemented in order to continue to protect the Eastern DPS of the Steller sea lion.

As indicated in the 2008 Recovery Plan, “[t]he most important protection has likely been prohibitions on lethal takes.” 2008 Recovery Plan at VII-1. Such protection will continue under the MMPA after delisting.

---

<sup>5</sup> Long, D.J., K. Hanni, P. Pyle, J. Roletto, R.E. Jones, and R. Bandar. 1996. White shark predation on four pinniped species in central California waters: geographic and temporal patterns inferred from wounded carcasses. Pages 263-274, in: A.P. Klimley and D.G. Ainley (eds.), Great white sharks, the biology of *Carcharodon carcharias*. Academic Press, San Diego, CA.

Besides these existing regulatory mechanisms, the delisting process includes a post-delisting monitoring plan. *See id.* at VII-8 through VII-9. After the final rule to delist a species has become effective, NMFS:

shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary [and] which . . . have been removed from either of the lists.

16 U.S.C. § 1533(g)(1).

If the Eastern DPS of the Steller sea lion is delisted, NMFS is committed to conducting at least 5 years of monitoring of sea lion populations to ensure that the species remains stable or improving. *See* 16 U.S.C. § 1533(g). NMFS has committed to monitoring activities for 10 years post delisting. 2008 Recovery Plan at VII-7.

The purpose of this post-delisting monitoring is to verify that a species delisted due to recovery remains secure from the risk of extinction after it no longer has the protection of the ESA. *See* 2008 Recovery Plan at VII-7. If monitoring results indicate that the well-being of a recovered species is at significant risk, then NMFS can use the emergency listing provisions of the ESA to re-list the species. *See* 16 U.S.C. § 1533(g)(2). Thus, the ESA has a built-in regulatory mechanism which requires NMFS to develop and implement a monitoring plan to ensure protection of the Eastern DPS of the Steller sea lion.

As detailed, existing regulatory mechanisms adequately protect the Eastern DPS of the Steller sea lion. And in addition to these broad regulatory mechanisms providing protection to sea lion populations, the protection of the sea lion will be secured by the post-delisting monitoring plan. Such a plan can address any potential future threats such as increased human disturbance, which has not been quantified. 2008 Recovery Plan at VII-5. A plan could provide for research and monitoring of the potential impacts of increased vessel traffic and tourism related activities post-delisting to better manage and control any negative effects. At current levels, however, these activities do not appear to be limiting the recovery of the Eastern DPS of the Steller sea lion.

*Factor E: Other natural or manmade factors affecting its continued existence have been sufficiently reduced or do not pose a threat*

Entanglement is a manmade factor that affects individual sea lions inadvertently ensnared in marine debris. 2008 Recovery Plan at VI-3 through VI-4. At current levels, entanglement does not appear to have a population level effect on the Eastern Steller sea lion DPS, and does not appear to be limiting recovery. There are multiple ongoing efforts to remove marine debris from beaches, and to disentangle sea lions from debris. Communities and government agencies will need to continue to organize and support these efforts post-delisting to ensure a comparable level of effort in the future.

The 2008 Steller Sea Lion Recovery Plan recommends two actions to provide assurance that delisting is warranted and factors will not develop to threaten the persistence of the species. First, establish an outreach program to educate the public, commercial fishermen, and others on the continued need to conserve and protect Steller sea lions. Second, ensure that an Alaskan stranding network is in place and functional. 2008 Recovery Plan at VII-6. The State of Alaska agrees with and supports both of these suggestions and is working cooperatively to monitor entanglement of Steller sea lions in Alaska, and to develop disentanglement techniques, and we believe that increased awareness by the public regarding the success story of the recovery of this population will clearly demonstrate that conservation actions can make a difference.

*Overall Analysis of These Five Factors Indicates that Delisting is Warranted*

The consideration here of the five criteria to determine whether a species should be removed from the List of Endangered and Threatened Species indicates that, based on substantial scientific and commercial information, the delisting of the Eastern DPS of the Steller sea lion is warranted. The threats to the Eastern DPS of the Steller sea lion have been either completely eliminated or sufficiently reduced or controlled so that the long-term survival of the Eastern DPS of the Steller sea lion is ensured. The Eastern DPS of the Steller sea lion is no longer a species which "is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." See 16 U.S.C. § 1532(19) (definition of "threatened"). Therefore, delisting of the Eastern DPS of the Steller sea lion is appropriate.

**IV. The Eastern DPS of the Steller Seal Lion Has Recovered**

If consideration of the delisting factors discussed above indicates that a species is neither endangered nor threatened it may be delisted on the basis that it has recovered. 50 C.F.R. § 424.11(c)-(d). The ESA regulations specifically provide for delisting based on recovery of a species to a point which it is no longer endangered or threatened under the ESA. See 50 C.F.R. § 424.11(d)(2). Population and distribution data on the Eastern DPS of the Steller sea lion indicate that the Eastern DPS of the Steller sea lion has recovered.

The Eastern DPS of Steller sea lion has been increasing since the late 1970s. Pitcher et al. 2007. This population was included in the original Federal threatened listing of this species due to rangewide declines that were occurring primarily in the Western DPS. In addition, the Eastern DPS retained its threatened status in the 1997 rule in which NMFS designated two separate DPSs due to concerns regarding human interactions and lack of recovery in California. 62 Fed. Reg. 24345 (May 5, 1997). These concerns have since been alleviated, the Eastern DPS of Steller sea lion is no longer in need of Federal threatened status, and the 2008 Steller Sea Lion Recovery Plan states that the Eastern DPS "should be considered for removal from the List."

The Eastern Steller sea lion DPS is experiencing significant population increases throughout its range. The abundance of this DPS is now probably as high as it has been in the last century. Based on pup counts from a 2002 population-wide survey, pup production was estimated at 11,000, representing a total population size of approximately 46,000-58,000 animals. Pitcher et al. 2007.

