

**02/10/16
OVERVIEW:
STATE OF
ALASKA AND
ENDANGERED
SPECIES ACT
LISTINGS**

<TARGET><BILL></BILL><SUBJECT>02-10-16 OVERVIEW STATE
OF ALASKA AND ENDANGERED SPECIES ACT
LISTINGS</SUBJECT><COMM>SRES29</COMM></TARGET>



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

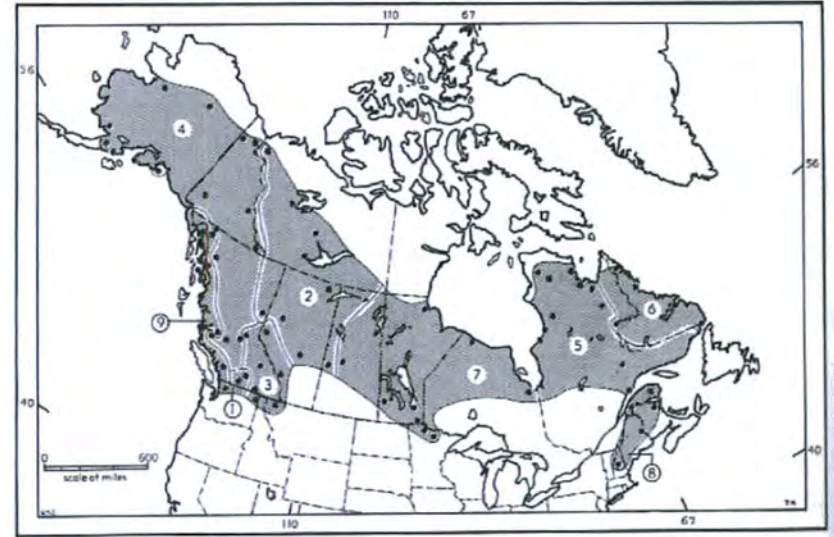
- **POW wolves do not qualify as a Distinct Population Segment**
- **Anticipate response from petitioners**
- **Preparations:**
 - **Coordinating between LAW and ADF&G**
 - **Demonstrating take can be managed sustainably**
 - **Continuing to fill knowledge gaps**
 - **Evaluating decision and status review**



Northern Bog Lemming

Positive 90-day finding: “may be warranted”

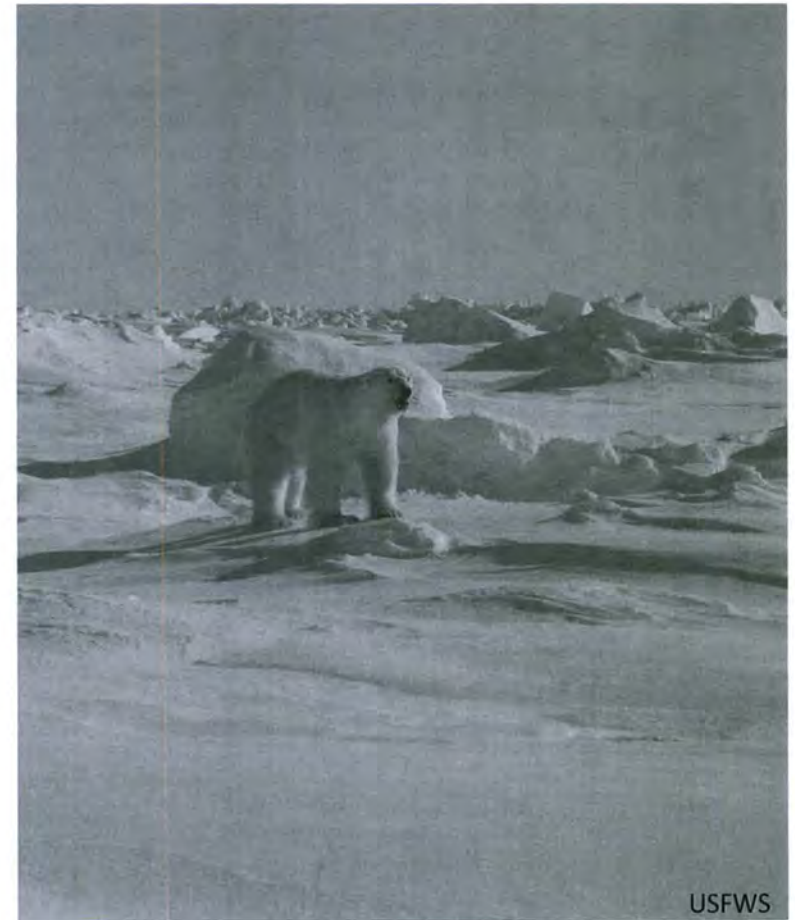
- Climate change focused petition
- Submitted extensive comments: no evidence that species is at risk of extinction in Alaska
- Status review not expected until after 2020



