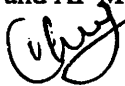


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: May 28, 2008
SUBJECT: Protected Resources Report

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

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

BACKGROUND

A. Petition to List the Pacific Walrus

As reported to the Council in April 2008, the U.S. Fish and Wildlife Service (USFWS) has received a petition from the Center for Biological Diversity (CBD) to list the Pacific walrus (*Odobenus rosmarus divergens*) as a threatened or endangered species under the Endangered Species Act. The petition was sent out in a Council mailing in late February 2008. After a review of the petition, the USFWS reported that it did not have sufficient funds to further process the petition, and that further action would be delayed to a future date. However, on May 27, 2008 the CBD formally gave a 60-day notice of intent to sue Secretary of the Interior Dirk Kempthorne for refusing to process the CBD listing petition for the Pacific walrus (**Item B-7(a)**). The CBD action is based on the concerns over global warming and increasing oil development in walrus habitat in the Bering and Chukchi Seas.

B. Sea Otters

On April 15-17, 2008 the 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. An agenda for that meeting is attached as **Item B-7(b)**. The SWAKSORT has developed some initial concepts for designating critical habitat for this DPS, and the USFWS will hold a public meeting this week in Kodiak to seek public comment on sea otter critical habitat.

C. Steller Sea Lions

The National Marine Fisheries Service Office of Protected Resources was scheduled to release in early May 2008 a draft *status quo* Biological Opinion on the effects of Alaska groundfish fisheries on the Steller sea lion. However, NMFS has informed the Council that the Agency requires additional time to complete the analyses for the BiOp and thus it will be delayed. The NMFS letter dated May 1, 2008 was sent out in a recent Council mailing (**Item B-7(c)**).

The implications of a delayed BiOp include a delay in completion of proposal review by the Council's Steller Sea Lion Mitigation Committee (SSLMC), and a change in the EIS schedule. The SSLMC was scheduled to present to the Council its recommendations for changes in SSL protection measures at this June 2008 meeting; however, the SSLMC cancelled its May 13-16 work session to review the BiOp and complete the proposal review process. Also, a draft EIS Scoping Report has been prepared by NMFS, but a presentation of the report to the Council will be delayed until a revised EIS schedule is established. NMFS has indicated that it will update the Council on these schedule issues later this summer.

At the April 2008 meeting, the Council developed a letter to NMFS outlining its concerns with the final Revised SSL Recovery Plan. That letter was sent to NMFS on April 10, 2008 (**Item B-7(d)**).

D. Cook Inlet Beluga Whales

On April 22, 2008, NMFS delayed the final decision on whether to list the Cook Inlet beluga whale under the Endangered Species Act based on a need for an additional six months to prepare a 2008 population estimate to better inform their decision. A press release and Federal Register notice are attached as **Item B-7(e)**. 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 Secretary of Commerce Carlos Gutierrez over violation of the Endangered Species Act by not making a final listing determination for this beluga stock (**Item B-7(f)** attached). The CBD petition specifically references and challenges the Agency's intent to delay their decision for six months. A map showing the distribution of beluga whales in Cook Inlet is also attached as **Item B-7(g)**.



For Immediate Release, May 27, 2008

Contact: Brendan Cummings, (760) 366-2232 x 304

**Lawsuit to Be Filed Seeking Endangered Species Act
Protection for the Pacific Walrus
*Arctic Marine Mammal Threatened by Global Warming and Oil Development***

SAN FRANCISCO— Today the Center for Biological Diversity formally notified Secretary of the Interior Dirk Kempthorne of its intent to file suit against him for refusing to process an Endangered Species Act listing petition for the Pacific walrus, imperiled by global warming and increasing oil development in its habitat in the Bering and Chukchi Seas off Alaska.

The Endangered Species Act listing process was initiated by a scientific petition filed by the Center on February 8, 2008. Secretary Kempthorne was required to issue an initial determination on the petition within 90 days, on May 8, 2008. Today's 60-day notice of intent to sue is a legally required precursor before a lawsuit can be filed to compel Secretary Kempthorne to comply with the law.

"The Arctic is in crisis from global warming. Arctic sea ice is disappearing at a stunning rate that vastly exceeds the predictions of the best climate models," said Shaye Wolf, a biologist with the Center for Biological Diversity and lead author of the petition. "The Pacific walrus is an early victim of our failure to address global warming. As the sea ice recedes, so does the future of the Pacific walrus."

The Pacific walrus is a well-known resident of the Arctic seas between Alaska and Siberia whose existence is intimately linked with the sea ice. The walrus, whose scientific name means "tooth-walking sea horse," uses the sea ice as a platform from which to forage for clams and mussels in the relatively shallow waters over the continental shelf. Female walrus and their calves follow the sea ice year-round and rely on the safety of ice floes for nursing their calves and as essential resting platforms between foraging bouts since they cannot continually swim. All Pacific walrus are dependent on sea ice for breeding activities in winter.

However, this sea ice is rapidly shrinking and forcing the Pacific walrus into a land-based existence for which it is not adapted. In 2007, the early disappearance of summer sea ice pushed females and calves onto land on the Russian and Alaskan coasts in abnormally dense herds. As a result, calves suffered high mortality on land due to trampling by the dense herds. Walrus calves, unable to swim as long as adults, have also been observed abandoned by their mothers at sea, which has been attributed to the disappearance of the sea ice on which they would normally rest.

The impacts of global warming on the Pacific walrus will undoubtedly worsen in the coming years. Scientists expect that the Arctic will be ice-free in the summer as early as 2012 and almost certainly by 2030. The Pacific walrus's winter sea-ice habitat is projected to decline 40 percent by mid-century if current greenhouse gas emissions continue, and any remaining sea ice in winter will be much thinner and will not last as long. On top of this, warming sea temperatures and sea-ice loss appear to be decreasing the abundance of the Pacific walrus's bottom-dwelling prey.

At the same time the sea-ice habitat of the walrus is melting away, the species' most important foraging grounds are being auctioned off to oil companies to extract more fossil fuels that will further accelerate global warming and the melting of the Arctic. The Chukchi Sea Lease Sale 193, held on February 6, 2008, resulted in 2.7 million acres of important Pacific walrus habitat being bid on by oil companies, thereby opening the door for oil and gas development in a significant portion of the Pacific walrus's summer range. Numerous seismic surveys associated with oil leasing are planned in walrus habitat in the Chukchi Sea this summer.

Five other lease sales in the Pacific walrus's habitat in the Chukchi, Beaufort, and Bering Seas are planned by 2012. Increased oil and gas development and the proliferation of shipping routes in the increasingly ice-free Arctic pose threats to the Pacific walrus due to the heightened risk of oil spills and rising levels of noise pollution and human disturbance.

"With rapid action to reduce carbon dioxide, methane, and black carbon emissions, combined with a moratorium on new oil-and-gas development and shipping routes in the Arctic, we can still save the Pacific walrus, the polar bear, and the entire Arctic ecosystem," said Brendan Cummings, oceans program director for the Center. "But the window of opportunity to act is closing rapidly."

