

03 / 04 / 15
UPDATE:
ENDANGERED
SPECIES ACT
COORDINATION
BY THE STATE
OF ALASKA

<TARGET><BILL></BILL><SUBJECT>03-04-15 UPDATE
ENDANGERED SPECIES ACT COORDINATION BY THE STATE OF
ALASKA</SUBJECT><COMM>SRES29</COMM></TARGET>



Endangered Species Act Issues in Alaska

David Rogers

Alaska Department of Fish and Game

March 4, 2015

Suite of Relevant Laws

- Endangered Species Act of 1973
- Marine Mammal Protection Act of 1972
- Administrative Procedure Act
- National Environmental Policy Act
- Alaska Endangered Species Act

ESA Section 4: Listing and Critical Habitat Processes

- Using the “best scientific and commercial data available” (i.e., new research not required):
US Fish & Wildlife Service or National Marine Fisheries Service (depending on species) determines “whether any species is an endangered species or a threatened species because of any of the following five factors:”

ESA Section 4: Listing (and delisting) factors

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms;
- (E) other natural or manmade factors affecting its continued existence.

Endangered or Threatened?

- “*Endangered*”- a species “in danger of extinction throughout all or a significant portion of its range”
- “*Threatened*”- a species “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range”

Listing Not Limited to “Species”

- Provisions in Act and Service policies allow listing of categories other than a “full” species:
 - Species, subspecies, Distinct Population Segments (DPS)
 - Example: Steller sea lions --
 - Eastern DPS – initially listed as Threatened; delisted in 2012
 - Western DPS: still listed as Endangered

What happens after listing?

Section 7: If a project with a federal "nexus" (permit or funding) "may affect" a listed species or its critical habitat, federal agency must consult with USFWS or NMFS

Section 9: Prohibits "take" of a listed species: Illegal to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." Some "take" exceptions:

- Alaska Native subsistence harvest – marine mammals
- For threatened species, Service can specify other exceptions in a Section 4(d) rule

Federally Listed - Endangered

- Short-tailed albatross
 - Eskimo curlew
 - Aleutian shield fern
 - Steller sea lion, western DPS
 - Bowhead whale
 - Fin whale
 - Cook Inlet beluga whale
 - Humpback whale
 - Other species with Alaska habitat:
 - N. Pacific right whale, blue whale,
 - Sei whale, sperm whale, leatherback turtle
- FWS
- NMFS



Federally Listed - Threatened

FWS:

- Spectacled eider
- Steller's eider (AK breeding pop)
- Polar bear
- Northern sea otter, southwest Alaska DPS
- Wood Bison (and as NEP)

NMFS:

- Ringed Seals (certain subspecies)



Pending Reintroductions:

- Wood bison –
 - ADF&G worked with USFWS to issue 10(j) and 4(d) rules giving management authority to State
 - Special category under Threatened:
 - Nonessential Experimental Population
 - Management Plan complete: reintroduction to Innoko/Lower Yukon will occur soon
- Steller's eider –
 - USFWS working to reintroduce in Yukon-Kuskokwim Delta

Under Consideration for Listing

- Pacific walrus
 - Alexander Archipelago wolf
 - Alaska yellow-cedar
 - Seals in Iliamna Lake
- } FWS
- } NMFS

Delisted

- Arctic Peregrine falcon - 1994
- Aleutian Canada Goose - 2001
- Eastern DPS, Steller sea lion – 2012
- Central North Pacific stock, humpback whale?
 - State submitted petition in 2014; decision due soon

Listing Not Warranted

(State research contributed to most)

- Yellow-billed loon
- Kittlitz's murrelet
- Queen Charlotte goshawk (in Alaska)
- Prince of Wales flying squirrel
- SE Alaska herring
- Pinto abalone
- Ribbon seal
- 43 species of Alaska corals