In British Columbia, the average annual rate of increase of pup production was 3.2% from 1971 to 2002. Pup production increased much more quickly (8% annually) since the mid-1990s. *Id.* Numbers of non-pups on rookeries also increased significantly in British Columbia at approximately 3.1% annually from 1971 to 2002. The number of major haul-outs increased from 18 sites in the 1970s to 24 in 2005. *Id.*

According to the 2008 Plan, Steller sea lion pup numbers in Southeast Alaska increased at an average annual rate of 3.1% from 1979 to 2005. In 2009, 7,462 pups were counted at the five major Southeast Alaska rookeries where 5,510 were counted in 2005. D. DeMaster, unpublished memo, NMFS (Dec. 2, 2009). Pup production in Southeast Alaska increased at an average rate of 5% per year between 1996 to 2009 and 3.6% per year since the late 1970s. *Id.* Between 2001/02 and 2009, rookery pup production increased 50% in Southeast Alaska. *Id.* In 1979 Forrester Island was the only sea lion rookery in Southeast Alaska. A rookery developed at Hazy Islands in the early 1980s, and another at White Sisters in the early 1990s. Two additional rookeries, Graves Rocks and Biali Rocks, developed in the early 2000s. Approximately 74% of the increase in pup production since 1990 occurred at the four new rookeries. Pitcher et al. 2007. Numbers of Steller sea lions in Southeast Alaska are believed to be at an all time high. 2008 Recovery Plan.

In Washington state, non-breeding Steller sea lion numbers have not yet reached population estimates reported in the early 1900s (2,000-3,000 individuals). However, Pitcher et al. reported a 9.2% average annual rate of increase of non-breeding Steller sea lions in Washington since 1989. Pitcher et al. 2007. This species has benefited greatly in this region from protections put in place by the Marine Mammal Protection Act and the ESA, including the elimination of bounties offered for sea lions in Oregon and Washington during the early- to mid-1900s, and anti-harassment protections.

Approximately 4,000 sea lions were killed for bounties on the Oregon coast from 1925 to 1929. However, counts were not conducted until 1968. Non-pup Steller sea lions increased on the two Oregon rookeries and eight haul-out sites by an average annual rate of 3.7% between 1976 to 2002. Brown et al. 2002,<sup>6</sup> 2008 Recovery Plan. Pups also increased at the two Oregon rookeries at an average annual rate of 2.3% from 1990 to 2002. Pitcher et al. 2007. The 2002 counts represent the highest numbers of Steller sea lions ever counted in Oregon, however, numbers of sea lions in Oregon in the 1800s and early 1900s are unknown.

Historically Steller sea lions have used six rookeries in California. Counts of non-pups at these six rookeries in the first half of the 20<sup>th</sup> century were between 3,900-5,600. A count conducted in 2004 was 1,578 non-pups and 818 pups, suggesting that only about a third as many sea lions are present in California. Pitcher et al. 2007. However, numbers appear to have stabilized and begun to increase. In statewide counts conducted from 1996-2004 non-pup numbers were stable, while pup numbers increased by an average annual rate of 8%. *Id.* Recovery may be slowed in

---

<sup>6</sup> Brown, R.F., S.D. Riemer, and B.E. Wright. 2002 Population Status and food habits of Steller sea lions in Oregon. Report from Oregon Dept. of Fish and Wildlife to Oregon State University. Contract F0225A-01. 17pp.



California by natural competition with other pinniped species whose populations have increased significantly in that region. Bartholomew and Boolootian 1960.<sup>7</sup>

Negative impacts to Steller sea lions from interactions with humans were drastically reduced with the passage of the Marine Mammal Protection Act (MMPA) in 1972 which banned predator control programs and commercial harvest of this species. Incidental take of sea lions in the course of commercial fishing operations is monitored and managed under the MMPA and the Magnuson-Stevens Fishery Conservation and Management Act.

## V. Conclusion

On June 29, 2010, NMFS published their intent to initiate a 5-year Status Review for the Eastern Steller sea lion DPS. 75 Fed. Reg. 37385; 75 Fed. Reg. 38979 (July 7, 2010) (revision). The best available information clearly demonstrates a successfully recovered population that has been increasing for over 30 years. The Eastern DPS of the Steller sea lion is stable or increasing throughout its range, and has increased to or above historic highs in some areas. The large number of rookeries and haul-outs throughout the range of the population provides a protective buffer from large-scale population declines due to disease or other catastrophic events.

In the 2008 Recovery Plan, NMFS concluded that “[n]o threats to recovery [of the Eastern DPS of the Steller sea lion] have been identified and the population has been increasing for over 25 years, new rookeries have been created, and the population is at historical high levels.” 2008 Recovery Plan at VII-7. The Eastern DPS of the Steller sea lion has recovered to a point that protection under the ESA is no longer required. The evaluation presented here of the five criteria to be considered to determine whether a species should be removed from the List of Endangered and Threatened Species, documents the recovery of the Eastern DPS of the Steller sea lion and establishes that threats to the Eastern DPS have been eliminated or sufficiently reduced.

Additionally, the 2008 Recovery Plan outlines key components for a post-delisting monitoring plan for the Eastern DPS. We suggest that NMFS work closely with the Alaska Department of Fish and Game to further develop the post-delisting monitoring plan and delist the Eastern DPS of the Steller sea lion.

The recovery of the Eastern Steller sea lion DPS is an ESA success story and a good example of government and non-government agencies and other stakeholders working together to develop and implement conservation actions to recover a species from significant declines. We offer our assistance in the delisting process. It is important to prioritize this delisting to document this ESA success story and accurately reflect the healthy status of this Steller sea lion DPS.

The Eastern DPS of the Steller sea lion is clearly not in danger of extinction now, nor is it likely to be in danger of extinction in the foreseeable future. Consequently, the State of Alaska respectfully requests that NMFS take immediate action to remove the Eastern Steller sea lion DPS from the threatened list under the ESA pursuant to 16 U.S.C. § 1533(b) and 50 C.F.R.