The Pacific walrus is on a growing list of species for which the Center for Biological Diversity has sought Endangered Species Act protection due to global warming. The Center filed petitions for the Kittlitz's murrelet in 2001, the staghorn and elkhorn corals in the Caribbean in 2004, the polar bear in 2005, 12 of the world's penguin species in 2006, and the American pika and the ribbon seal in 2007. On May 14, 2008, in response to a court-ordered deadline, Secretary Kempthorne announced the listing of the polar bear as a threatened species under the Endangered Species Act.

Oil and gas development, shipping, and greenhouse gas emissions affecting the Arctic would be subject to greater regulation under the Endangered Species Act if the Pacific walrus is listed. Listing of the Pacific walrus would not affect subsistence harvest of the species by Alaska natives, which is exempted from the law's prohibitions.

SOUTHWEST ALASKA SEA OTTER RECOVERY TEAM, MEETING FIVE

DRAFT MEETING AGENDA
for 15-17 April 2008 at the
North Pacific Research Board Conference Room
1007 West 3rd Avenue, Suite 100
Anchorage, Alaska 99501

15 April, Tuesday

- 9:00-12:00 am Recovery criteria work sessions
 A. Ecosystem criteria (Estes and Bodkin)
 B. Demographic criteria (Tinker, Ralls, and Lowry)
 C. Threats-based criteria (Burn, DeMaster, Doroff)
- 1:00 pm I. Welcome and opening statements
 II. Introductions
 III. Review and approval of agenda
- 1:30 pm IV. Update on SWAK SO management actions
 A. Critical habitat and Recovery Team involvement
 B. Others
- 2:00 pm V. Plans for 2008 SWAK SO research
 A. USFWS
 B. USGS
 C. Alaska SeaLife Center
- 3:00 pm VI. Threats analysis
 A. Review and finalize revised threats tables for each management unit
 B. Draft text to accompany templates (done in subgroups?)
- 5:00 pm ADJOURN FOR THE DAY

16 April, Wednesday

- 9:00 am VII. Review and finalize revised recovery strategy and goals
- 10:00 am VIII. Discuss and develop delisting and uplisting criteria
- 11:45 am LUNCH BREAK
- 1:00 pm IX. Continue to discuss and develop delisting and uplisting criteria
- 5:00 pm ADJOURN FOR THE DAY

**SOUTHWEST ALASKA SEA OTTER RECOVERY TEAM, MEETING FIVE
DRAFT AGENDA, CONTINUED**

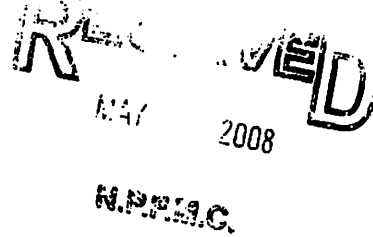
17 April, Thursday

- 9:00 am X. Discuss recovery actions
 A. Content of drafted sections
 B. Priorities
- 12:15 pm LUNCH
- 1:30 pm XI. Discuss implementation schedule
- 2:30 pm XII. Discuss actions needed to complete the draft plan and need for future
meetings
- 3:15 pm ADJOURN MEETING



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
PO 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,

Handwritten signature of Robert D. Mecum in cursive.

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
Anchorage, AK 99501-2252

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Visit our website: <http://www.fakr.noaa.gov/npfmc>

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

DRAFT REPORT
of the
SCIENTIFIC AND STATISTICAL COMMITTEE
to the
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
March 31 to April 2, 2008

The SSC met during March 31 to April 2, 2008 at the Hilton Hotel, Anchorage, Alaska. Members present were:

Pat Livingston, Chair

NOAA Fisheries—AFSC

Bill Clark

International Pacific Halibut Commission

George Hunt

University of Washington

Franz Mueter

SigmaPlus Consulting

Doug Woodby

Alaska Department of Fish and Game

Keith Criddle, Vice Chair

University of Alaska Fairbanks

Sue Hills

University of Alaska Fairbanks

Kathy Kuletz

US Fish and Wildlife Service

Lew Queirolo

NMFS—Alaska Region

Robert Ames

Oregon Department of Fish and Wildlife

Anne Hollowed

NOAA Fisheries—AFSC

Seth Macinko

University of Rhode Island

Terry Quinn II

University of Alaska Fairbanks

Members absent were:

Gordon Kruse

University of Alaska Fairbanks

Farron Wallace

Washington Dept of Fish and Wildlife

C-1 Steller Sea Lion Issues

Bill Wilson (NPFMC) presented information on three issues with assistance from others as noted under each item. Public testimony was taken on all items at once and was heard from George Pletnikoff (Greenpeace) and Paul MacGregor (At-Sea Processors Association).

C-1 (a) Review NMFS Response to Fast-Tracking two SSLMC proposals

This was an informational item only. NMFS recommended that the proposals not be fast-tracked but rather stay with the rest of the SSLMC proposal package.

C-1 (b) Review Final Revised SSL Recovery Plan

Kaja Brix (NMFS, Alaska Region) presented the main changes made to the Recovery Plan since the last time we saw it in August 2007 and introduced the new SSL coordinator, Dr. Lisa Rotterman (NMFS). **Although the Plan is final and no further changes will be made until the Plan is officially revised, the SSC provides comments to build the administrative record for the next revision.**

Overall, the SSC commends the agency on the improvements made to the Final Recovery Plan, noting that it is a well-written document with better balance and fewer internal contradictions than in previous versions. Although the document is final, the SSC suggests that a link to the data from the 2006 and 2007 partial surveys be provided on the web site on which the recovery plan is available. The data are central to the change of trend for the Western DPS (wDPS) from increasing to stable or decreasing, and should be made readily available since they are not in the tables in the document (e.g., Table 1.1 and 1.2). The SSC notes that the implication of this change in population trend for the adequacy

of the current SSL protection measures will be determined in the coming status quo Biological Opinion (BiOp).

In June and August 2006, and August 2007, the SSC commented on the two earlier draft revised Recovery Plans (RP). In previous sets of comments, the SSC suggested items that could be addressed fairly quickly and easily, and other items that would take considerably more work and analysis. In June and August 2006, the SSC commented on 7 main issue areas, addressed 36 more specific points, and made extensive comments and recommendations with respect to the PVA. NMFS responded either by disagreeing, making changes in the document, or by deferring the task to the implementation plan and future work. The 7 main issues were: 1) a need to address the implications of alternate population structures (e.g., metapopulations); 2) provide biological justification for criteria for delisting/downlisting, such as the 3% rate of population increase; 3) need for research plans for testing hypotheses; 4) better discussion of efficacy of past management actions, 5) review of critical habitat designation, 6) the apparently subjective ranking of impacts under threats assessments (for example, from the information in the RP, Toxics seem to be a low threat and disease a medium threat), and 7) the basis for priorities for plan actions. More specific points commented on by the SSC included the requirement for assessment of the Russian subpopulation, statistical significance of trend analyses, and the effects of fluctuating carrying capacity.

