

HJR

44



Committee Assignments:

Member:

House Special Committee on Fisheries
House Special Committee on Education
House Transportation Committee
House Judiciary Committee

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SPONSOR STATEMENT

House Joint Resolution 44

3/22/04

"Relating to research into the decline of the Southwest Alaska population of the Northern Sea Otter in the western Gulf of Alaska."

The Southwest Alaska population of Northern Sea Otters has declined as much as 65 percent since the mid-1970s. In response to this precipitous decline, the United States Fish and Wildlife Service recently proposed listing the sea otters in the Southwest region as threatened under the Endangered Species Act.

As we have witnessed with Steller sea lions, commercial fishing activity in Southwest Alaska could be curtailed if sea otters gain protected status. Our coastal communities, as well as the state as a whole, depend heavily on revenue generated by commercial fishing.

In an attempt to be proactive, this resolution asks the U.S. Fish and Wildlife Service and the U.S. Congress to provide \$5 million per year for five years for research into the abundance of Northern Sea Otters and the reasons behind their decline. Since Kodiak is uniquely situated in the Gulf of Alaska and is also a large commercial fishing port, the resolution asks that research into the sea otters' population decline be centered in Kodiak, with field stations in other western Alaska coastal communities.

Previous surveys of sea otter population levels have been sporadic and have not produced long-term reliable data. It is imperative that scientists immediately begin to consistently monitor and investigate the sea otters' decline to mitigate the potential negative effects on Alaska's commercial fishing industry.

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U.S. Fish & Wildlife Service

ESA Listing for Sea Otters in Southwest Alaska

The numbers of sea otters in southwest Alaska have declined by at least 56 to 68 percent since the mid-1980s. This population of otters occurs in nearshore waters from the Aleutian Islands to Cook Inlet, including waters adjacent to the Aleutians, the Alaska Peninsula, and the Kodiak archipelago. Recognizing the severity of the decline, the U.S. Fish and Wildlife Service is proposing to list the southwest Alaska Distinct Population Segment of northern sea otter as threatened under the Endangered Species Act. The following information was prepared to answer questions that you might have regarding this proposed listing

When will sea otters be listed, and will they be listed as "threatened" or "endangered?"

FWS has published in the Federal Register a proposal to list the southwest Alaska DPS of the northern sea otter as threatened under the ESA. The Service expects to make a final determination on whether to list the DPS within one year of publication of the proposal, as required by the ESA. Information on how the listing process proceeds following publication of a proposal to list can be found at <http://endangered.fws.gov/listing/listing.pdf>. A threatened species (or DPS) is one that is considered likely to become endangered in the foreseeable future. An endangered species (or DPS) is one that is considered to be in danger of extinction throughout all or a significant portion of its range in the foreseeable future.

Under the ESA, a "species" is defined as including any subspecies of a plant or animal, and any distinct population segment, or DPS, of any species or vertebrate fish or wildlife. The basis for identifying a DPS is described in our DPS policy (<http://endangered.fws.gov/policy/pol005.html>), and is explained in the proposed rule.

How can I participate in this process?

When the proposed rule is published in the Federal Register, a 120-day formal public comment period will begin. The

proposed rule provides information on how to submit written comments. The Service will hold public hearings on the proposed rule in southwest Alaska, if requested. Requests for public hearings must be received by the Service within 60 days of publication of the proposed rule.

If the proposed listing becomes final, how will that impact human activities in southwest Alaska?

The ESA and its implementing regulations include some general requirements, prohibitions, and exceptions that apply to threatened and endangered wildlife. If the proposal to list the southwest Alaska DPS of the northern sea otter as threatened becomes final, Federal agency actions would be subject to the consultation requirements under section 7 of the ESA. Under section 7, Federal agencies are required to ensure, in consultation with the Service, that an action they "authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species," including a subspecies or a DPS.



In addition, the ESA prohibits take of listed wildlife. The Service has issued regulations (50 CFR 17.21) that generally apply these prohibitions to threatened wildlife. If the southwest Alaska DPS of the northern sea otter is listed, these prohibitions on take would come into effect. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these. However, the Endangered Species Act allows the Secretary of the Interior to issue rules that provide exceptions to the prohibition on take for threatened species. Under current regulations, a "special rule" can be tailored for a particular threatened species, so that take prohibitions would not apply. The special rule would contain the prohibitions and exemptions necessary and appropriate to conserve the species. In addition, the ESA provides for an exemption for Alaska Natives that allows them to continue to conduct traditional subsistence harvesting of sea otters if the DPS is listed.

