

Designating Endangered Species in Alaska: A Cautionary Note

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Outline

1. Definition of the ESA
2. State of Alaska position
3. ESA process
4. Alaska ESA examples
5. Issues with current implementation
6. Current status of ESA listings in Alaska
7. Consultation process issues
8. Legal considerations



The ESA

- Adopted under President Nixon in 1973
- Purpose:
 - to protect critically imperiled species from extinction
 - to recover species to the point where legal protections are not needed
- Effect: Puts species and the habitats they occupy that the federal government determines to be critically imperiled under federal control and adopts a comprehensive federal regulatory oversight program.



ESA: State of Alaska Position

Let me be absolutely clear:

The State of Alaska supports listing of species that are critically imperiled and at risk of extinction in the immediate future.

Our concerns revolve around the question of what constitutes “critically imperiled” and requires listing and how much federal oversight is necessary to “recover” a species.



Agreement

North Pacific Right Whales

- The state agrees with the listing of this species as endangered.
- Only about 30 individuals are estimated to remain in the eastern stock which occasionally occupies Alaska waters.
- These species need protection to prevent their extinction.

We should all cooperate to ensure this species doesn't go extinct and recovers.



Disagreement

Ringed Seals

- The state disagrees with the listing of this species as threatened.
- This species currently numbers in the millions worldwide.
- By their own analysis NOAA found there will be no population level impacts to this species in the next 50 years.
- However, this species was listed based solely on climatic modeling results that show something might happen in the next 100 years that warrants its listing today.
- As a result of its listing this species is granted the same protections as the right whale and NOAA recently proposed a designation of critical habitat for this species that is about the size of Texas.

We disagree with the listing of this species and are fighting in court to reverse it.



ESA Process

- Public petition or agency initiation
- 90-Day finding
- 12-Month status review
- Proposed decision
- Final decision
- Designation of critical habitat
- Establishment of recovery team & development of recovery objectives
- Uplisting, downlisting, or delisting



Alaska ESA Examples



Aleutian Canada Goose

Photo: Roy Lowe

Aleutian Canada Goose



Steller Sea Lion



Polar Bear



**Beluga Whales
in Cook Inlet**





Aleutian Canada Goose

- “Listed as endangered” in 1967
- Recovery Plan adopted in 1974
 - ***Predation by introduced foxes was identified as the main threat – this threat was addressed***
- Did not define critical habitat
- Re-classified to threatened in 1990
- De-listed in 2001 as recovered





Steller Sea Lion

- Listed as threatened in 1990
- Critical habitat established in 1993
- Western stock up-listed to endangered in 1997
- Fishery BiOp prepared as part of Section 7 consultation
 - *Fishing restricted beginning in 1998*
- Recovery Plan adopted in 1992 and revised in 2008
 - Recovery objectives established
 - *Grow at 3% per year for 30 years*
 - *Growth must occur throughout range*
 - *Threats facing the stocks eliminated and monitored*
 - Research needs identified:
 - *Total estimated cost ~\$430 million*





Steller Sea Lion

- **Current Status**

- **Eastern stock: Remains threatened**

- Recovery objectives achieved

- **Western stock: Remains endangered**

- Population at ~ 60,000 animals

- **State successfully challenged the federal BiOp based on its data and assessment and eased fishery restrictions put in place.**





Polar Bear

- Environmental groups petitioned USFWS to list polar bears as endangered due to climate change impacts
- May 2008, USFWS listed polar bears as threatened based on:
 - *climate change will result in a decline of sea ice habitats*
 - *lost habitat will threaten currently healthy populations with extinction over the next 50-100 years*





Polar Bear

- **Section 4d Rule**

- *Defines the scope of the Section 7 consultation process*

- **Critical Habitat**

- *Designated over state objection over 200,000 square miles as critical habitat*

- **Recovery Plan**

- *Developed a recovery/conservation plan that set recovery objectives to OSY numbers*





Polar Bear

■ Current Status

- *There are 2 subpopulations in Alaska.*
 - *The Chukchi Sea population is healthy and viable*
 - *The Southern Beaufort Sea population which has declined in numbers but stabilized.*

***In short,
they are not at any immediate risk of
extinction***





Polar Bear

■ Listing Impacts

- *Has impacted seismic work in ANWR and on the North Slope*
- *Is impacting ITR for existing and new oil and gas operations both on and offshore*
- *Is impacting traditional uses of polar bears by our native peoples*
- *Is impacting interest in Alaska as a place to conduct business*