In the SSC's August 2007 comments, several issues from previous minutes were reiterated and new ones were raised. Again, NMFS responded to all comments in various ways: disagreeing, agreeing and changing the document, or deferring the issue to the implementation plan and future work. The SSC was pleased to see that our many comments on the lack of balance, confusing and contradictory statements, additional studies that should have been included, and clearer organization were addressed. **The change in the ranking of the killer whale predation threat, and dropping the requirement for vital rates were positive changes to the document. However, the SSC was surprised to see that the call for a large-scale "adaptive management plan" was still included.** Although the SSC long ago called for adaptive management, meaning carefully coordinated small scale experiments, it has been shown many times that a large-scale experiment that would give sufficient contrast among the treatments to yield useful information is extremely unlikely to be developed.

SSC concerns that were deferred for future work included: investigation of the management and recovery implications of different stock structures (e.g., metapopulations), reassessment of critical habitat designations, technical improvements to the PVA, and effects of a modified carrying capacity on recovery criteria. The SSC understands that the current definition of the wDPS includes the Russian subpopulation. The SSC encourages exploration of options (such as an international treaty) to accommodate SSL assessment and the associated funding to collect the necessary data. The SSC had requested that the agency develop a more structured and transparent method of weighting the evidence for determining threat assessment level, and improve the biological criteria for delisting or downlisting. For example, something like the proposal ranking tool developed by the Steller Sea Lion Mitigation Committee could be developed for this purpose.

Some new issues were also found in the revised RP. For example, if SSL move from the wDPS to the eastern DPS, this movement will impact the apparent rate of population change in the wDPS. This would affect our understanding of the recovery of the wDPS. This issue needs to be addressed in the future. Likewise, there is a possibility that octopus taken in the pot fisheries may cause local depletion of this important component of SSL diets and should be examined. There are also a number of statements of considerable importance that would be bolstered by inclusion of pertinent references to the literature.

The SSC recommends that NMFS communicate the anticipated procedures and timeline for the next recovery plan revision that might consider the work suggested by the SSC, analysis and review

of new data (e.g., new counts), and PVA improvements. It seems unlikely that the RP will be revised in five years considering that this one took longer than that. With Biological Opinions on the horizon, the implementation plan to be developed, and the amount of work that would need to be done for the suggested analyses, a timely revisiting of the RP could be sidetracked. Therefore, it seems prudent to outline a procedure and timeline for analysis and revision so that issues and concerns can be addressed and appropriate analyses undertaken.

C-1 (c) Receive report from the Steller Sea Lion Mitigation Committee (SSLMC) on preliminary recommendations for changes in SSL protections measures.

SSLMC chair Larry Cotter presented the committee's report. The SSLMC was expecting to present a preliminary package of proposals at this meeting, at their March 2008 meeting. However, the SSLMC decided that until the status quo draft BiOp is released, it will be impossible to craft such a package. The timeline now will be to receive the BiOp in May, determine which, if any, proposals can be considered, and the package of proposals will be presented to the Council in June.

C-3 GOA Groundfish Sideboards

The SSC received a report on an initial review draft EA/RIR/IRFA from Jon McCracken (NPFMC). There was no public testimony on this agenda item. This is an initial review draft of a discussion paper last reviewed by the SSC in October 2007. The analysis considers alternatives for adjusting sideboard exemptions.

The current draft purpose and need statement does not provide a concise or compelling expression of need for the proposed action. This draft appears to have missed the preliminary review stage when direction from Council could have been provided. This places the analyst in the position of attempting to describe the Council's unarticulated intent, its expectations, and the range of acceptable courses of action the Council wishes to consider. **The SSC recommends that the Council provide clearer guidance as to its purpose, need, objectives, and "acceptable" suite of alternatives.** This will assist the analyst(s) in providing an analysis consistent with the requirements of MSA, E.O.12866, NEPA, and RFA (among other relevant legal mandates).

One aspect of this document that could be enhanced to better address continuing administrative and procedural concerns expressed by DOC and NOAA General Counsel reviewers, would be to highlight the true range of "alternatives" before the Council. [This applies equally to other analyses prepared for Council review and Secretarial approval.] Specifically, there are formally two alternatives identified (for each of a series of independent actions), including the mandatory "No Action" alternative. However, functionally there are numerous alternative forms of the actions, addressed within the analysis, owing to the combinations of "alternatives", "options", and "sub-options", both complementary and mutually exclusive of one another. A more accurate description of these would facilitate public (and reviewer) understanding of the true range of actions before the Council, which, in turn, will expedite procedural advancement of the action.

Once the Council provides the requisite guidance to the analyst(s), cited above, the SSC recommends that the analyst(s) systematically address each of the required elements set-forth by the E.O. and MSA National Standards. For example, the draft analysis does not provide clear evidence that the sideboards have been binding; it lacks a thorough discussion of the costs and benefits of the proposed action at the



NEWS FROM NOAA

NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION • US DEPARTMENT OF COMMERCE

Contact: Sheela McLean
907-586-7032

FOR IMMEDIATE RELEASE
Apr. 21, 2008

NOAA's Fisheries Service Extends Decision on Cook Inlet Beluga Whale Listing

NOAA's Fisheries Service will extend the final decision on listing Cook Inlet beluga whales up to six months, which will give NOAA researchers time to prepare a 2008 population abundance estimate before the agency decides whether or not to list the population under the Endangered Species Act.

Last year, biologists for NOAA's Fisheries Service estimated the Cook Inlet beluga whale population at 375, the largest since 2001.

"We believe that substantial disagreement exists regarding the population trend, and that allowing an additional six months to obtain the 2008 abundance estimate would better inform our final determination as to whether the Cook Inlet beluga whale should be listed as endangered under the Endangered Species Act," said Doug Mecum, acting Alaska regional administrator for NOAA's Fisheries Service.

In April 2007, NOAA's Fisheries Service proposed that the Cook Inlet beluga whales be listed as an endangered species. The Endangered Species Act provides for an extension when there is substantial disagreement regarding the sufficiency or accuracy of the available information.

This extension moves the deadline by which final action must be taken from April to October 20.

NOAA's Fisheries Service will conduct the annual aerial survey for beluga whales in Cook Inlet in June 2008 and provide the 2008 abundance estimate by September.

There has been variability in the population estimates for beluga whales over the last 13 years. The estimates in 2006 and 2007 were 302 and 375 belugas respectively. The State of Alaska has interpreted the 2006 and 2007 data as an increasing population trend. Federal scientists believe further population surveys are required to determine if the 2007 increase indicates an upward population trend.

NOAA's Fisheries Service received approximately 180,000 responses during the public comment period for the proposed listing of Cook Inlet beluga whales. The agency also held public hearings in Anchorage, Homer, and Soldotna, Alaska, and in Silver Spring, Maryland during July and August of 2007. The majority of comments supported listing Cook Inlet beluga whales as endangered under the Endangered Species Act.

Cook Inlet belugas are one of five beluga populations recognized within U.S. waters. The other beluga populations inhabit Bristol Bay, the eastern Bering Sea, the eastern Chukchi Sea, and the Beaufort Sea.