The proposed rule seeks public comment on activities that are unlikely to result in violations of the take prohibitions of the ESA.

Will critical habitat be proposed?

The proposed rule to list the southwest DPS of the otter as threatened does not include a proposal for designating critical habitat. As explained in the proposed rule, critical habitat is not determinable at this time. As part of the request for public comments on the proposal to list the DPS, the Service is seeking information regarding features and specific areas that the Service should consider for a critical habitat proposal, in the event that the listing becomes final. If the Service does propose critical habitat for the DPS in the future, the public would have an opportunity to comment on such a proposal.



Would listing close commercial fishing in southwest Alaska, similar to what happened with Steller sea lions?

We do not anticipate that listing the southwest DPS of the northern sea otter would result in closure of commercial fishing in southwest Alaska. Steller sea lions are fish eaters, and they congregate in large numbers at specific sites known as haulouts and rookeries but feed in open waters. In contrast, sea otters eat primarily invertebrates that live in shallow waters; and because of the sea otter's dependence on them, sea otters spend the vast majority of their time quite close to the shore. The Alaska Department of Fish and Game recently analyzed its commercial fishing database. The results indicate that the species which otters most often prey upon have little or no commercial interest, and the areas where they live generally do not overlap with those where most commercial fishing occurs.

Are sea otters hunted today?

Yes, to a limited extent. The Marine Mammal Protection Act of 1972 (MMPA) prohibits the "take" of marine mammals, including sea otters. Under the MMPA, take is defined as "hunt, harass, capture, or kill." The MMPA provides an exemption for Alaska Natives, who are allowed to hunt marine mammals for subsistence purposes and to create and sell authentic articles of handicraft and clothing made from marine mammal parts. As noted above, the Endangered Species Act includes a provision that allows Alaska Native residents of coastal villages to conduct subsistence harvesting of sea otters even if the DPS is listed.

Is subsistence hunting a contributing factor in the decline?

Subsistence hunting does not appear to be contributing to the decline of the DPS. Since 1988, the Service has administered a program for monitoring the harvest of sea otters, polar bears, and Pacific walrus in Alaska. This program is known as the marine mammal Marking, Tagging, and Reporting Program (MTRP). Alaska Natives who harvest sea otters are required by law to present each skin and skull to an MTRP tagger within 30 days. Plastic, numbered tags are attached to the skin and skull, and information about the sea otter is recorded and sent to the Service's Marine Mammals Management Office in Anchorage, Alaska. Since the inception of the MTRP, the combined harvest from southwest Alaska villages has averaged fewer than 100 otters per year. For more information about the MTRP, contact Dean Cramer, Wildlife Biologist, at (907) 786-3806.

Will subsistence hunting be affected by this action?

Both the Endangered Species Act and the MMPA have provisions that allow Alaska Natives to conduct subsistence harvesting.

Why would killer whales be eating sea otters?

In a paper published in the October 16, 1998 issue of Science, Dr. James Estes of the U.S. Geological Survey outlined an hypothesis that killer whales may have begun eating sea otters in response to declines in other prey items, specifically harbor seals and Steller sea lions. Declines in those species are believed to be due to changes in the composition and abundance of forage fish.



If killer whales are the cause of the decline, how does ESA listing address the problem?

Though killer whale predation has been suggested as a possible cause of sea otter declines, this is as yet only a theory and one that is not shared by all sea otter researchers. Killer whales are also protected under the Marine Mammal Protection Act. Regardless of the cause of the sea otter decline, if the DPS is listed, the Service's highest priority is to foster the recovery of the DPS. A final listing of the DPS would subsequently lead to the development of a recovery plan by Federal, State, and local agencies and private groups to describe appropriate conservation measures for the recovery of the DPS. Additionally, Alaska would be eligible for grant funds for management actions promoting the conservation and recovery of the southwest Alaska DPS of the northern sea otter.

U.S. Fish & Wildlife Service
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All Photos by Dr. Randall Davis,
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News

04-03

For Immediate Release

Contact: Bruce Woods (907) 786-3695

U.S. FISH AND WILDLIFE SERVICE PROPOSES LISTING SOUTHWEST ALASKA SEA OTTERS AS "THREATENED" UNDER ENDANGERED SPECIES ACT

The U.S. Fish and Wildlife Service is proposing to list the southwest Alaska Distinct Population Segment of the northern sea otter (*Enhydra lutris kenyoni*) as threatened under the Endangered Species Act (ESA.) A Proposed Rule regarding the listing was published today in the Federal Register. The Service will accept comments on the proposed rule for the next 120 days.