Beluga Whales in Cook Inlet

- Beluga whales over-harvested in early to mid 1990s
- In 1998, NMFS initiated a status review to list beluga whales in Cook Inlet as endangered
- In 2000, NMFS determined the whales are not in danger of extinction and chooses to not list under ESA
- NMFS instead lists the whales as depleted under the MMPA
- In October 2008 NMFS listed beluga whales as endangered based on:
 - ***population was not increasing as fast as expected after harvest was regulated***
 - ***the population had a greater than 1% chance of going extinct within 100 years***





Beluga Whales in Cook Inlet

- Critical habitat has been established in Cook Inlet
- A recovery plan has been developed that sets the recovery goal to OSY levels
- We are now seeing a wide variety of lawsuits impacting oil and gas operations as a result of the listing
 - The state is engaged as an intervenor.
- NMFS has stated its intent to examine fisheries impacts on these whales with an eye towards restricting fisheries



Issues With Current Implementation of the ESA



What is appropriate when modeling the populations being considered for listing?

- How far into the future can population trends be reasonably predicted –
10 years, 50 years, 100 years, 300 years?
- What is a reasonable level of extinction risk –
1%, 10%, 20%, 25%?



For climate related listings:

- Is it possible to save all species in their historic ranges when the ecosystems are changing due to climate change?
- Assuming climate is changing ecosystems, how should critical habitat be established and defined?
- How would recovery objectives be written, especially for species at currently healthy levels but are projected to decline?
- Should a species be listed even if the cause (climate change) cannot reasonably be addressed by the ESA?
- What could not be listed due to climate change?



For recovery objectives:

- Are recovery objectives set too high?
- Can threats be completely removed?
- Can population targets be reached and sustained?
- MMPA and ESA have different criteria for de-listing. Should ESA recovery standards be the same as those for de-listing under MMPA?