The proposed rule, maps, and other materials relating to this proposal can be found on the NOAA's Fisheries Service Alaska region Web site at <http://www.alaskafisheries.noaa.gov/protectedresources/whales/beluga.htm>

NOAA's Fisheries Service, known formally as the National Marine Fisheries Service, is dedicated to protecting and preserving our nation's living marine resources through scientific research, management, enforcement, and the conservation of marine mammals and other protected marine species and their habitat. To learn more about NOAA's Fisheries Service in Alaska, please visit our Web sites at <http://www.alaskafisheries.noaa.gov> or <http://www.afsc.noaa.gov>

The National Oceanic and Atmospheric Administration, an agency of the U.S. Commerce Department, is dedicated to enhancing economic security and national safety through the prediction and research of weather and climate-related events and information service delivery for transportation, and by providing environmental stewardship of our nation's coastal and marine resources. Through the emerging Global Earth Observation System of Systems (GEOSS), NOAA is working with its federal partners, more than 70 countries and the European Commission to develop a global monitoring network that is as integrated as the planet it observes, predicts and protects.

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 224**

[Docket No. 080401502-8537-01]

RIN 0648-XG94

Endangered And Threatened Species; Endangered Status for the Cook Inlet Beluga Whale

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

ACTION: Final determination regarding petitioned action; 6-month extension.

SUMMARY: We, NMFS, are extending the date by which a final determination will be made regarding the April 20, 2007, proposed rule to list a Distinct Population Segment (DPS) of beluga whale, *Delphinapterus leucas*, found in Cook Inlet, Alaska, as endangered under the Endangered Species Act of 1973, as amended (ESA). We believe that substantial disagreement exists regarding the population trend, and that allowing an additional 6 months to obtain the 2008 abundance estimate would better inform our final determination as to whether the Cook Inlet beluga whale should be listed as endangered under the ESA.

DATES: A final determination on this listing action will be made no later than October 20, 2008.

ADDRESSES: The proposed rule, maps, and other materials relating to this proposal can be found on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, (907) 271-5006, fax (907) 271-3030; Kaja Brix, NMFS, (907) 586-7235, fax (907) 586-7012; or Marta Nammack, NMFS, (301)713-1401.

SUPPLEMENTARY INFORMATION:**Background**

We initiated a Status Review for the Cook Inlet beluga whale on March 24, 2006 (71 FR 14836). Subsequently, we received a petition from The Trustees for Alaska to list the Cook Inlet beluga whale as an endangered species on April 20, 2006. In response to the 2006 petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006). After completion of the Status Review, we re-affirmed that the Cook Inlet beluga whale constitutes a Distinct Population Segment under the ESA, and proposed this population be listed as an endangered species (72 FR 19854; April 20, 2007). We received public comment in response to the proposed rule, and held public hearings in Anchorage, Homer, and Soldotna, Alaska, and in Silver Spring, Maryland. We received approximately 180,000 responses to the proposed listing.

The majority of comments supported listing the Cook Inlet beluga whale as endangered under the ESA. However, several commenters, including Alaska Department of Fish and Game, questioned the sufficiency or accuracy of the available data used in the rulemaking. We have considered these comments, and we find that substantial disagreement exists over a certain aspect of the data presented in the proposed rule. In particular, there remains disagreement over the population trend of belugas in Cook Inlet, and whether the population is now demonstrating a positive response to the restrictions on subsistence harvest imposed in 1999.

Extension of Final Listing Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed listing: (1) finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final

determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

The State of Alaska sent a letter to us outlining its disagreement with the abundance and population trend. The State's letter noted that the June 2007 count of beluga whales was the largest since 2001, indicating, in their estimation, that the population is beginning to recover from the unsustainable harvests in the early 1990s, as had been predicted by State and Federal biologists. An additional 6 months will allow us to complete an additional abundance survey in June 2008, which will provide additional information bearing on the dispute and may be sufficient to resolve it. The annual aerial survey for beluga whales in Cook Inlet will be conducted in June 2008, with the analyses that produce an annual abundance estimate that can be factored into a trend analysis expected to be completed by the end of September 2008. We will, therefore, extend the deadline for the final listing determination to allow for the collection of these data and the completion of the analysis that forms part of the trend in abundance to better inform our final decision and potentially resolve the disagreement over the scientific information upon which it will be based.

In consideration of the disagreement surrounding the population trend, we extend the timeline for the final determination for an additional 6 months (until October 20, 2008) to resolve the scientific disagreement.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 16, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8-8689 Filed 4-21-08; 8:45 am]

BILLING CODE 3510-22-S



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April 23, 2008

Via Facsimile, Electronic and Certified Mail

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RE: 60-Day Notice of Intent to Sue: Violations of the Endangered Species Act; Failure to Finalize Proposed Listing Rule for the Cook Inlet Beluga Whale (*Delphinapterus leucas*)

Dear Mr. Gutierrez and Mr. Balsiger:

This letter serves as a sixty-day notice on behalf of the Center for Biological Diversity, Natural Resources Defense Council, Alaska Center for the Environment, Cook Inletkeeper, Alaska Community Action on Toxics, Friends of the Anchorage Coastal Wildlife Refuge, North Gulf Oceanic Society, and Dr. Sylvia Brunner of intent to sue the Secretary of Commerce and the National Marine Fisheries Service/NOAA Fisheries (collectively "NMFS") over violations of Section 4 of the Endangered Species Act ("ESA") (16 U.S.C. § 1531 *et seq.*) for the agency's failure to make a final listing determination for the Cook Inlet distinct population segment ("DPS") of the beluga whale (*Delphinapterus leucas*) under the ESA. *See* 16 U.S.C. § 1533(b)(6). Specifically, NMFS has arbitrarily and unlawfully determined that a "substantial disagreement" regarding the population trend of the Cook Inlet beluga whale exists, and that this "disagreement" warrants a six-month extension of the deadline for finalizing the listing rule for the species. *See* 73 Fed. Reg. 21578 (April 21, 2008). This letter is provided pursuant to the 60-day notice requirement of the citizen suit provision of the ESA, to the extent such notice is deemed necessary by a court. *See* 16 U.S.C. § 1540(g).

BACKGROUND

A. The Cook Inlet Beluga Whale

The Cook Inlet beluga whale's long and frequently interrupted journey towards ESA listing is well documented in our April 20, 2006 Petition, the 2006 and 2008 Status Reviews, and

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summarized in the Proposed Rule. *See* 72 Fed. Reg. at 19855. We will not repeat that history here. Instead, we note that it has been fully two decades since the Cook Inlet beluga whale was first recognized by NMFS as potentially needing the protections of the ESA. *See* 53 Fed. Reg. 33516 (August 31, 1988) (“Endangered and Threatened Wildlife and Plants; Identification of Marine Vertebrate and Invertebrate Candidate Species for Listing under the Endangered Species Act”). Given the estimated population of approximately 1300 whales in 1979 had declined to 650 by 1994, it is reasonable to assume the population was on the order of 700-1000 animals in 1988. If NMFS had acted to protect the species in 1988, the overharvest and consequent decline might have been prevented, and the species would not be facing the high probability of extinction currently confronting it. To avoid any further declines and additional risk to the beluga’s viability, NMFS must not repeat the mistakes of the past and continue to delay the necessary and inevitable listing of the Cook Inlet beluga whale under the ESA. Instead, NMFS must promptly finalize the listing rule and list the beluga as Endangered. Only with such listing will the full force of our Nation’s most powerful and successful wildlife law be brought to bear to help stem the Cook Inlet beluga whale’s decline and start the species on the path to recovery. Unfortunately, rather than comply with its statutory mandates and follow the overwhelming weight of the science, NMFS has chosen to once again illegally delay protection for this critically endangered species.