---

<sup>7</sup> Bartholomew, G.A., and R.A. Boolootian. 1960. Numbers and population structure of pinnipeds on the California Channel Islands. *Journal of Mammalogy* 41:366-375.

Secretary Gary Locke

August 30, 2010

§ 424.14. Thank you for the opportunity to provide you with this petition and information. Copies of all references cited in this petition are available upon request. I can be contacted to discuss this petition and the next step in the delisting process at [douglas.vincent-lang@alaska.gov](mailto:douglas.vincent-lang@alaska.gov) or (907) 267-2339.

Respectfully,



Doug Vincent-Lang  
Endangered Species Coordinator

cc: Denby Lloyd—ADF&G, Commissioner  
Cora Campbell—Special Assistant to the Governor  
Kim Titus—ADF&G, Wildlife Scientist  
Corey Rossi—ADF&G, Division Director  
Bob Small—ADF&G, Marine Mammal Program Coordinator  
Sadie Wright—ADF&G, Wildlife Biologist  
Brad Meyen—DOL, Attorney

## References

Bartholomew, G.A., and R.A. Boolootian. 1960. Numbers and population structure of pinnipeds on the California Channel Islands. *Journal of Mammalogy* 41:366-375.

Brown, R.F., S.D. Riemer, and B.E. Wright. 2002. Population Status and food habits of Steller sea lions in Oregon. Report from Oregon Dept. of Fish and Wildlife to Oregon State University. Contract F0225A-01. 17pp.

D. DeMaster, unpublished memo, NMFS (Dec. 2, 2009).

Hill, P.S., and D.P. DeMaster. 1999. Alaska Marine Mammal Stock Assessments, 1999. NOAA Technical Memo. NMFS-AFSC-110. 166 pp.

Long, D.J., K. Hanni, P. Pyle, J. Roletto, R.E. Jones, and R. Bandar. 1996. White shark predation on four pinniped species in central California waters: geographic and temporal patterns inferred from wounded carcasses. Pages 263-274, in: A.P. Klimley and D.G. Ainley (eds.), *Great white sharks, the biology of *Carcharodon carcharias**. Academic Press, San Diego, CA.

National Marine Fisheries Service, "Final Recovery Plan for Steller Sea Lions, *Eumetopias jubatus*" ("1992 Recovery Plan"), NMFS, Silver Spring, Maryland, (Dec. 1992) pp. i-viii, 1-92.

National Marine Fisheries Service, "Recovery Plan for the Steller Sea Lion, Eastern and Western Distinct Population Segments (*Eumetopias jubatus*), Revision" ("2008 Recovery Plan"), NMFS, Silver Spring, Maryland (Mar. 2008) pp. i-xvi, I-1 through VIII-31.

National Marine Fisheries Service, "Interim Endangered and Threatened Species Recovery Planning Guidance Version 1.3" ("2010 Recovery Guidance"), (June 2010), 122 pp. at § 1.1

Pitcher, K.W., P.F. Olesiuk, R.F. Brown, M.S. Lowry, S.J. Jeffries, J.L. Sease, W.L. Perryman, C.E. Stinchcomb, and L.F. Lowry. 2007. Abundance and distribution of the eastern North Pacific Steller sea lion (*Eumetopias jubatus*) population. *Fishery Bulletin* 107: 102-115.

U. S. Fish and Wildlife Service and NMFS, "Endangered Species Petition Management Guidance" ("1996 Petition Guidance"), Division of Endangered Species, (July 1996) 21 pp., at 14.

Wolfe, R.J., and C. Mishler. 1998. The subsistence harvest of harbor seal and sea lion by Alaska Natives in 1997. Alaska Department of Fish and Game, Juneau, AK, Subsistence Division. Technical Paper No. 246. 70 pp.

Wolfe, R.J., and L.B. Hutchinson-Scarborough. 1999. The subsistence harvest of harbor seal and sea lion taken by Alaska Natives in 1998. Alaska Department of Fish and Game, Juneau, AK, Subsistence Division. Technical Paper No. 250. 72 pp.

SEP 7 AM 9:26

**Before the U.S. Secretary of Commerce**

**A Petition to Remove the Eastern Distinct Population Segment  
of the Steller Sea Lion (*Eumetopias jubatus*)  
from the Federal Endangered Species List**

Submitted by:

**Oregon Department of Fish and Wildlife  
And  
Washington Department of Fish and Wildlife**

August 30, 2010

Submitted to: Gary Locke  
Secretary of Commerce  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

CC: Jane Lubchenco  
Under Secretary of Commerce for Oceans and Atmosphere and NOAA  
Administrator  
1401 Constitution Avenue, NW  
Washington, DC 20230

Eric C. Schwaab  
Assistant Administrator for Fisheries  
NOAA Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910

James Lecky  
Director  
Office of Protected Resources  
NOAA Fisheries Service  
1315 East West Highway  
Silver Spring, MD 20910

William Stelle  
Administrator  
Northwest Region  
NOAA Fisheries Service  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Donna Darm  
Protected Resources Division  
NOAA Fisheries Service  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Kaja Brix  
Protected Resources Division  
NOAA Fisheries Service  
PO Box 21668  
Juneau, Alaska 99802



Washington  
Department of  
**FISH and  
WILDLIFE**



August 30, 2010

The Honorable Gary M. Locke  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Secretary Locke:

NOAA Fisheries is proposing to conduct a 5-year review of the status of the Eastern Distinct Population Segment (EDPS) of the Steller sea lion ("Endangered and Threatened Species; Initiation of a 5-Year Review of the Eastern Distinct Population Segment of the Steller Sea Lion"; 75 FR 37385). It is the position of the States of Oregon and Washington that conducting such a review is unwarranted given that most scientists with extensive knowledge in this area, including many within NOAA Fisheries, believe that sufficient information currently exists to allow the Department of Commerce instead to immediately proceed with delisting the Steller sea lion EDPS. Indeed, information supporting an immediate delisting can be found in numerous NOAA Fisheries documents including the Stock Assessment Reports, the Federal Recovery Plan, and the 2010 Endangered Species Act – Section 7 Consultation Draft Biological Opinion on the Authorization of groundfish fisheries under the Fishery Management Plan for Groundfish of the Bering Sea, Aleutian Islands, Gulf of Alaska, and State of Alaska parallel groundfish fisheries. Initiating a 5-year review that will, in all likelihood, be immediately followed by a full delisting process is not a wise use of limited time and resources.