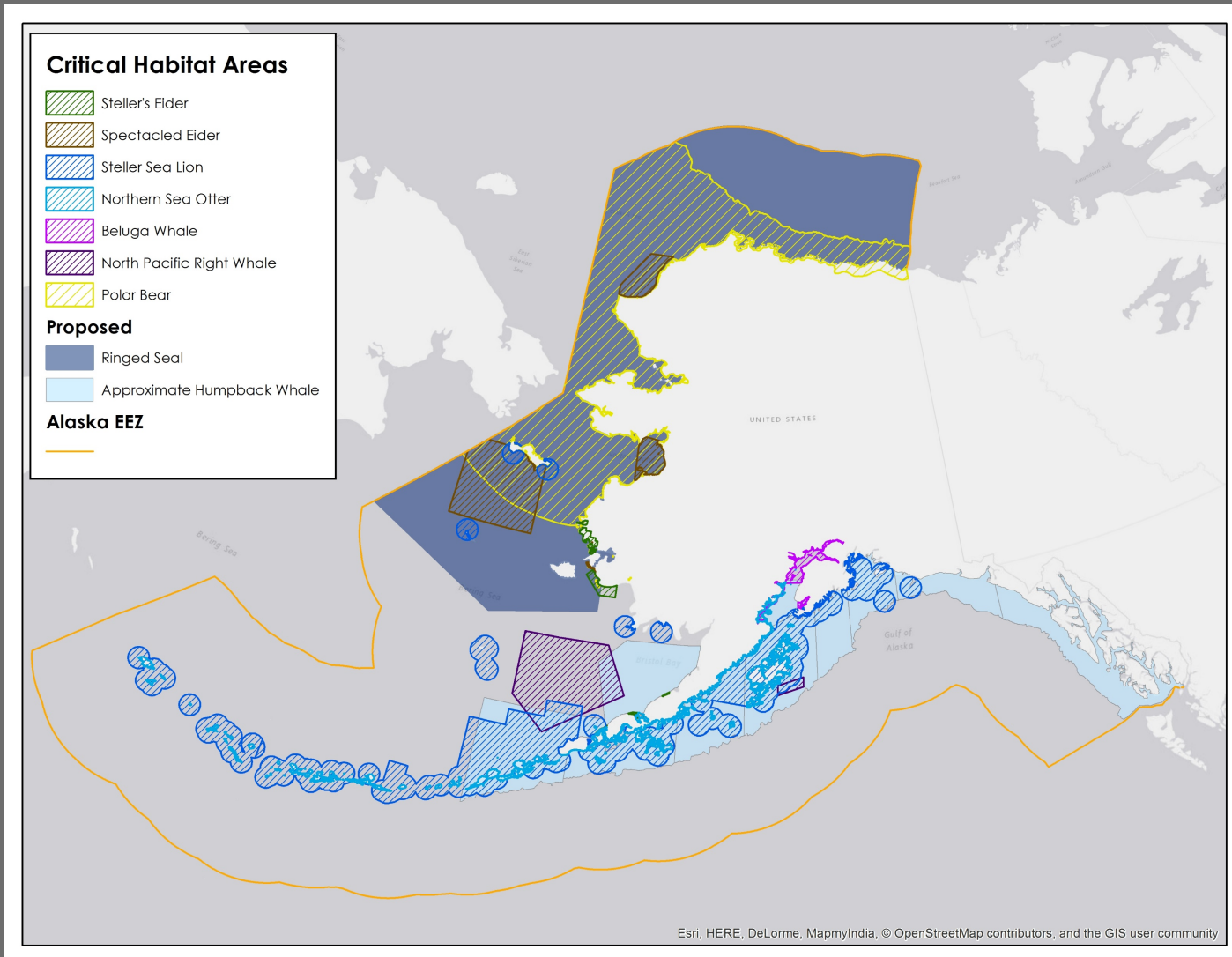


For critical habitat:

- What is truly critical?
- Are excessive designations necessary?
- What is considered a demines impact?



Currently or Proposed Critical Habitat in Alaska



It is easier to list than delist a species.

- About 2,000 plants and animals are currently listed as threatened or endangered under ESA
- An additional 300+ species are being considered for listing
- To delist, the agency must determine that:
 - *a species must be no longer in danger of becoming extinct*
 - *threats facing it have been eliminated and are monitored*
- Since inception, only 46 species de-listed, of which only 20 have been recovered (~1%)



Current Status of Listings in Alaska



ESA:

Endangered Species

- Short-tailed albatross - USFWS
- Eskimo curlew - USFWS (presumed extinct)
- Aleutian shield fern - USFWS
- Steller sea lion (western stock) - NMFS
- Bowhead whale - NMFS
- Fin whale – NMFS
- Cook Inlet beluga whale - NMFS
- Humpback whale (Western NP DPS) - NMFS
- Other rare species: North Pacific right whale, Blue whale, Sei whale, Sperm whale, and the Leatherback sea turtle - NMFS



ESA: Threatened Species

- Spectacled eider - USFWS
- Steller's eider (AK breeding pop) – USFWS
- Polar bear - USFWS
- Northern sea otter, southwest Alaska DPS - USFWS
- Steller sea lion, eastern pop. – NMFS
- Green, loggerhead and olive ridley sea turtles – NMFS
- Wood bison (less the E/NS population) – USFWS
- Mexican DPS humpback whale - NMFS



Species Currently Under Consideration for ESA listing

- Alexander Archipelago wolf - USFWS
- Pacific walrus - USFWS
- Kittlitz's murrelet – USFWS
- Pinto abalone – NMFS
- Lynn Canal herring – NMFS
- Lake Illimna ice seals – NMFS
- Suckley's bumblebee – USFWS



Highly Migratory Species Outside Alaska Currently ESA Listed

- Southern resident killer whales- NMFS
- Mexican humpback whales- NMFS
- Puget Sound Chinook salmon– NMFS
- Snake River Fall Chinook– NMFS
- Willamette River Chinook– NMFS
- Lower Columbia Fall Chinook- NMFS

These ESA listings impact Alaska's fisheries.