B. Violation of the ESA

No matter how imperiled a species might be, it does not receive any protection under the ESA until it is officially listed as Threatened or Endangered. As a result, Congress aptly described Section 4 of the ESA, 16 U.S.C. §1533, the section that sets out the process for listing a species, as “[t]he cornerstone of effective implementation of the Endangered Species Act” S. Rep. No. 418, 97th Cong., 2d Sess. at 10; *see also* H. Rep. No. 567, 97th Cong., 2d Sess. at 10.

Section 4 sets forth a detailed process by which the Secretary of Commerce through his designee NMFS adds to the lists of Threatened and Endangered species. 16 U.S.C. §1533. The listing process can begin either by citizen petition or by internal NMFS processes. In either case, strict timelines apply once the process is initiated. 16 U.S.C. §1533(b)(3)(A).

Upon receipt of a petition to list a species under the ESA, NMFS must determine whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” *Id.* NMFS must make this initial, “90-Day Finding,” “[t]o the maximum extent practicable, within 90 days after receiving the petition.” *Id.* If NMFS determines that the petition presents substantial information that a listing may be warranted, it must “promptly commence a review of the status of the species” to determine whether listing is (1) warranted, (2) not warranted, or (3) warranted but precluded by other pending proposals that require immediate attention. 16 U.S.C. § 1533(b)(3)(B). This finding, known as the 12-Month Finding, is due “within 12 months after receiving a petition.” *Id.* NMFS has no discretion to extend the time allotted for the 12-Month Finding.

If the 12-Month Finding concludes that listing is warranted, NMFS must simultaneously publish a proposed rule to list the species in the Federal Register. 16 U.S.C. § 1533(b)(3)(B)(ii). Within 12 months of publishing the proposed rule, NMFS must make a final listing determination for the species. At this point, NMFS must either publish a final rule listing the species, publish a

withdrawal of the proposal, or in the rare instance where there is substantial disagreement about scientific data, delay a final determination for up to six months to solicit more scientific information. 16 U.S.C. §§ 1533(b)(6)(A)(i) & 1533(b)(6)(B)(i).

The petition to list the Cook Inlet beluga whale as Endangered was received by NMFS on April 20, 2006. On April 20, 2007 NMFS published a proposed listing rule to list the Cook Inlet beluga whale as Endangered. *See* 72 Fed. Reg. 19854. That proposed listing rule triggered an obligation for NMFS to finalize the listing decision for the Cook Inlet beluga whale by no later than April 20, 2008. 16 U.S.C. § 1533(b)(6)(C).

However, instead of finalizing the proposed listing rule, on April 22, 2008 NMFS published a notice purportedly invoking 16 U.S.C. § 1533(b)(6)(B)(i), which, in limited circumstances, authorizes a six-month delay in making a final listing determination. Specifically, the ESA states:

If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

16 U.S.C. § 1533(b)(6)(B)(i).

NMFS asserts that there is a “substantial disagreement” regarding population trends in the Cook Inlet beluga whale:

However, several commenters, including Alaska Department of Fish and Game, questioned the sufficiency or accuracy of the available data used in the rulemaking. We have considered these comments, and we find that substantial disagreement exists over a certain aspect of the data presented in the proposed rule. In particular, there remains disagreement over the population trend of belugas in Cook Inlet, and whether the population is now demonstrating a positive response to the restrictions on subsistence harvest imposed in 1999.

72 Fed. Reg. 19854.

The primary basis for this “disagreement” is the slightly higher numbers of whales counted in the June 2007 abundance survey. *Id.* However, this new abundance data cannot reasonably alter the determination that the beluga is endangered and therefore interpretation of this data does not rise to the level of a “substantial disagreement” justifying a delay under 16 U.S.C. § 1533(b)(6)(B)(i). In fact, the 2008 Status Review and Extinction Risk Assessment of Cook Inlet Belugas, released by NMFS the week *before* the deadline extension, explicitly included and considered the 2007 abundance estimate in making its extinction risk assessment. The Status Review concluded that *even with the 2007 abundance estimate*, under relatively optimistic scenarios, the Cook Inlet beluga whale still has a 79% chance of extinction over the next 300 years. In other words, regardless of the whether or not the 2007 count represents an increasing population, the Cook Inlet beluga whale faces

a sufficiently high risk of extinction to warrant the protections of the ESA. Further survey data from 2008 cannot reasonably be expected to change this fact. As such, it is not "relevant to the determination concerned" and cannot justify an extension under 16 U.S.C. § 1533(b)(6)(B)(i).

Because NMFS has not established any lawful justification for the six-month delay in listing the Cook Inlet beluga whale, NMFS' finding is unlawful and must be immediately withdrawn. *See, e.g. Marbled Murrelet v. Lujan*, 1992 U.S. Dist. LEXIS 14645 (W. Dist Wash. 1992) ("The court finds that defendant Secretary of the Interior's Notice of Six-Month Extension regarding his decision on whether to list the marbled murrelet under the Endangered Species Act ('ESA'), 16 U.S.C. § 1533, does not comply with the requirements of the Act in that the Secretary has not established the existence of any 'substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination . . . concerned.'").

Time is of the essence in all efforts to protect endangered species, but especially so for the Cook Inlet beluga whale, which is one of the most endangered cetacean populations on the planet. The Cook Inlet beluga whale, our organizations and their members, and the public are entitled to timely protection of species under the ESA within the deadlines set by Congress. Accordingly, an acceptable remedy would be the immediate issuance of a final rule listing the Cook Inlet beluga whale as Endangered. Moreover, given NMFS is already overdue in completing the listing rule, we see no reason for NMFS to delay the effective date of the final rulemaking for 30 days following publication in the Federal Register as is often done with ESA listing. *See* 5 U.S.C. § 553(d)(3) (allowing rules to take effect immediately if good cause exists); *see also Marbled Murrelet v. Lujan*, 1992 U.S. Dist. LEXIS 14645 (requiring final listing determination to be published within three days and made effective upon publication after finding the Secretary to have unlawfully invoked a six-month extension of the final listing determination.).