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**



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”

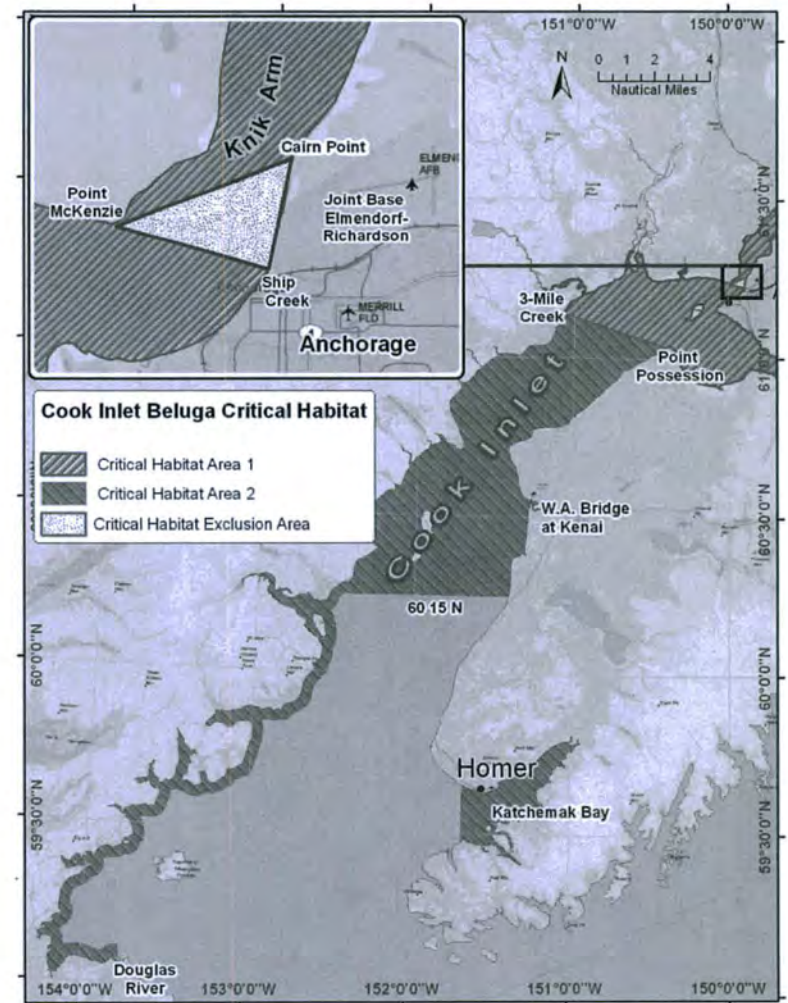
- **Climate change listing petition**
- **Submitted extensive comments (working with DNR):**
 - **Petitioners overstated the decline**
 - **Inconsistent evidence for climate change link**
- **Status review will likely not occur until 2019**



Cook Inlet Beluga Whale

Listed as Endangered – Draft Recovery Plan

- The plan provides no viable path to downlist or delist, even if the whales are no longer in danger of extinction
- Conducting research on use areas within Cook Inlet
- Hope to work with our partners on further research to mitigate impacts and regulatory burdens.



Addressing ESA Shortcomings

Statute, Regulations, and Implementation

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



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



Alaska ESA Litigation List

Organizations involved in litigation over ESA issues affecting species in Alaska as plaintiff or intervening parties:

SE Wolves deadline case

Center for Biological Diversity; Greenpeace, Inc.; The Boat Company

- Center for Biological Diversity et al. v. Jewell et al.; U.S. District Court, District of Columbia (Case No.: 1:14-cv-00991-EGS)

Polar Bear critical habitat case

Center for Biological Diversity; Defenders of Wildlife; Greenpeace, Inc.

- State of Alaska v. Jewell et al.; U.S. District Court, District of Alaska (Case no.: 3:11-cv-00036-RRB)
- Alaska Oil and Gas Association, State v. Jewell & Center for Biological Diversity; U.S. Court of Appeals for the Ninth Circuit (Case Nos. 13-35619, 13-35662, 13-35666, 13-35667, 13-35669)

Polar Bear listing case

Center for Biological Diversity; Greenpeace, Inc.; Natural Resources Defense Council; Humane Society of the United States; International Fund for Animal Welfare; Defenders of Wildlife

- In Re Polar Bear Endangered Species Act Listing and 4(D) Rule Litigation - MDL 1993; U.S. District Court, District of Columbia (Case no. 1:08-mc-00764)
- In Re Polar Bear Endangered Species; U.S. Court of Appeals for the District of Columbia (Case no. 11-5219 consolidated with nos. 11-5221, 11-5222, 11-5223)

Ringed Seal listing case

Center for Biological Diversity

- State of Alaska v. National Marine Fisheries Service et al.; U.S. District Court, District of Alaska (Case no.: 4:15-cv-00005-RRB)

Bearded Seal Listing case

Center for Biological Diversity

- State of Alaska v. National Marine Fisheries Service et al., U.S. District Court, District of Alaska (Case no.: 4:13-cv-00021);
- Alaska Oil and Gas Association, et al. v. Penny Pritzker, et al., U.S. Court of Appeals for the Ninth Circuit (Case Nos. 14-35806 & 14-35811)

Ribbon Seal listing case

Center for Biological Diversity; Greenpeace, Inc.