Of particular concern to state fish and wildlife management agencies are the increasingly negative interactions that the growing Steller sea lion population is having with other very important marine and anadromous fish resources. We are concerned that devoting scarce state resources to an unnecessary status review reduces our capacity to respond to these emerging challenges in a timely manner.

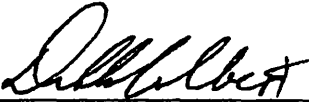
Therefore the States of Oregon and Washington respectfully petition the U.S. Department of Commerce and NOAA Fisheries (as provided by 50 CFR § 424.14) to use your authority under

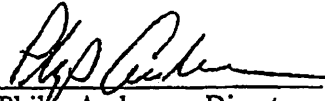
The Honorable Gary M. Locke  
August 30, 2010  
Page 2

Section 4(b) (3) (A) of the Endangered Species Act, 16 U.S.C. § 1533(b) (3) (A), to remove the EDPS of the Steller sea lion from the federal Endangered Species List.

Thank you for reviewing this petition. We are aware that other delisting petitions may be filed for the Steller sea lion EDPS and we anticipate working closely with the other petitioners, the Department of Commerce, and NOAA Fisheries to proceed expeditiously to a successful delisting.

Respectfully,

  
\_\_\_\_\_  
Roy Elicker, Director *for*  
Oregon Dept. of Fish & Wildlife

  
\_\_\_\_\_  
Philip Anderson, Director  
Washington Dept. of Fish & Wildlife

PETITION TO DELIST THE EASTERN DISTINCT POPULATION SEGMENT OF THE  
STELLER SEA LION FROM THE ENDANGERED SPECIES ACT

Submitted to  
U.S. Department of Commerce  
by  
Oregon Department of Fish & Wildlife  
Washington Department of Fish & Wildlife

Background

The Steller sea lion (*Eumetopis jubatus*) ranges throughout the North Pacific Rim from California to Japan (Loughlin et al., 1984, Pitcher et al., 2007). The Steller sea lion population in the western portion of the range underwent dramatic declines from the late 1970s to the early 1990s (Braham et al., 1980; Merrick et al., 1987; Loughlin et al., 1992; Trites and Larkin, 1996). As a result the entire Steller sea lion population was listed as "threatened" under the U.S. Endangered Species Act (ESA) in 1990, and later as "endangered" in the western portion of the range (Loughlin, 1997; National Marine Fisheries Service (NMFS), 2008). Potential explanations for the obvious decline in abundance have included population redistribution, commercial and subsistence harvest, predation, pollution, entanglement in marine debris (Merrick et al., 1987) and changes in ocean climate and productivity, quantity, quality and availability of prey possibly resulting in nutritional stress, reductions in sea lion body size, productivity and survival of pups and juveniles (York 1994, Trites and Donnelly, 2003; Trites et al., 2007).

The 1990 Federal Register notice on the listing of the entire Steller sea lion population as "threatened" (55 FR 49204) focused almost exclusively on the serious declines in the abundance of Steller sea lions in the western portion of the animal's range, and gave very brief mention and no meaningful analysis of the status of the Steller sea lion in the eastern portion of the range. In 1997 the Federal Register (62 FR 24346) presented the reclassification of the U.S. Steller sea lion population into two Distinct Population Segments, Eastern and Western (EDPS and WDPS). As part of the same action, the WDPS was reclassified as "endangered" while the EDPS remained listed as "threatened". In the discussion of this latter action, somewhat more attention was given to the status of Steller sea lions in the eastern portion of the range. However, the justifications presented for retaining the "threatened" listing of the EDPS were general in nature and again, did not represent a thorough analysis of the distribution, abundance, status and trends of the Steller sea lion EDPS.

The stated reasons for maintaining the "threatened" listing status for the EDPS as presented in the Federal Register in 1997 included: 1) uncertainties about the future status of the EDPS in spite of its' apparent stability at the time; 2) mention of very short term "declines"(over just two years) in counts of adults and pups at some locations in southeast Alaska; 3) concern for declines in abundance at the extreme southern fringe of the range in southern and central California, where California sea lion population growth and Steller sea lion northward redistribution may be responsible; 4) the fact that, before the decline of the WDPS, the EDPS represented a relatively



The Recovery Plan identifies two points as recovery criteria for the Steller sea lion EDPS:

- 1) *The population has increased at an average annual growth rate of 3% for 30 years.*

Pitcher et al. (2007) reported the growth of the EDPS to be at least 3.1% per year over the 25 years prior to 2002. The Federal Recovery Plan directly acknowledges that the EDPS has been increasing at 3% or more per year. The Recovery Plan notes that the robustness of the observed positive trend for the EDPS over the last 25-30 years was confirmed by Bayesian trend analyses conducted by Goodman (2002) and more recent analyses by Boyd (2010). The NMFS Stock Assessment Reports for Steller sea lions also report the steady increase and healthy condition of the EDPS. Overall, the EDPS increased at over 3% per year between 1982 and 2009, more than doubling in Southeast Alaska, British Columbia, and Oregon (NMFS 2010). Similarly, data collected in the EDPS continue to document the steady growth of Steller sea lions in this portion of the range.

- 2) *The ESA criteria for delisting are met.*

#### ESA Listing Factors

The agencies submitting this petition have reviewed the best available scientific information regarding the listing factors in Section 4(a)(1) of the ESA and provide the following assessment for each factor.