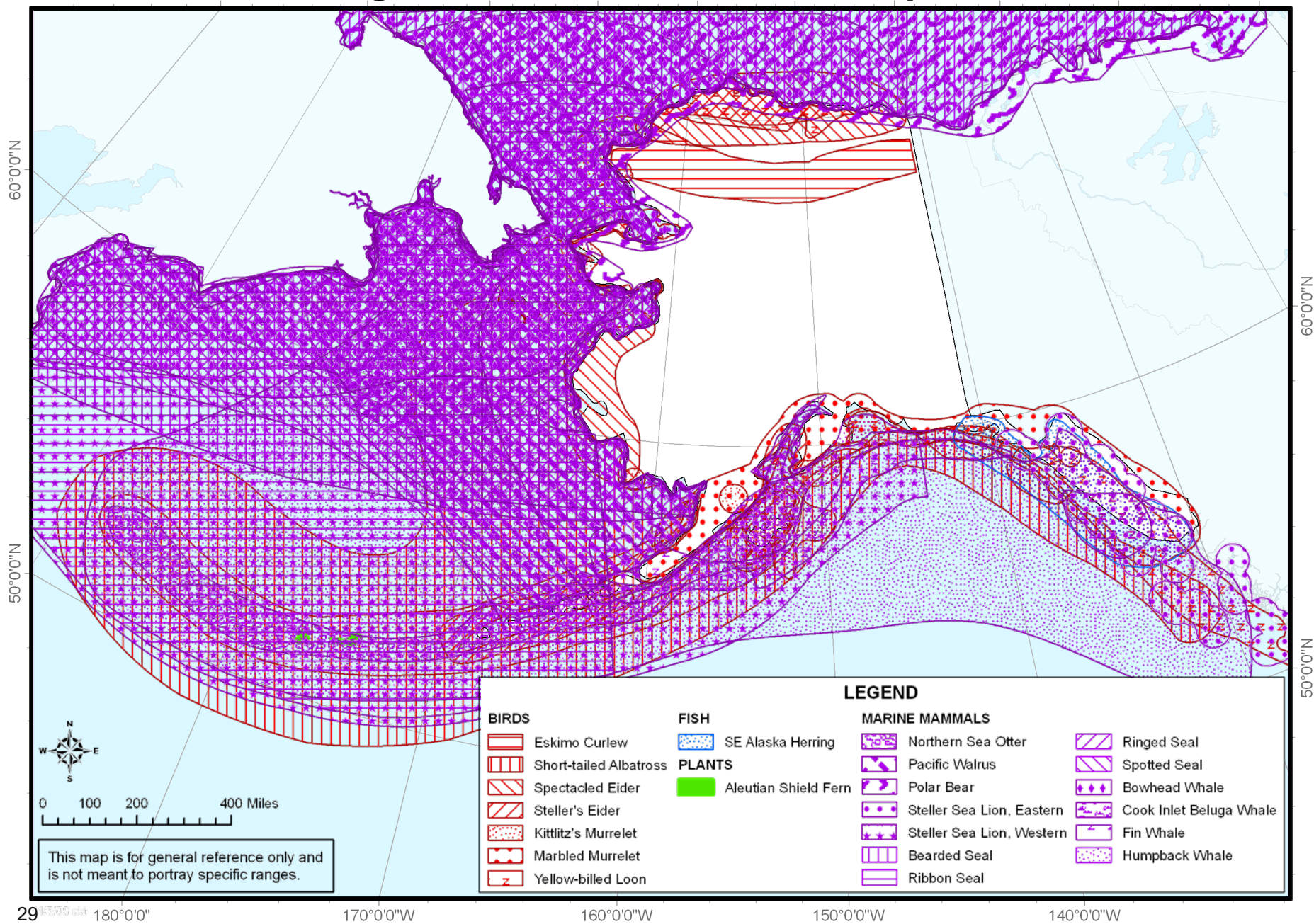
What Happens After Listing?

- **Section 9:** Prohibits the “take” of a listed species. Under Section 3 take includes “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct”.
- **Section 7:** For projects that have a federal “nexus”, federal agencies need to consult with NMFS or USFWS on any project that may affect a listed species or its critical habitat.
 - **Biological assessment (“likelihood to effect” decision)**
 - **BiOp (with “JAM” finding and resultant incidental take statement and minimization measures).**
- **Section 10:** For projects that have “incidental take” but no federal nexus.
 - **Habitat Conservation Plans (HCP) to minimize and mitigate impact of incidental take**
 - **Incidental take permits w/ approved HCP**

These are applicable throughout a species' range.



Range of Listed or Candidate Species



Consultation Process Issues

As more species are listed the more likely:

- minimization & mitigation efforts will conflict*
- recovery objectives will conflict*
- critical habitat needs will conflict*
- climate impacts will be considered*



Legal Considerations

- *All agency decisions are subject to citizen litigation, from listing decisions to critical habitat designations, to JAM authorizations.*
- *This has the real potential to slow resource development projects, and place decisions in the hands of judges.*



Summary

- Listing decisions will affect resource development in Alaska
 - *Steller sea lion mitigation measures*
 - *Polar bear ITR's*
- Listing decisions and implementation should be based on reasonable conclusions:
 - *Reasonable time frames for population projections*
 - *Reasonable levels of extinction risk*
 - *Reasonable recovery objectives and goals*
 - *Reasonable establishment of critical habitat*



Current State Strategy

- Challenge unwarranted or unjustified listing decisions (e.g., polar bear)
- Intervene in court cases in which the state has an interest (e.g., ribbon seal)
- Initiate down- or de-listing petitions for recovered species (e.g., Eastern DPS of SSL)
- Conduct research on at-risk or listed species to improve knowledge (e.g., Section 6 funds)
- Help Alaskans navigate thru the ESA processes



Current State Strategy

- Governor's budget includes a capital request for ADF&G to fund data collection and engage in legal challenges.
- Governor's budget also includes an increment for the Department of Law to engage in legal challenges of unwarranted actions.



Thank you

Questions?

