



ESA Update

Senate Resources Committee

February 10, 2016



Sam Cotten

ADF&G Commissioner

Bruce Dale

ADF&G DWC Director

Craig W. Richards

Attorney General

Brad Meyen

Sr. Assistant Attorney General



Goals

- **Provide stewardship for Alaska's wildlife**
- **Conduct and provide relevant and sound science**
- **Protect the State, including the economy, from unwarranted ESA regulations and impacts**
- **Maintain the State's management authority**
- **Build on the work of previous administrations**



Strategy

- Take strong positions to protect the State and fulfill our mandates
- Participate – prelisting to post delisting
- Coordinate – ADFG, LAW, DNR, Legislature
- Utilize our substantial scientific expertise
- Work with partners to avoid listings and minimize impacts
- Defend good decisions, strategically challenge bad decisions
- Address ESA shortcomings



ESA Process

- Public petition OR federal agency initiates review
- 90-day finding: “may be warranted”
- Status review and 12-month finding:
 - “Not warranted,” or
 - Proposed listing and critical habitat
- Final decision and critical habitat designated
- Recovery team → recovery objectives
- Recovery
- Delisting



Definitions

Threatened: likely to become endangered within the foreseeable future

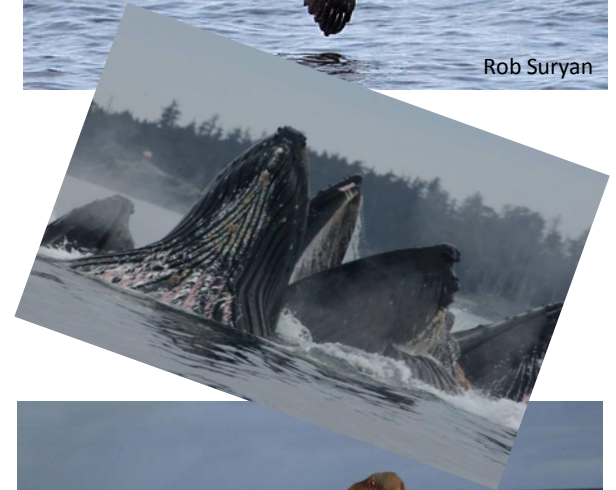


Endangered: in danger of extinction



Alaska ESA Situation Report

- FWS: 3 endangered, 5 threatened
- NMFS: 14 endangered, 16 threatened (only 3 with AK critical habitat)
- Candidate species: 4 (Iliamna seal, walrus, bog lemming, yellow cedar)
- Petitioned: 1 (western bumble bee)
- Proposed delisting: 1 (humpback whale)
- No known extinctions since State management, and decline of the 1 potentially extinct species (Eskimo curlew) was pre-statehood



Southeast Wolves

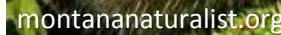
“Not warranted” listing determination

- **POW wolves do not qualify as a Distinct Population Segment**
- **Anticipate response from petitioners**
- **Preparations:**
 - **Coordinating between LAW and ADF&G**
 - **Demonstrating take can be managed sustainably**
 - **Continuing to fill knowledge gaps**
 - **Evaluating decision and status review**



Positive 90-day finding: “may be warranted”

-
- A map of Canada divided into nine numbered regions, each with a unique shading pattern. Region 1 is in the southwest (Alberta/Saskatchewan) with a grid pattern. Region 2 is in the west (British Columbia) with a diagonal line pattern. Region 3 is in the southwest (British Columbia) with a dotted pattern. Region 4 is in the northwest (Yukon/Alaska) with a cross-hatch pattern. Region 5 is in the east (Ontario/Quebec) with a horizontal line pattern. Region 6 is in the northeast (Quebec/N.B.) with a vertical line pattern. Region 7 is in the central (Manitoba/Saskatchewan) with a diagonal line pattern. Region 8 is in the southeast (Nova Scotia) with a horizontal line pattern. Region 9 is in the west (British Columbia) with a dotted pattern. The map includes latitude markings (56, 67, 10, 40) and longitude markings (110, 67). A scale bar indicates 0 to 600 miles.



Polar Bear

Listed as Threatened – Draft Recovery Plan

- First ESA climate change recovery plan
- Sea ice habitat is key factor in projected future declines
- ESA is not appropriate for regulating emissions
- “Take” is not a primary threat
- Take home: little conservation benefit for polar bears



USFWS



Polar Bear

Next Steps

- **Remain engaged: recovery team, research, US-Russia Polar Bear Commission**
- **Work with Alaska Native groups on harvest of subpopulations shared with Canada and Russia**
- **Critical habitat vacated – covered in litigation portion of update**



Humpback Whale

Endangered (Range-wide); proposed partial delisting

- Proposed delisting of Hawaii-Alaska stock in response to State of Alaska petition
- Final delisting rule expected soon
- State is engaged in development of the Post Delisting Monitoring Plan



Yellow Cedar

Positive 90-day finding: “may be warranted”