The ESA criteria for delisting are based on the following five factors:

- (A) *Is there a present or threatened destruction, modification, or curtailment of its habitat or range?*

A very large portion of the land-based habitat of Steller sea lions in the eastern population is included in some form of protection from state or federal law (e.g. federal or state managed reserves and refuges). In Oregon and Washington nearly all coastal rocks and islands used by Steller sea lions fall under the jurisdiction of the U.S. Fish and Wildlife Service refuge program. Along the north Washington coast where most haul-out areas in the state occur falls within the NOAA Olympic Coast Marine Sanctuary. The recent and ongoing establishment of marine aquatic reserves along the U.S. West Coast also stands to benefit sea lions and other marine species.

- (B) *Is the species subject to overutilization for commercial, recreational, scientific, or educational purposes?*

The Steller sea lion EDPS has been protected from commercial exploitation under the Marine Mammal Protection Act (MMPA) since 1972. Any scientific or educational uses require permits obtained from the Permit Office of the NMFS Protected Species Division. Applications for such permits are rigorously scrutinized to prevent unnecessary, duplicative, or excessive activities that could have negative impacts.

Both ODFW and WDFW have conducted studies of Steller sea lion distribution, abundance, movements, survival, food habits, mortality (via examinations of beach cast animals), and have recorded data on interactions with fisheries and various human activities over many years. None of the potential natural or manmade causes for population decline examined in the western population range appear to be having negative impacts on eastern stock sea lions occurring in Oregon and Washington (ODFW, WDFW, unpublished data).

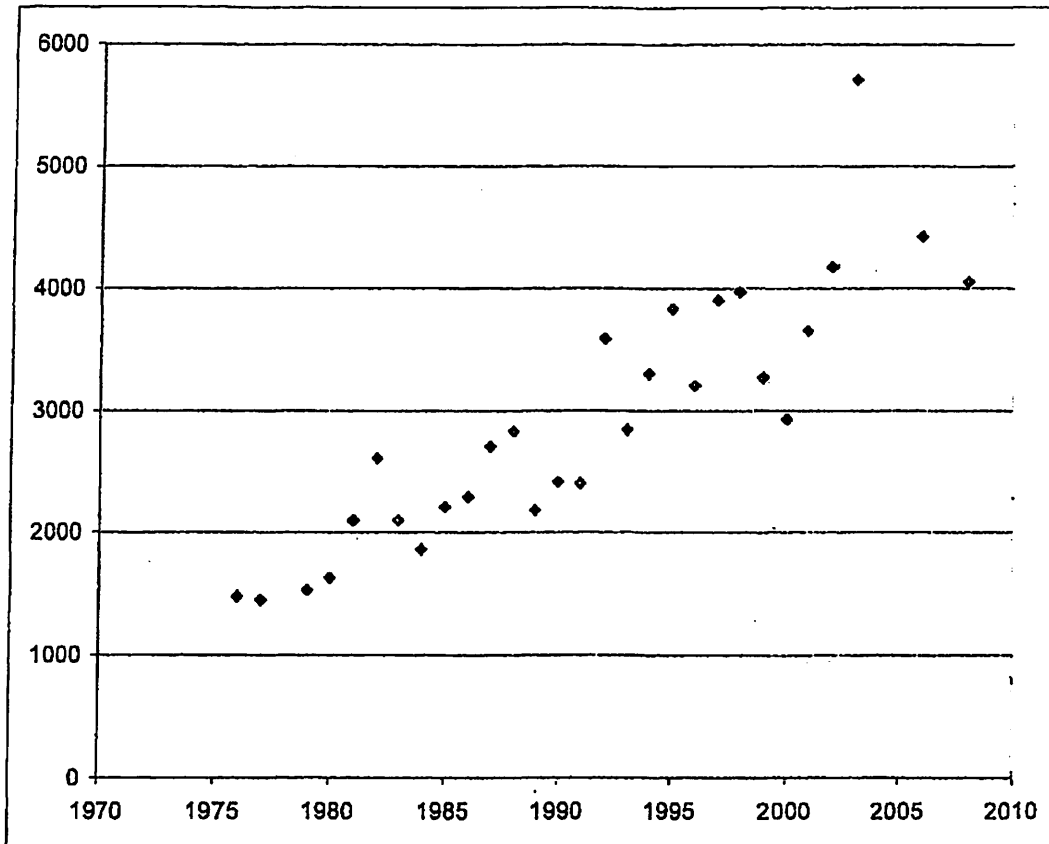
Similarly, none of the potential threats to recovery of sea lions identified in the Recovery Plan (predation, harvest, killing, human impacts, entanglement in debris, parasitism, disease, toxic substances, climate change, reduced prey biomass or quality, disturbance, or any cumulative affect of a combination of these factors) appear to be significant sources of mortality for EDPS sea lions, nor do they seem likely to prevent the continued population growth of the EDPS in the foreseeable future. The Recovery Plan also concludes that if current protection measures for the EDPS are maintained, we should expect this population to remain at very low risk of extinction.

#### Conclusion

We conclude that none of the potential threats identified in Section 4(a)(1) of the ESA for listing and delisting purposes (A-E above) constitutes a real threat to the continued healthy status of the Steller sea lion EDPS. We further conclude that the EDPS of the Steller sea lion has met the Federal Recovery Plan criteria for delisting. As necessary, we will provide you with additional details, references, and the unpublished data mentioned above during the process of proceeding with your review and delisting actions.

We believe that, based on your review of this material and additional information others can provide, the Department of Commerce and NOAA Fisheries will find that the EDPS of Steller sea lions from central California through southeast Alaska has recovered to healthy and sustainable levels of abundance, faces no significant threats as defined under the law, and no longer meets the criteria for listing as a threatened species under the federal Endangered Species Act (16 U.S.C § 1531-1534).