- Center for Biological Diversity et al. v. Lubchenco et al.; U.S. District Court, N. District of California-San Francisco Division (Case. No.: 3:09-cv-04087-EDL)

Cook Inlet DPS Beluga whale listing case

Center for Biological Diversity; Alaska Center for the Environment; Cook Inletkeeper; North Gulf Oceanic Society; Natural Resources Defense Council; Defenders of Wildlife

- State of Alaska v. Lubchenco et al.; U.S. District Court, District of Columbia (Case no.: 1:10-cv-00927-RCL)

Steller sea lions case

Oceana, Inc.; Greenpeace, Inc.

- State of Alaska v. Lubchenco et al.; U.S. District Court, District of Alaska (Case no.: 3:10-cv-00271-TMB)
- State of Alaska, et al. v. Jane Lubchenco, et al.; U.S. Court of Appeals for the Ninth Circuit (Case Nos. 12-35201, 12-35203, 12-35204)

ESA Petition List and Outcome

Petition Species	Date Submitted	Petitioner	Outcome	Notes
Wolf, Alexander Archipelago (emergency listing request)	9/24/2015	Alaska Wildlife Alliance	not warranted	can't petition an emergency listing and also concluded with a not warranted finding
Wolf, Alexander Archipelago (emergency listing request)	9/24/2015	Cascadia Wildlands	not warranted	can't petition an emergency listing and also concluded with a not warranted finding
Wolf, Alexander Archipelago (emergency listing request)	9/24/2015	Center for Biological Diversity	not warranted	can't petition an emergency listing and also concluded with a not warranted finding
Wolf, Alexander Archipelago (emergency listing request)	9/24/2015	Greater Southeast Alaska Conservation Community	not warranted	can't petition an emergency listing and also concluded with a not warranted finding
Wolf, Alexander Archipelago (emergency listing request)	9/24/2015	Greenpeace	not warranted	can't petition an emergency listing and also concluded with a not warranted finding
Wolf, Alexander Archipelago (emergency listing request)	9/24/2015	The Boat Company	not warranted	can't petition an emergency listing and also concluded with a not warranted finding
Western bumble bee	9/15/2015	Defenders of Wildlife	in process	
Northern bog lemming	10/3/2014	Wild Earth Guardians	in process, positive 90 day finding (may be warranted)	
Yellow-cedar	6/25/2014	Center for Biological Diversity	in process, positive 90 day finding (may be warranted)	
Yellow-cedar	6/25/2014	Greater Southeast Alaska Conservation Community	in process, positive 90 day finding (may be warranted)	
Yellow-cedar	6/25/2014	Greenpeace	in process, positive 90 day finding (may be warranted)	
Yellow-cedar	6/25/2014	The Boat Company	in process, positive 90 day finding (may be warranted)	
Pinto abalone	8/1/2013	Center for Biological Diversity	not warranted	
Iliamna Harbor Seal	11/19/2012	Center for Biological Diversity	in process, positive 90 day finding (may be warranted)	
44 cold water corals off Alaska	8/20/2012	Center for Biological Diversity	not warranted	Petition did not present substantial information that a listing may be warranted
Wolf, Alexander Archipelago	8/10/2011	Center for Biological Diversity	not warranted	
Wolf, Alexander Archipelago	8/10/2011	Greenpeace	not warranted	
3 species of ice seals (bearded, ringed, and spotted)	5/28/2008	Center for Biological Diversity	mixed not warranted and listed as threatened	spotted not warranted, ringed threatened, bearded threatened
Walrus, Pacific	2/8/2008	Center for Biological Diversity	warranted but precluded	
Ribbon seal	12/20/2007	Center for Biological Diversity	not warranted	

ESA Petition List and Outcome

Petition Species	Date Submitted	Petitioner	Outcome	Notes
Lynn Canal Herring	4/2/2007	Juneau Group of the Sierra Club	not warranted	
Cook Inlet beluga whale	4/20/2006	Alaska Center for the Environment	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Alaska Community Action on Toxics	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Alaska Oceans Program	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Audubon Society	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Center for Biological Diversity	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Cook Inlet Keeper	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Defenders of Wildlife	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Friends of Potter Marsh and the Anchorage Coastal Wildlife Refuge	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Kachemak Bay Conservation Society	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Natural Resources Defense Council	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	North Gulf Oceanic Society	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Sylvia Brunner	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Cook Inlet beluga whale	4/20/2006	Trustees for Alaska	Listed as endangered	note the original petition submitted in 2000 to list the whales was unsuccessful.
Polar bear	2/16/2005	Center for Biological Diversity	Listed as threatened	