- **Climate change listing petition**
- **Submitted extensive comments (working with DNR):**
 - **Petitioners overstated the decline**
 - **Inconsistent evidence for climate change link**
- **Status review will likely not occur until 2019**



Other Potential Listings

Pacific Walrus

- Status review being initiated
- Decision by Sept. 2017 under FWS settlement



NOAA

Lake Iliamna Harbor Seal

- Expect listing decision in next few months



Western Bumble Bee

- Petition is being reviewed
- Ranges across much of Alaska



USDA



Addressing ESA Shortcomings

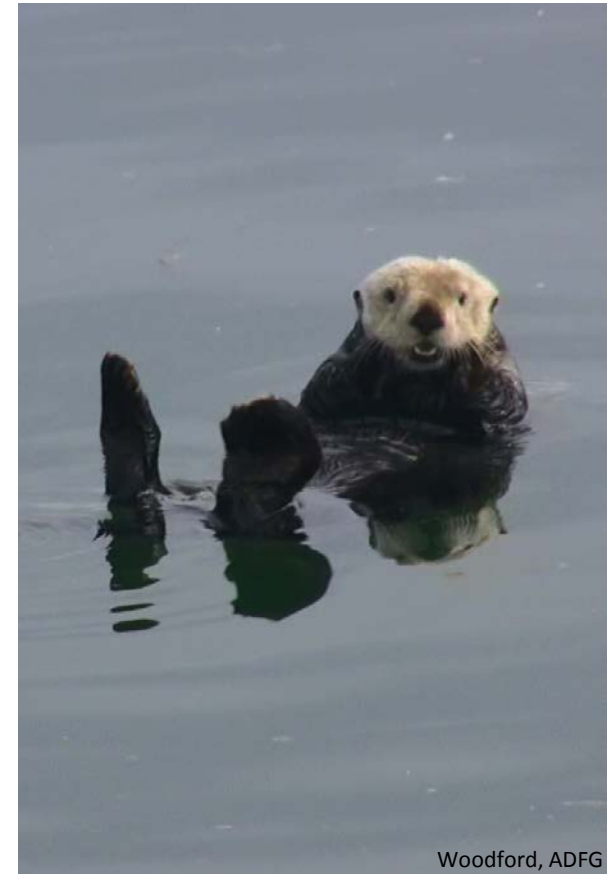
- 1. Western Governor's Association ESA Initiative**
- 2. Association of Fish and Wildlife Agencies – Threatened and Endangered Species Policy Committee**
- 3. State-Federal ESA Joint Task Force**



Addressing ESA Shortcomings

Statute, Regulations, and Implementation

- Increase States' role as Congress intended
- Improve the listing and critical habitat designations processes
- Address ESA climate change issues
 - Define foreseeable future appropriately
 - Account for uncertainty in models appropriately
 - Recognize limited benefit



Woodford, ADFG



ESA Research

One of the State's Best Tools

- Avoid unwarranted listings and critical habitat designations
- Identify worthwhile conservation actions to recover species
- Limit unnecessary ESA regulations
- Enables the State to drive good decisions



ESA Research

Kittlitz's murrelet

- **ADF&G research prevented listing**
- **Avoided potential cruise ship regulations**



Yellow-billed loon

- **ADF&G research helped prevent listing**



Little brown bats

- **ADF&G research is averting petitions**
- **Several bats are listed in the lower 48**



Status of ESA Litigation



Polar Bear Critical Habitat Litigation:

- FWS designated 187,000 square miles of land and water as critical habitat in 2011
- State and others sued in U.S. District Court (Alaska)
- Court vacated critical habitat rule for, among other reasons:
 1. Lack of record showing each primary constituent element present in each area;
 2. Failure to properly respond to State comments



Status of ESA Litigation



Polar Bear Critical Habitat Litigation:

- FWS and Center for Biological Diversity appealed to the Ninth Circuit
- Briefing was completed and oral argument held August 11, 2015
- A decision has yet to be issued by the Ninth Circuit
- State Case: *Alaska v. Sally Jewell et al.*



Status of ESA Litigation



Bearded Seals Listed in 2012:

- State and others sued in U.S. District Court (Alaska) to overturn decision
- In July 2014, Court vacated listing of Beringia Distinct Population Segment (the population in Alaska and federal territorial areas)
- Appealed by federal government and intervenors to the Ninth Circuit. (State case: *Alaska v. Sally Jewell et al.*)
- Final briefing due March 2016



Status of ESA Litigation



Ringed Seals Also Listed in 2012:

- State and others sued in U.S. District Court (Alaska) to overturn decision listing the Arctic subspecies
- All cases were consolidated for administrative purposes
- All briefing completed in November 2015; cases ripe for decision
- State case: *Alaska v. National Marine Fisheries Service*



Department of Law Role



ESA Tasks:

- Challenge unwarranted ESA decisions by federal agencies
- Intervene in support of beneficial federal agency decisions
- Assist ADF&G in commenting on proposed federal rules for listings, critical habitat, and changes in agency procedures
- Monitor ESA issues nationwide for impacts to Alaska
- Work with state alliances to address ESA impacts
- Seek ESA reform at national level