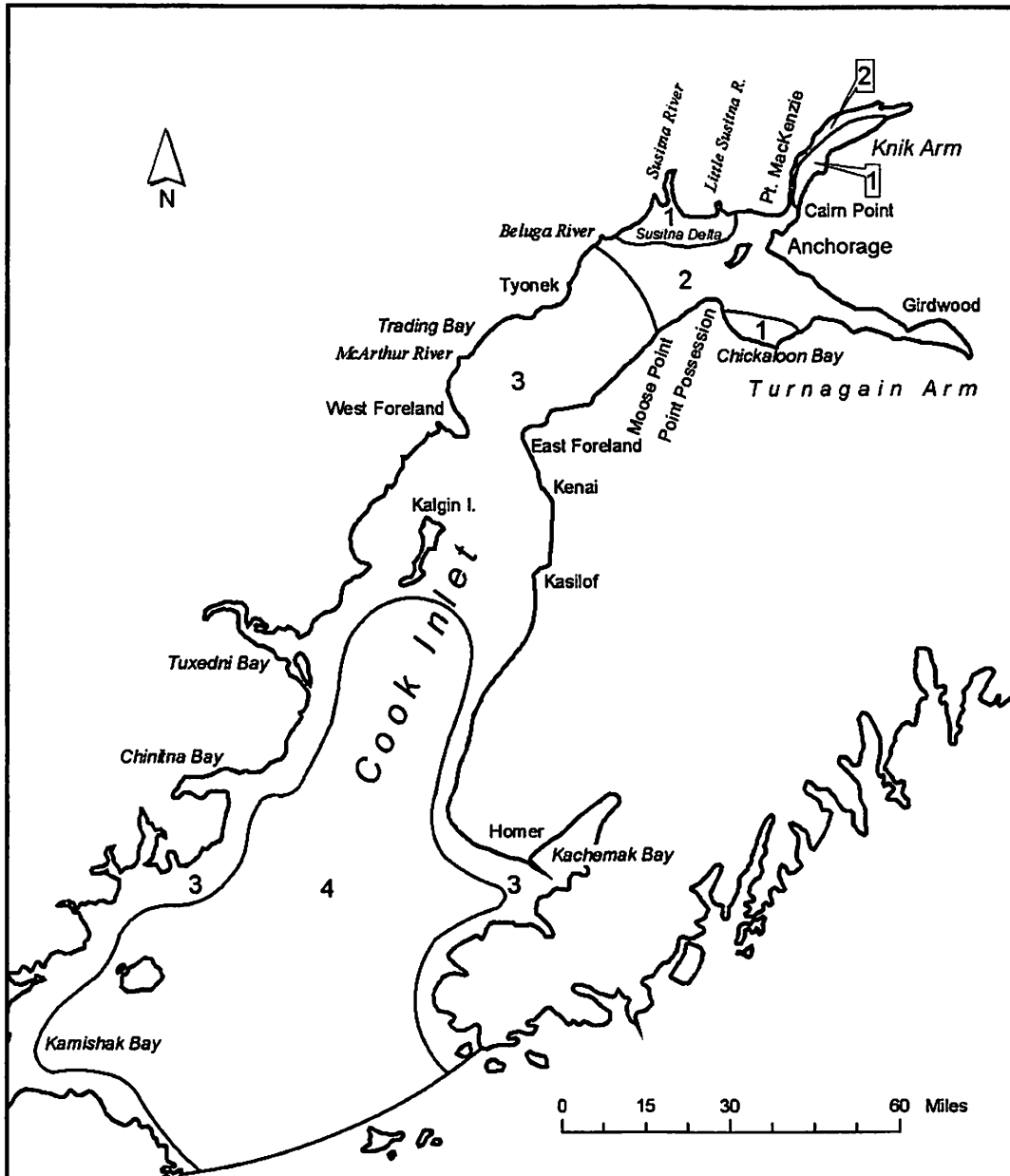
If NMFS does not act within 60 days to correct these violations of the ESA, we will pursue litigation in federal court. We will seek injunctive and declaratory relief, and legal fees and costs regarding these violations. If you have any questions, wish to meet to discuss this matter, or feel this notice is in error, please contact me at (760) 366-2232 x304. Thank you for your concern

Sincerely,



Brendan Cummings
Center for Biological Diversity
P.O. Box 549
Joshua Tree, CA 92252

Cook Inlet beluga whale habitat zones (from draft Conservation Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*), National Marine Fisheries Service, March 2005). Zones: 1 = high value/high sensitivity habitat; 2 = high value habitat; 3 = winter habitat, secondary summer habitat, historic sites; 4 = remainder of known range.





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Because life is good.

For Immediate Release, May 28, 2008

Contact: Brendan Cummings, (760) 366-2232 x 304

Endangered Species Act Protection Sought for Three Arctic Seal Species *Ringed, Bearded, and Spotted Seals off Alaska Threatened by Global Warming*

SAN FRANCISCO— Today the Center for Biological Diversity filed a [scientific petition](#) with the National Marine Fisheries Service to protect three ice-dependent seals under the federal Endangered Species Act due to threats from global warming. The petition seeks to protect the ringed, bearded and spotted seals, which occur in the icy waters off Alaska in the Bering, Chukchi, and Beaufort Seas.

Today's petition follows previous petitions by the Center seeking protection of the polar bear, Pacific walrus, and ribbon seal, Arctic marine mammals threatened by the loss of their sea-ice habitat in the face of global warming. The polar bear was listed as a threatened species under the Endangered Species Act on May 15, 2008. The Fisheries Service is currently reviewing the ribbon seal for listing under the Endangered Species Act, while its sister agency, the U.S. Fish and Wildlife Service has yet to respond to the walrus petition.

"While the polar bear may be the first Arctic species listed under the Endangered Species Act due to global warming, it will, unfortunately, not be the last. Arctic sea ice is melting so rapidly in the face of global warming that every ice-dependent marine mammal is imperiled and needs the protections of the Endangered Species Act," said Shaye Wolf, a biologist with the Center for Biological Diversity and lead author of the petition.

The ringed, bearded, and spotted seals differ in their use of sea ice, but all are dependent upon it for important life stages. The ringed seal is the most widespread marine mammal in the ice-covered regions of the Northern Hemisphere and the smallest and most ice-adapted of all northern seals. The ringed seal inhabits landfast ice during the winter and spring breeding season and has the ability to make and maintain breathing holes in thick ice and to excavate lairs in snowdrifts over breathing holes, which it uses for resting, giving birth, and nursing pups during spring. Bearded seals reproduce and haul out primarily on drifting pack ice over shallow continental shelf waters where the ice is in constant motion producing leads, polynyas, and other openings. Spotted seals primarily breed on the sea-ice front of the Bering Sea in spring, and move to coastal habitats in the Chukchi Sea during the ice-free season in summer and fall.

The sea-ice habitat of the ringed, bearded, and spotted seal is threatened by rapid warming that is occurring at a pace that is exceeding the predictions of the most advanced climate models. Arctic surface temperatures increased twice as much as the global average during the 20th century. Winter sea-ice extent in 2006 and 2007 declined to a minimum that most climate models forecast would not be reached until 2070, and summer sea-ice extent in 2007 plummeted to a record minimum which most climate models forecast would not be reached until 2050.

In addition to loss of sea-ice habitat from global warming, these seals face threats from increased oil and gas development in their habitat and the proliferation of shipping routes in the increasingly ice-free Arctic.

"With rapid action to reduce carbon dioxide, methane, and black carbon emissions, combined with a moratorium on new oil-and-gas development and shipping routes in the Arctic, we can still save the ringed, bearded and spotted seals, as well as the polar bear and all other Arctic species," said Brendan Cummings, oceans program director for the Center for Biological Diversity. "Unfortunately, the Bush administration is doing just the opposite."