Current Issue: Climate Change

- *Listings based on climate change:*
 - Polar bear – projected loss of sea ice within 50 years
 - Bearded seal – loss of sea ice within 100 years
 - Ringed seal – [same as bearded]
- *Petitions based on climate change*
 - Alaska yellow-cedar
 - Seals in Iliamna Lake
 - Pacific Walrus

Climate Change Listing Concerns:

- Precautionary listing of ice-dependent species: e.g., polar bear, ice seals
 - Limited evidence of current declines
 - Models predict possible extinction 45 to 100 years in the future
 - Appropriate timeframe for modeling?
- Recovery
- Critical Habitat

Climate Change Listing Concerns:

- How to develop recovery objectives for species at currently healthy levels but projected to decline?
- How should critical habitat be designated if species range is projected to change?
- ESA provides few additional protections beyond existing MMPA protections
 - ➔ Listings based on climate change warrant a different approach?

Current Issue: Critical Habitat

- Expansive designations:
 - Polar bear: ~187,000 square miles (vacated)
 - Ringed seal (proposed): ~350,000 square miles
- ESA Section 3: Critical habitat means "the specific areas within the [occupied] area [where biological and physical features] *essential* to the conservation of the species" are found
- ESA Section 5: "critical habitat shall not include the entire geographical area which can be occupied by the ... species"
- Unlike for listing, critical habitat designation required to consider economic impacts
 - Secretary has discretion to exclude areas

State Strategy - Political

- Build partnerships
 - Association of Fish and Wildlife Agencies
 - Western Association of Fish and Wildlife Agencies
 - Western Governor's Association
- Participate in a state-federal ESA Joint Task Force
- Bring concerns to Congress

State Strategy - Research

- Conduct research on at-risk or listed species to improve knowledge
- Develop conservation actions
 - Less expensive and easier to develop than ESA requirements
- Primary goal of State Wildlife Action Plan and Wildlife Diversity Program
- Large proportion of funding from federal sources (e.g., Section 6 funding from the Services, with 25% State match required). Future funding levels uncertain.

State Strategy – Research

Examples of highly relevant research:

- Yellow-billed loon
- Pacific walrus
- Western DPS Steller sea lion
- Cook Inlet beluga whale
- Alexander Archipelago wolf
- Southeast Alaska herring
- Seals in Iliamna Lake
- Black oystercatcher
- Bats in Alaska
- Rusty blackbird

State Strategy – Participate Fully in the ESA Process

- Provide data and information for status reviews
 - Example: review of Steller sea lion critical habitat
- Submit comments on proposed actions
- Participate in recovery planning
- Submit delisting petitions
 - Eastern DPS Steller sea lion
 - Central North Pacific DPS, humpback whale

State Strategy - Legal

- Challenge listing and critical habitat decisions the State believes are scientifically or legally deficient and unwarranted (e.g., bearded seal)
- Intervene in court cases in which the state has an interest (e.g., ribbon seal, IHA Permits, Western DPS Steller sea lion).

Current State Litigation

- Polar bear
 - Critical habitat: struck down/remanded to USFWS
 - 187,000 square miles;
 - 8% state lands
 - USFWS has appealed
- Bearded seal (Beringia DPS)
 - Threatened listing: struck down/remanded
 - NMFS has appealed

Example: Bearded seal listing

- Successful challenge in U.S. District Court:
 - Lack of information/data on connection between projected loss of sea ice and habitat needs
 - Very large current population (approximately 155,000 animals)
 - No indication of current decline
 - Remanded to NMFS; under appeal

U.S. District Court, Alaska District Judge Beistline:

“An unknown, unquantifiable population reduction, which is not expected to occur until nearly 100 years in the future, is too remote and speculative to support a listing as threatened. If [the court] were to hold otherwise, such a holding could logically render every species in the arctic and sub-arctic areas potentially ‘threatened.’”

- ❖ State considering joining similar litigation challenging ringed seal listing



Thank you -
Questions?