ESA Petition List and Outcome

Petition Species	Date Submitted	Petitioner	Outcome	Notes
Yellow-billed loon	3/30/2004	Center for Biological Diversity	not warranted	
Yellow-billed loon	3/30/2004	Interregional Public Charitable Organization of Far Eastern Resource Centers "ISAR"	not warranted	
Yellow-billed loon	3/30/2004	Kaira Club	not warranted	
Yellow-billed loon	3/30/2004	Kamchatka Branch of Pacific Institute of Georgraphy	not warranted	
Yellow-billed loon	3/30/2004	Kamchatka League of Independent Experts	not warranted	
Yellow-billed loon	3/30/2004	Kronotsky Nature Preserve	not warranted	
Yellow-billed loon	3/30/2004	Natural Resources Defense Council	not warranted	
Yellow-billed loon	3/30/2004	Pacific Environment	not warranted	
Yellow-billed loon	3/30/2004	Taiga Rangers	not warranted	
Yellow-billed loon	3/30/2004	Trustees for Alaska	not warranted	
Yellow-billed loon	3/30/2004	Yuzhno-Sakhalinsk Local Public Fund "Wild Nature of Sakha"	not warranted	
Kittlitz's murrelet	5/11/2001	Center for Biological Diversity	not warranted, but initially warranted but precluded	
Northern Sea Otter, Southwest Alaska DPS	10/25/2000	Center for Biological Diversity	Listed as threatened	
Steller's and spectacled eiders	12/1/1990	Mr. James G. King	listed as threatened (both)	
Steller sea lion	11/21/1989	Environmental Defense Fund and 17 other environmental c	Listed as threatened	

Federally Listed Threatened and Endangered Species in Alaska

SPECIES UNDER AUTHORITY OF U.S. FISH AND WILDLIFE SERVICE

Listed Species/DPS	Listing Level	Critical Habitat in Alaska?
Short-tailed albatross	Endangered	No
Aleutian shield fern	Endangered	No
Eskimo curlew	Endangered	No
Steller's eider	Threatened	Yes
Spectacled eider	Threatened	Yes
Northern sea otter (Southwest DPS)	Threatened	Yes
Polar bear	Threatened	Vacated but appealed
Wood bison	Threatened*	No

SPECIES UNDER AUTHORITY OF THE NATIONAL MARINE FISHERIES SERVICE

Listed Species/DPS	Listing Level	Critical Habitat in Alaska?
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WHALES

Humpback Whale	Endangered	No
Fin Whale	Endangered	No
Bowhead Whale	Endangered	No
Sperm Whale	Endangered	No
Blue Whale	Endangered	No
North Pacific Right Whale	Endangered	Yes
Sei Whale	Endangered	No
Cook Inlet Beluga Whale	Endangered	Yes
Western North Pacific Gray Whale	Endangered	No

PINNIPEDS

Steller Sea Lion (Western DPS)	Endangered	Yes
Ringed Seal	Threatened	Proposed

REPTILES

Leatherback Sea Turtle	Endangered	No
Green Sea Turtle	Threatened	No
Loggerhead Sea Turtle	Threatened	No
Olive Ridley Sea Turtle	Threatened	No

FISH

Upper Columbia River Spring Chinook Salmon	Endangered	No
Snake River Sockeye Salmon	Endangered	No
Upper Columbia River Steelhead	Endangered	No
Snake River Fall Chinook Salmon	Threatened	No
Snake River Spring/Fall Chinook Salmon	Threatened	No
Puget Sound Chinook Salmon	Threatened	No
Lower Columbia River Chinook Salmon	Threatened	No
Upper Willamette River Chinook Salmon	Threatened	No
Lower Columbia River Coho Salmon	Threatened	No
Hood Canal Summer Run Chum Salmon	Threatened	No
Snake River Basin Steelhead	Threatened	No
Lower Columbia River Steelhead	Threatened	No
Upper Willamette River Steelhead	Threatened	No
Middle Columbia River Steelhead	Threatened	No
Green Sturgeon (Southern DPS)	Threatened	No

*The Alaska reintroduction of wood bison has special status as a "nonessential experimental population."

Sources: <http://www.fws.gov/alaska/fisheries/endangered/species.htm>;

https://alaskafisheries.noaa.gov/sites/default/files/ak_nmfs_species.pdf.

Prepared by: ADF&G Division of Wildlife Conservation, February 9, 2016