###

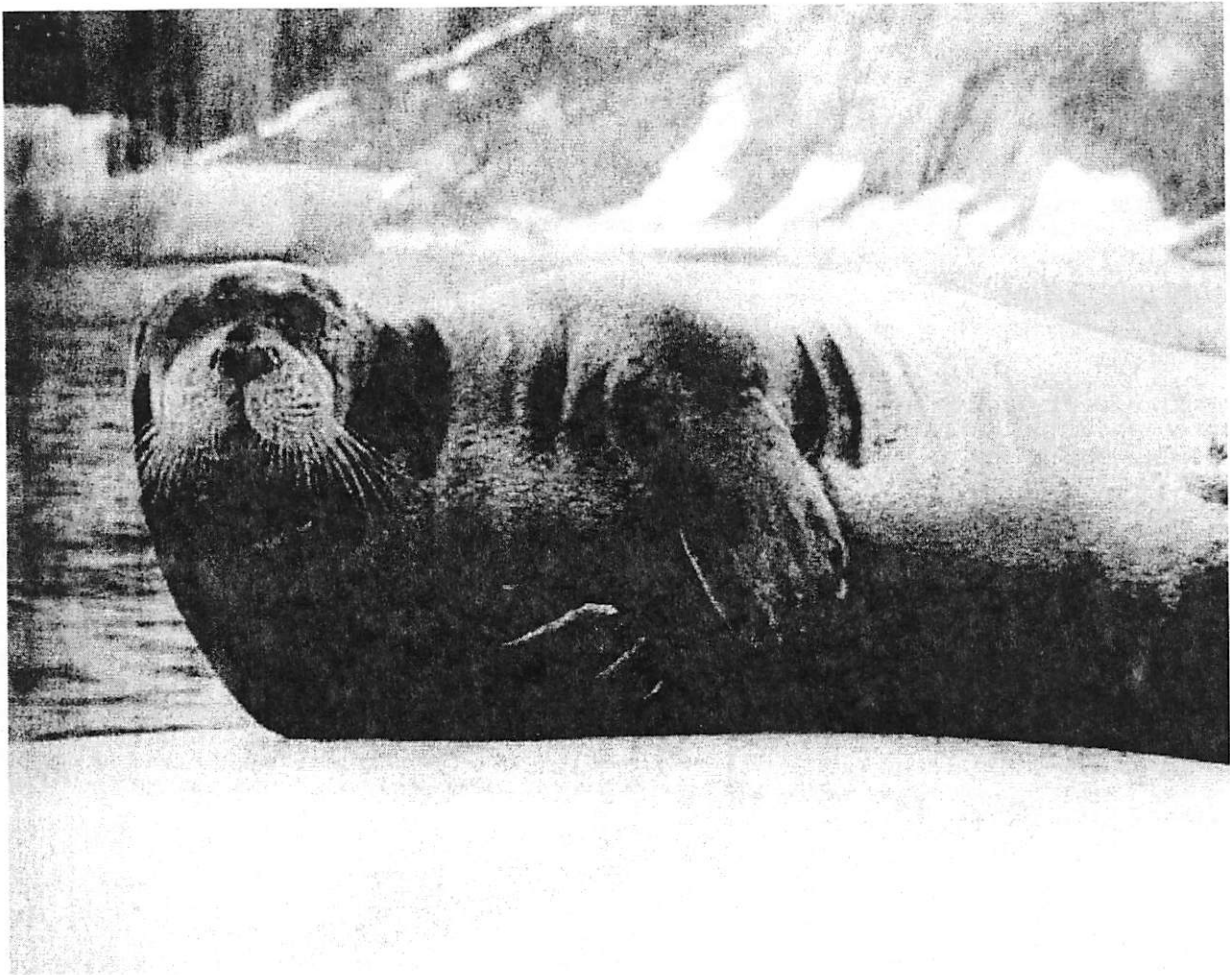
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BEFORE THE SECRETARY OF COMMERCE

PETITION TO LIST THREE SEAL SPECIES UNDER THE
ENDANGERED SPECIES ACT: RINGED SEAL (*PUSA*
HISPIDA), BEARDED SEAL (*ERIGNATHUS BARBATUS*), AND
SPOTTED SEAL (*PHOCA LARGHA*)



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CENTER FOR BIOLOGICAL DIVERSITY

MAY 28, 2008

Notice of Petition

Carlos M. Gutierrez
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James Balsiger, Acting Director
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PETITIONER

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ph: (415) 436-9682 ext 301
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Shaye Wolf

Date: this 28 day of May, 2008

Shaye Wolf, Ph.D.
Brendan Cummings
Kassie Siegel
Center for Biological Diversity

Pursuant to Section 4(b) of the Endangered Species Act ("ESA"), 16 U.S.C. §1533(b), Section 553(3) of the Administrative Procedures Act, 5 U.S.C. § 553(e), and 50 C.F.R. §424.14(a), the Center for Biological Diversity ("Petitioner") hereby petitions the Secretary of Commerce, through the National Marine Fisheries Service ("NMFS"), to list the ringed seal (*Pusa hispida*), bearded seal (*Erignathus barbatus*), and spotted seal (*Phoca largha*) as threatened or endangered species and to designate critical habitat to ensure their survival and recovery.

The Center for Biological Diversity ("Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 40,000 members in Alaska and throughout the United States. The Center and its members are concerned with the

conservation of endangered species, including the bearded seal, spotted seal, and ringed seal, and the effective implementation of the ESA.

NMFS has jurisdiction over this petition. This petition sets in motion a specific process, placing definite response requirements on NMFS. Specifically, NMFS must issue an initial finding as to whether the petition “presents substantial scientific or commercial information indicating that the petitioned action may be warranted.” 16 U.S.C. §1533(b)(3)(A). NMFS must make this initial finding “[t]o the maximum extent practicable, within 90 days after receiving the petition.” *Id.* Petitioner needs not demonstrate that the petitioned action *is* warranted, rather, Petitioner must only present information demonstrating that such action *may* be warranted. While Petitioner believes that the best available science demonstrates that listing the bearded seal, spotted seal, and ringed seal as endangered *is* in fact warranted, there can be no reasonable dispute that the available information indicates that listing these species as either threatened or endangered *may* be warranted. As such, NMFS must promptly make a positive initial finding on the petition and commence a status review as required by 16 U.S.C. § 1533(b)(3)(B).

The term “species” is defined broadly under the ESA to include “any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” 16 U.S.C. § 1532 (16). A Distinct Population Segment (“DPS”) of a vertebrate species can be protected as a “species” under the ESA even though it has not formally been described as a separate “species” or “subspecies” in the scientific literature. A species may be composed of several DPSs, some or all of which warrant listing under the ESA. Petitioners ask that the Secretary of Commerce list the ringed seal (*Pusa hispida*), bearded seal (*Erignathus barbatus*), and spotted seal (*Phoca largha*) as threatened or endangered species because the continued existence of each of these species is threatened by one or more of the five listing factors. As described in this petition, the spotted seal is monotypic. The bearded seal contains two currently recognized subspecies: Pacific bearded seal *Erignathus barbatus nauticus* and Atlantic bearded seal *Erignathus barbatus barbatus*. The ringed seal contains five currently recognized subspecies: *Pusa hispida hispida*, *Pusa hispida botnica*, *Pusa hispida ochotensis*, *Pusa hispida ladogensis*, and *Pusa hispida saimensis*. Each of these subspecies meets the definition of a “species” eligible for listing under the ESA. In the event that NMFS does not find that the entire species of ringed seal or bearded seal meets the requirements for listing, we request that NMFS evaluate whether each subspecies of bearded and ringed seals is eligible for listing. In the event that NMFS does not recognize the taxonomic validity of the bearded and ringed seal subspecies or the spotted seal species as described in this petition, we request that NMFS 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.