Appendix 1. Counts of non-pup Steller sea lions ashore in Oregon, June-July, 1976-2008.  
Source: Oregon Department of Fish and Wildlife, unpublished data. Counts for 2006 and 2008 have not been finalized.

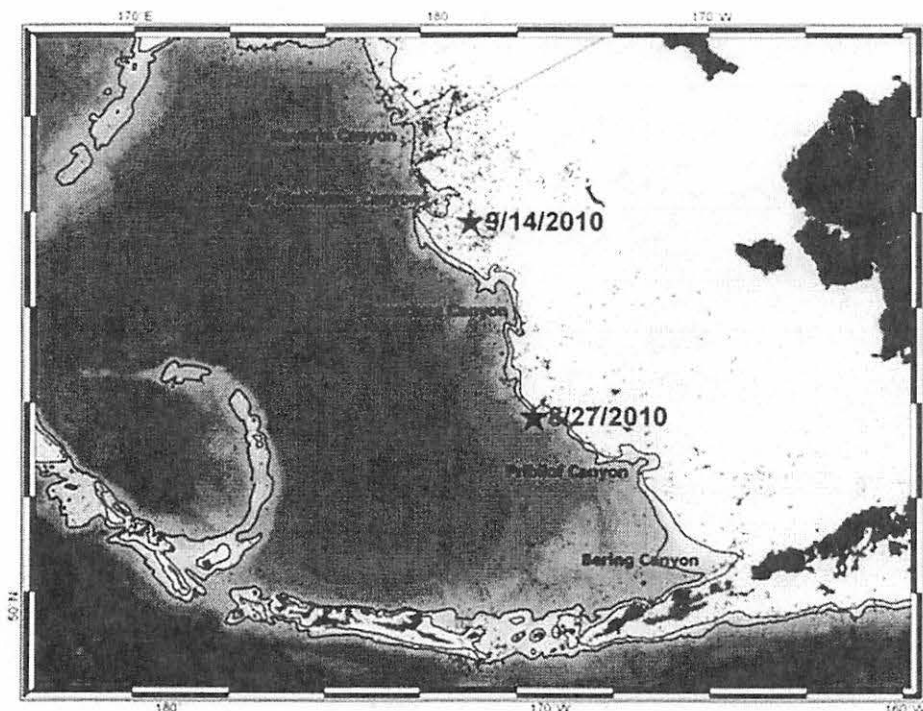


**Information Bulletin 10-93**  
Sustainable Fisheries Division  
907-586-7228

**September 17, 2010**  
2:15 p.m.

## **NMFS Reports the Incidental Take of Two Short-Tailed Albatross In the BSAI Hook-And-Line Groundfish Fishery**

The National Marine Fisheries Service (NMFS) reports the incidental take of two endangered short-tailed albatrosses (STAL) in the hook-and-line groundfish fishery of the Bering Sea/Aleutian Islands (BSAI). The first bird was taken on August 27, 2010, at 56° 37' N and 172° 57' W in NMFS reporting area 523. The bird had an identifying leg band from its natal breeding colony in Japan. It was a subadult at 7 years and 10 months old. The second bird was also taken in the BSAI on September 14, 2010, at 59° 20' N and 176° 33' W in NMFS reporting area 521. This bird also had an identifying legband and was 3 years and 10 months. The last STAL take, previous to these two, occurred in 1998.



(Click for larger view). Chart indicates locations (red dots) of all STAL from Sept through November. Data are from birds tagged with satellite transmitters from 2001-2010. The two recent takes are depicted by purple stars. Credits: Yamashina Institute for Ornithology, Oregon State University, U.S. Fish and Wildlife Service, and Ministry of Environment Japan.

The world population of the endangered short-tailed albatross in 2009 was at about 3,000 according to the STAL Recovery Team that met recently at the World Seabird Conference in Victoria, British Columbia. The short-tailed albatross is protected in Alaska waters by the Endangered Species Act (ESA). As a result of consultation with the US Fish and Wildlife Service (USFWS) under the ESA, USFWS issued an incidental take statement of 4 birds during each 2-year period for the BSAI and Gulf of Alaska (GOA) hook-and-line groundfish fisheries. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease, pending reinitiation of consultation with the USFWS. NMFS may choose to reinitiate consultation if/when the level of authorized incidental take is met but not exceeded, in order to avoid potential delays in operations. To date, the incidental take levels have not been reached during the

