



MARINE MAMMAL COMMISSION

21 December 2009

Ms. Kaja Brix, Regional Administrator
Protected Resources
Alaska Region
National Marine Fisheries Service
P. O. Box 21668
Juneau, AK 99802-1668

ATTN: Ellen Sebastian, re RIN 0648-XR74

Dear Ms. Brix:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's proposed rule and 12-month finding regarding a petition from the Center for Biological Diversity to list the spotted seal (*Phoca largha*) under the Endangered Species Act (74 Fed. Reg. 53683). The Commission offers the following recommendations and rationale.

RECOMMENDATIONS

The National Marine Fisheries Service's review concludes with the finding that the southern distinct population segment of the spotted seal warrants listing as threatened. The Marine Mammal Commission concurs with that finding and recommends that the National Marine Fisheries Service—

- proceed with listing of the southern distinct population segment as threatened under the Endangered Species Act;
- devise and implement a research plan to address the major uncertainties and programmatic shortcomings revealed in the status review of the spotted seal, including a realistic research budget;
- strengthen efforts under the existing Agreement between the Government of the United States of America and the Government of the Russian Federation on Cooperation in the Field of Protection of the Environment and Natural Resources and confers with the Department of State on how to further build discussions and collaboration with Russian, Korean, Chinese, and Japanese researchers and managers to (1) assess the status of spotted seal populations throughout the species' range and (2) identify the need for protective measures where necessary; and
- revisit the question of status of the Okhotsk and Bering Sea distinct population segments in five years after suitable information has been collected to assess their status.

RATIONALE

The Service's analysis began by examining the population structure of the spotted seal species. Genetic information collected from seals across the species' range, coupled with the geography of that range, provides a compelling argument that the species consists of at least three

segments. More studies of this matter would be useful, as one can reasonably hypothesize that additional divisions occur within the species. Further testing of seal populations from the Liaodong Bay and Peter the Great Bay seems especially important given their low abundance and proximity and vulnerability to human activities. The Service then examined and confirmed the ecological significance of each of these segments to the species as a whole. The Commission concurs with the Service and believes that the evidence is sufficient to suggest at least three distinct population components of ecological significance.

The Service then examined the status of the spotted seal species and concluded that the southern distinct population segment was at risk of becoming endangered in the foreseeable future and therefore warranted a designation of “threatened.” Here again, the Commission concurs with the Service’s determination that the southern distinct population segment should be listed at least as threatened. The Commission’s reasons include (1) the small sizes of the two main populations in this segment and the unexplained decline in their numbers, (2) the fact that they may experience a complete loss of ice habitat with climate change, (3) the extensive human activities in the range of that segment (e.g., oil and gas, fisheries), and (4) the fact that the threats to those populations are neither well described nor (presumably) well managed. For these reasons, the Marine Mammal Commission recommends that the National Marine Fisheries Service proceed with listing of the southern distinct population segment as threatened under the Endangered Species Act.

The Commission does not concur with the Service’s analysis and conclusions regarding the status of the Okhotsk and Bering Sea distinct population segments. Both of these segments have been estimated to be relatively numerous in the recent past, but the clear fact of the matter is that the abundance, trends, and status of these segments are unknown. The Service recognized as much in the following statement regarding the subdivisions of the Okhotsk segment: “In the absence of current information on the abundance levels or threats that may occur within each of the subdivisions of this DPS [distinct population segment], we have no basis to conclude that the spotted seal may be considered threatened or endangered in any of those specific subdivisions.”

In the Commission’s view, this statement misplaces the burden of proof, undermines the incentive for true science-based conservation and management, and potentially sets an unacceptable precedent. It may well be that neither the Okhotsk nor Bering Sea distinct population segment requires the additional protection of the Endangered Species Act. However, to dismiss such protection based on an absence-of-evidence argument should strike everyone involved as unsatisfactory when the existing evidence is so scant. All interested parties should have foreseen this situation. At its 2005 annual meeting in Anchorage and more recently in a 7 November 2008 letter, the Commission reminded the Service that it has for many years overlooked ice seals and that the resulting lack of scientific information would sorely compromise assessment of their status. The Service’s analysis and proposed rule confirm that assertion.

The question, then, is how to rectify the lack of information and provide a better basis for decisionmaking for this species in the future. Here, the Commission has three recommendations. First, the Marine Mammal Commission recommends that the National Marine Fisheries Service

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devise and implement a research plan to address the major uncertainties and programmatic shortcomings revealed in the status review, including a realistic research budget. Second, because the species occurs within the waters of several countries, the Commission recommends that the Service strengthen efforts under the existing Agreement between the Government of the United States of America and the Government of the Russian Federation on Cooperation in the Field of Protection of the Environment and Natural Resources and confer with the Department of State on how to further build discussions and collaboration with Russian, Korean, Chinese, and Japanese researchers and managers to (1) assess the status of spotted seal populations throughout the species' range and (2) identify the need for protective measures where necessary. And third, to ensure that decisions regarding the spotted seal are based on adequate science, the Marine Mammal Commission recommends that the National Marine Fisheries Service revisit the question of status of the Okhotsk and Bering Sea distinct population segments in five years after suitable information has been collected to assess their status. The Commission sees no alternative to these three recommendations if our management and conservation decisions and efforts are to be science-based, comprehensive, and sufficient to sustain healthy marine mammal populations and marine ecosystems.

I hope these recommendations and comments are helpful. Please contact me if you have questions or need additional information.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director