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Executive Summary

The rapid melt of Arctic sea ice as a result of global warming threatens all Arctic marine mammals with extinction. All five ice-associated pinnipeds that inhabit Alaskan waters are particularly vulnerable. Through this Petition, the Center for Biological Diversity seeks Endangered Species Act (“ESA”) protection for the ringed seal (*Pusa hispida*), bearded seal (*Erignathus barbatus*), and spotted seal (*Phoca largha*). The Center filed petitions seeking protection of the ribbon seal (*Histiophoca fasciata*) and Pacific walrus (*Odobenus rosmarus divergens*) in December 2007 and February 2008 respectively. Those petitions are undergoing agency review. Another Arctic marine mammal, the polar bear (*Ursus maritimus*) was listed as “threatened” under the ESA on May 15, 2008 as a result of a Center petition filed in February 2005.

The ringed seal is the most widespread marine mammal in the ice-covered regions of the Northern Hemisphere and the smallest and most ice-adapted of all northern pinnipeds. Five distinct subspecies of the ringed seal are recognized: the Arctic ringed seal (*P. h. hispida*) that inhabits the seasonally and permanently ice-covered waters of the Arctic Ocean and contiguous subarctic seas; the Okhotsk ringed seal (*P. h. ochotensis*) restricted to the Okhotsk Sea; the Lake Saimaa ringed seal (*P. h. saimensis*) confined to Lake Saimaa, Finland; the Lake Ladoga ringed seal (*P. h. ladogensis*) confined to Lake Ladoga, Russia; and the Baltic ringed seal (*P. h. botnica*) restricted to the Baltic Sea. Unlike other northern phocids, the ringed seal is able to inhabit and reproduce in landfast ice during the winter and spring breeding season due to its ability to make and maintain breathing holes in thick ice and to excavate subnivalian lairs in snowdrifts over breathing holes, which it uses for resting, giving birth, and nursing pups during March-May.

The bearded seal is, after the walrus, the largest of the ice-associated pinnipeds that inhabit Alaskan waters. The bearded seal occurs in a patchy circumpolar distribution around the perimeter of the Arctic Ocean and the contiguous subarctic seas. Two subspecies of the bearded seal are recognized: the Atlantic bearded seal (*E. b. barbatus*) and Pacific bearded seal (*E. b. nauticus*). Bearded seals reproduce and haulout primarily on drifting pack ice over shallow water where the ice is in constant motion producing leads, polynyas and other openings. Because the bearded seal feeds predominantly on benthic prey, its distribution is generally restricted to relatively shallow shelf waters of less than 150-200 m where such prey are more abundant. Both bearded and ringed seals perform seasonal migrations in conjunction with the seasonal advance and retreat of sea ice.

The spotted seal or larga seal is characterized by its vivid markings of brownish to black irregularly shaped spots scattered over a lighter base coat. Spotted seals primarily breed and haulout on the sea-ice front of the Bering and Okhotsk Seas, although southern breeding populations occur in the seasonally ice-covered regions of the northern Sea of Japan and northern Yellow Sea. The spotted seal moves between breeding areas on the sea-ice front in winter and spring to coastal habitats during the ice-free season in summer and fall.

Accurate abundance estimates for all three species are lacking, but previous estimates are of over a million ringed seals worldwide, and perhaps 750,000 bearded seals and 250,000 spotted seals.

The sea-ice habitat of the ringed, bearded, and spotted seal is threatened by rapid Arctic climate change that is occurring at a pace that is exceeding the predictions of the most advanced climate models. Arctic surface temperatures increased twice as much as the global average during the 20th century. Winter sea-ice extent in 2006 and 2007 declined to a minimum which most climate models forecast would not be reached until 2070, and summer sea-ice extent in 2007 plummeted to a record minimum which most climate models forecast would not be reached until 2050.

In the range of the ringed and bearded seals, sea-ice extent has declined significantly during the March through July breeding and molting season in recent decades throughout most of the range, including the seasonally ice-covered Okhotsk and Bering Seas, Hudson Bay, Baffin Bay, Greenland Sea, Canadian Archipelago, Barents Sea, Kara Sea, Laptev Sea, Chukchi Sea, and Arctic Ocean. In the range of the spotted seal, sea-ice extent in the Bering and Okhotsk Seas has already experienced large declines throughout the March-June spotted seal reproductive and molting periods in recent decades.

Of foremost concern for these three seal species, global warming will accelerate in this century. Arctic air temperatures are projected to increase by an average of 8°C during winter by the end of the century. Climate scientists are warning that the Arctic may have already passed a tipping point beyond which an ice-free Arctic summer is inevitable, and that a seasonally ice-free Arctic Ocean might be realized as early as 2012. Winter and spring sea ice will also continue to decline with the accelerating loss of summer sea ice that creates large open-water areas that increase the ice-albedo feedback. The Bering, Okhotsk, and Barents Seas are projected to lose at least 40% of winter sea-ice area by 2050. Any remaining sea-ice habitat will likely be of low quality because the sea ice will be thinner and the ice will melt sooner, leading to breakup of the sea ice during the reproductive and molting periods.

Global warming will impact ringed, bearded, and spotted seals directly by degrading and eliminating critical sea-ice habitat, which will have devastating consequences by reducing adult reproductive success and the survival of pups and impairing their ability to molt. Growing threats from climate change include depletion of prey resources due to changing ocean conditions and ocean acidification; increasing exposure to predators, competitors, disease, and human disturbance; and increasing shipping activity and oil and gas development, with associated risks of oil spills and noise pollution as sea-ice loss increases the accessibility of previously ice-covered regions. The ringed, bearded, and spotted seal also face threats from current or potential overexploitation from hunting, current oil and gas development in many parts of their range, rising contaminant levels in the Arctic, and bycatch mortality from commercial fisheries. Although the ringed, bearded, and spotted seal face multiple threats, each of these species merits listing under the ESA due to the threats from global warming alone.

Existing regulatory mechanisms have been ineffective in mitigating the principal threats to the ringed, bearded, and spotted seal, the most important of which is global warming. There

are currently no legal mechanisms regulating greenhouse gases on a national level in the United States. The immediate reduction of greenhouse gas pollution is essential to slow global warming and ultimately stabilize the climate system while there is still suitable sea-ice habitat remaining. Unless greenhouse gas emissions are cut dramatically in the immediate future, the disappearance of the sea ice and the decline and likely extinction of the ringed, bearded, and spotted seal, as well as the loss of the entire Arctic ecosystem, are essentially assured.

Full petition can be downloaded from:

http://www.biologicaldiversity.org/species/mammals/Arctic_seals/pdfs/CBD_ringed_bearded_spotted_petition.pdf