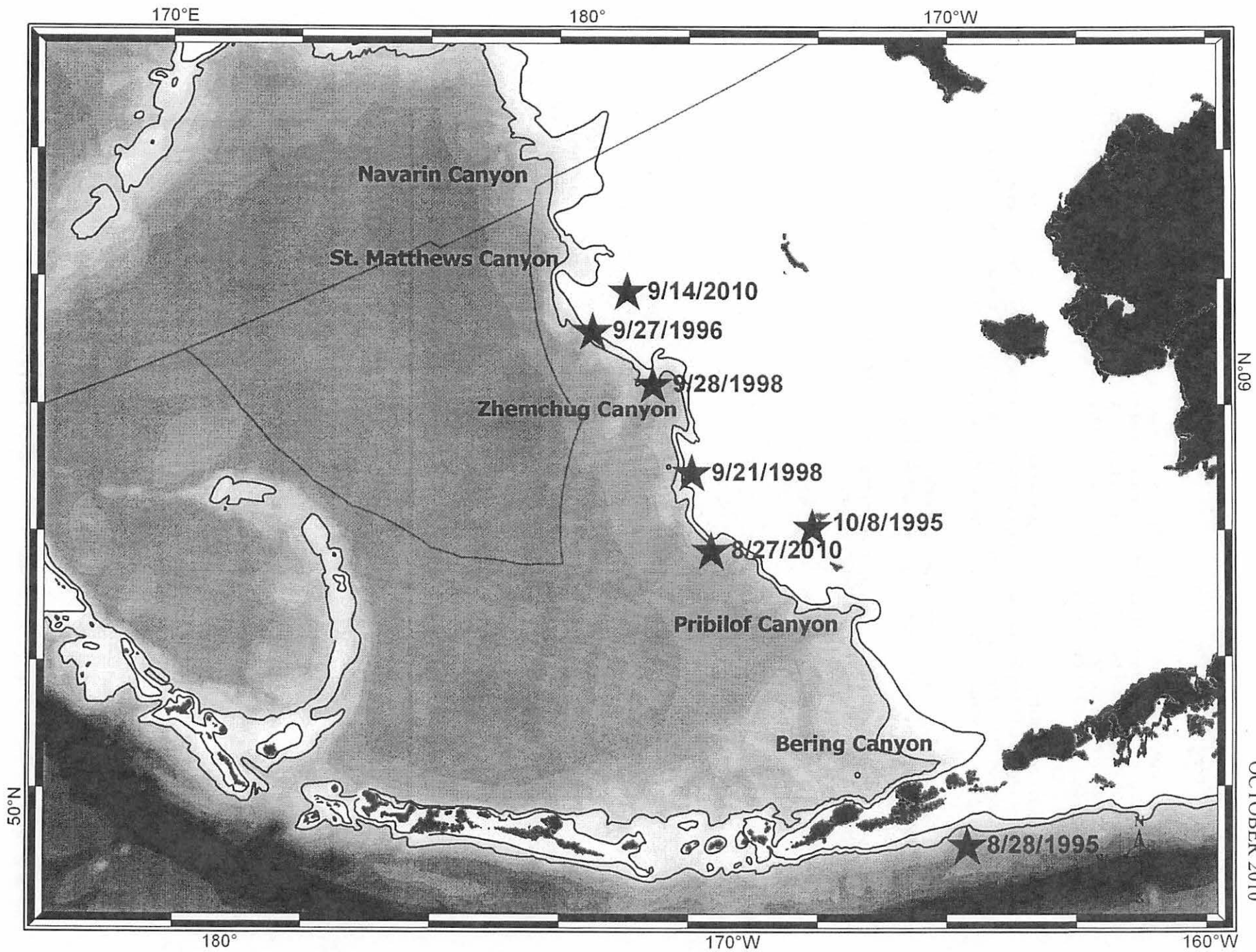
current or any previous Biological Opinions.

The NMFS Regional Office, NMFS North Pacific Groundfish Observer Program, and the USFWS are actively coordinating efforts and communicating with each other in response to these take incidents and are complying to the fullest extent with ESA requirements to protect this species. NMFS is also working closely with the cod freezer longline fleet, where the birds were taken, to evaluate what additional actions can be taken by the fleet to avoid further takes.

To assist in this coordinated effort, NMFS reminds operators of hook-and-line vessels in the BSAI and GOA that they are required to employ multiple seabird avoidance measures. "Hook-and-line vessel operators should use great caution when fishing in these areas and when short-tailed albatross are sighted," says Jim Balsiger, Regional Administrator for the Alaska Region of NOAA Fisheries.

Detailed information on those requirements is available at <http://alaskafisheries.noaa.gov/protectedresources/seabirds/guide.htm>.

This information bulletin provides information about regulations at 50 CFR Parts 679.24(e) and 679.42(b)(2). See these cites for the specific regulations.



N.09

AGENDA B-7(e)  
OCTOBER 2010

AGENDA B-7(f)  
OCTOBER 2010

# Cook Inlet Beluga Whale Science Workshop

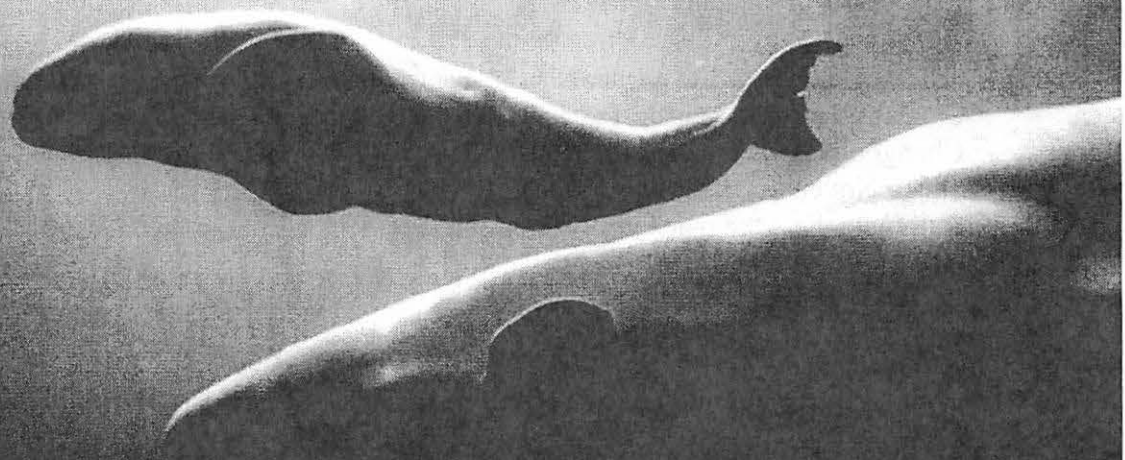
hosted by *National Marine Fisheries Service, Alaska Region*

**October 11th & 12th**  
**9 a.m. - 5 p.m.**

**Downtown Marriot, Anchorage, Alaska**

**FREE TO THE GENERAL PUBLIC**

National Marine Fisheries Service (NMFS) has been funding research on the Cook Inlet beluga whales and is hosting a workshop to exhibit the outcome from the more recent scientific research to the public.



**NMFS is accepting abstracts for presentations at the Cook Inlet Beluga Whale Science Workshop.**

All abstracts must be received no later than September 15, 2010 and should be submitted to Mandy Migura (mandy.migura@noaa.gov) with the wording "ABSTRACT - CIB WORKSHOP" in the email subject line. Please also indicate if you would consider providing a poster should there not be enough space for a presentation. If there is sufficient interest, NMFS will host a poster session the evening of Monday October 11th.