"We are proposing to list the sea otter population in southwest Alaska based on survey data indicating that it has declined dramatically over the last 10 to 15 years," said Rowan Gould, Regional Director of the Service's Alaska Region. "This population, which once contained more than half of the world's sea otters, has declined at least 56 to 68 percent since the mid-1980s and we have no indications that the decline has ceased."

Under the ESA, "species" is defined broadly to include species, subspecies, and also to include Distinct Population Segments, or DPS, of vertebrate species. A DPS is a portion of a vertebrate species or subspecies that is discrete from the remainder of its taxon and also is significant to that taxon. The ESA defines a "threatened" species as one that is likely to become endangered in the foreseeable future. An "endangered" species is defined as being in danger of extinction throughout all or a significant portion of its range.

The proposed rule describes the southwest Alaska DPS of the northern sea otter as occurring in nearshore waters from the Aleutian Islands to Cook Inlet, including waters adjacent to the Aleutians, the Alaska Peninsula, and the Kodiak archipelago. This corresponds to the range of the southwest stock of sea otters recognized in 2002 by the Service in accordance with provisions of the Marine Mammal Protection Act. Two other stocks of sea otters in Alaska that also were recognized in 2002, the southcentral and southeast stocks, are believed to be stable or increasing and are not included in the proposed rule published today.

Between the mid 1700s and the early 1900s, commercial hunting of sea otters brought the entire species to the brink of extinction. When they became protected from commercial harvest in 1911 under the International Fur Seal Treaty, only 13 small remnant populations were known to still exist, including six in southwest Alaska. Following this protection, otters from 11 of these populations gradually recovered and re-colonized their former range in southwest Alaska and some other portions of their historic range.

A substantial decline in the southwest Alaska otter population appears to have begun in the mid- to late 1980s. In the Aleutians, there were approximately 55,000 to 74,000 sea otters in the mid-1980s, representing almost half of the world's estimated population of sea otters at that time. Aerial surveys since that time, however, indicate a progressive decline in the number of otters in the Aleutians, where the current population is estimated to be less than 9,000 animals. Survey results also show substantial declines have occurred in the Alaska Peninsula, where the counts of otters have declined by more than 65 percent since the mid 1980s. In the Kodiak Archipelago, surveys indicate the number of otters has declined more than 55 percent since the

late 1980s. Overall, the DPS has declined an estimated 56 to 68 percent over the past 10 to 15 years, and recent surveys indicate the decline is continuing.

The cause of the population decline is not clear. Production of young does not appear to be reduced, nor is there evidence that starvation, disease, or contaminants are involved. There also is no evidence that entanglement in commercial fishing gear or competition with fishermen for prey species is playing a significant role in the decline, and annual subsistence harvest by Alaska Natives is believed to be too low to contribute significantly to the decline. Some evidence points to predation by killer whales as a possible cause of the decline in the Aleutian Island chain. However, additional research will be needed before we can confidently identify the cause of the decline.

The proposed rule to list the southwest DPS of the otter as threatened does not include a proposal for designating critical habitat. As explained in the proposed rule, critical habitat is not determinable at this time. As part of the request for public comments on the proposal to list the DPS, the Service is seeking information regarding features and specific areas that the Service should consider for a critical habitat proposal, in the event that the listing becomes final. If the Service does propose critical habitat for the DPS in the future, the public would have an opportunity to comment on such a proposal.

If the southwest Alaska DPS of the sea otter is listed as threatened under the ESA, a recovery plan would be developed for it. This plan would bring together efforts by Federal, State, Alaska Native groups, local agencies, and private entities for the conservation of the DPS.

The Service invites the public to submit data, information, and comments on the proposed rule. The Service will accept comments on the proposed rule for the next 120 days, and during that time the Service also will hold one or more public hearings where the public can obtain information and offer comments. Requests for public hearings need to be received by the Service within the next 60 days. A copy of the proposed rule and other information about the proposal is available on the Internet at <http://alaska.fws.gov/current.htm>. Comments on the proposal can be emailed to fw7_swakseaotter@fws.gov.

You can subscribe to the U.S. Fish and Wildlife Service, Alaska Region listserver to have our press releases sent to your e-mail address automatically by sending a message to: listserv@www.fws.gov. Please indicate that you would like to subscribe to FWS-Alaska news and give your name in the body of the message.

The U.S. Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 542 national wildlife refuges, thousands of small wetlands and other special management areas. It also operates 69 national fish hatcheries, 64 fishery resource offices, and 81 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

- FWS

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