A report containing the abstracts will be available via the NMFS website:

**<http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm>**



**NMFS Steller Sea Lion Biological Opinion  
Draft Reasonable and Prudent Alternative (RPA) – August 2010**

In Area 543:

- Prohibit retention of Atka mackerel and Pacific cod.
- Establish a TAC for Atka mackerel sufficient to support the incidental discarded catch that may occur in other targeted groundfish fisheries (e.g., Pacific ocean perch).
- Eliminate the Atka mackerel platoon management system in the HLA.

In Area 542:

**Groundfish**

- Close waters from 0–3 nm around Kanaga Island/Ship Rock to directed fishing for groundfish by federally permitted vessels.

**Pacific cod**

- Close 0–10 nm zone of critical habitat to directed fishing by federally permitted vessels using nontrawl gear year round. Close critical habitat 10–20 nm to directed fishing for Pacific cod using nontrawl gear by federally permitted vessels January 1 through June 10.
- Close 0–20 nm zone of critical habitat year round to directed fishing by federally permitted vessels using trawl gear.
- Prohibit Pacific cod fishing November 1 through December 31 in Area 542. (This extends this trawl gear restriction to nontrawl gear.)

**Atka mackerel**

- Set TAC for Area 542 to no more than 47 percent of acceptable biological catch (ABC).
- Close 0–20 nm critical habitat to directed fishing by federally permitted vessels year round.
- Change the Atka mackerel seasons to January 20 through June 10 for the A season and June 10 through November 1 for the B season.
- Eliminate the Atka mackerel platoon management system in the HLA.

In Area 541 and the Bering Sea:

**Pacific cod**

- Close 0–10 nm of critical habitat to directed fishing for Pacific cod by all federally permitted vessels year round.
- Limit the amount of catch that can be taken in the 10–20 nm area of critical habitat based on gear type used:
  - Close critical habitat 10–20 nm to directed fishing for Pacific cod using nontrawl gear by federally permitted vessels January 1 through June 10.
  - Close critical habitat 10–20 nm to directed fishing by for Pacific cod using trawl gear by federally permitted vessels June 10 through November 1.
- Prohibit Pacific cod fishing November 1 through December 31 in Area 541. (This extends this trawl gear restriction to nontrawl gear.)

**Atka mackerel**

- Change the Bering Sea/Area 541 Atka mackerel seasons to January 20 through June 10 for the A season and June 10 through November 1 for the B season.



**North Pacific Fishery Management Council motion  
Steller Sea Lion Biological Opinion and EA/RIR**

The Council recommends that NMFS consider the following as a Reasonable and Prudent Alternative (RPA).

**RPA Alternative 4: SSL protection with sustainable fisheries and communities**

Unless otherwise stated, the existing protection measures in 50 CFR 679 remain in place.

**Atka mackerel**

Remove existing 'platoon' system in areas 542 and 543

**Area 543:**

- No fishing inside critical habitat
- Fishing outside critical habitat east of 174 degrees – 30 minutes East longitude
- TAC not to exceed 65% of ABC
- A season Jan 20 to June 10, B season June 10 to Nov 1
- No more than 50% of TAC harvested in A or B season
- No rollover between A and B seasons

**Area 542:**

- No fishing inside critical habitat from 178 degrees – 0 minutes East longitude to 180 degrees – 0 minutes longitude.
- TAC not to exceed 65% of ABC
- Catch inside critical habitat (outside Trawl Exclusion Zones) not to exceed 50% of TAC
- A season Jan 20 to June 10, B season June 10 to Nov 1
- No more than 50% of TAC harvested in A or B season
- No rollover between A and B seasons

**Area 541:**

- Status quo, except A season January 20 to June 10, B season June 10 to November 1

**Pacific cod trawl**

**Area 543:**

- No cod trawling in critical habitat east of 174 degrees 30 minutes East longitude
- Cod trawling in critical habitat west of 174 degrees 30 minutes from 10 nm and out from February 15 to March 15
- Cod trawl harvest limited to no more than 2.5% of BS/AI ABC

**Area 541 and Area 542 east of 178 degrees West Longitude:**

- Trawl cod fishery is A Season only (January 20 to June 10)
- Trawl cod fishery inside critical habitat is only east of 178 degrees W to 541 management border
- No inside critical habitat cod fishing west of 178 degrees W to 177 degrees E

- Increase haulout closures to 10 nm for cod trawl between 170 degrees W to 174 W
- Status quo West of 174 W to 178 W

**Pacific cod fixed gear**

No additional restrictions on vessels under 60' using fixed gear

**Area 543:**

- Prohibit directed fishery for Pacific cod.

**Areas- 542**

- Cod fishery is limited to B season only (June 10 to November 1)
- Critical habitat open outside 3 4 nm-from rookeries and haulouts

**Area 541/Bering Sea:**

- No new 541 restrictions on fixed gear cod fishing

The Council strongly encourages NMFS to develop a research plan which considers the SSC recommendations to address data and information gaps regarding the decline of Steller sea lions in Area 543 and the slow Steller sea lion recovery in Areas 542 and 541, and to immediately initiate budget and funding discussions within the agency to support the research plan.

The Council notes SSC concerns and recommendations for the analysis including:

- stating as fact some conclusions that still have a great deal of uncertainty about them such as past conservation methods having a "positive impact on reducing the impacts of the fishery exploitation strategy on Steller sea lions";
- assumptions underlying the BiOp analysis including biomass projection methodology, biomass apportionment, and nutritional stress as the causal factor for low natality ;
- the global scale of the RPA relative to the current information base and conservation goal; and
- questions raised in the editorial comments of the SSC

and therefore recommends an independent review of the BiOp.

The Council recommends the agency include a 2-year sunset provision in their rule making. Further, the Council notes the SSC's concerns and recommendations regarding the EA/RIR, and requests strengthening and expanding the document.