



# MARINE MAMMAL COMMISSION

8 May 2023

Ms. Martha Williams, Director  
U.S. Fish and Wildlife Service  
MS: PRB (JAO/3W)  
Falls Church, VA 22041-3803

ATTN: Docket No. FWS-R7-ES-2022-0155

Dear Ms. Williams:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the U.S. Fish and Wildlife Service's (FWS) draft stock assessment reports (SARs) for the Pacific walrus and for the three northern sea otter stocks in Alaska (88 Fed. Reg. 7992). The draft SARs provide new information on abundance and trends, potential biological removal levels, and sources and numbers of human-caused serious injuries and deaths. The Commission appreciates FWS's efforts to update and improve these reports. The Commission provides the following comments and recommendations.

## **Timeliness of review and revision of stock assessment reports**

Section 117(c) of the Marine Mammal Protection Act (MMPA) requires that SARs be reviewed at least annually for stocks specified as strategic and for any stock for which significant new information has become available. The SARs for all other marine mammal stocks are to be reviewed at least once every three years. Two of the stocks for which SARs are being updated, the Pacific Walrus and the Southwest Alaska stock of northern sea otters, are specified as strategic stocks. The Southeast Alaska and Southcentral Alaska stocks of northern sea otters are non-strategic. Final SARs for these four stocks were last published in April 2014 (79 Fed. Reg. 22154). That is, it has been nine years since FWS last reviewed, updated, and made SARs for these stocks available to the public for comment. This far exceeds the timeline for review required by the MMPA, not only for strategic stocks, but for any marine mammal stock. When the review indicates the status of a stock has changed or can be more accurately determined, MMPA Section 117(c)(2) requires revision of the SAR. Clearly, new information has become available over the past nine years that supports more accurate determination of the status of these stocks, as evidenced by the extensive list of publications on the FWS Northern sea otter program website<sup>1</sup>, and the publications referenced in the current draft Pacific walrus SAR, many of which were published between 2015 and 2020.

Although the Commission is pleased that these SARs are being updated, it is noteworthy that FWS is not doing this on its own initiative. Updating these SARs is being done only after FWS reached a settlement with litigants who filed a lawsuit seeking to compel these updates that set this deadline. Moreover, this is not the first time that litigation seeking to compel FWS to adhere to the

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<sup>1</sup> <https://www.fws.gov/program/alaska-marine-mammals-management-office/alaska-sea-otter-program>

statutory requirements for updating SARs has been necessary. These same litigants filed a similar lawsuit in 2007<sup>2</sup> after FWS had not updated the SARs for stocks in Alaska in the previous five years.

The primary purpose of the SARs is to provide information on the current status of marine mammal populations and evaluate whether human-caused mortality and serious injury may be hindering the ability of a stock to reach or remain at its optimum sustainable population. The SARs are essential for making informed management decisions and help ensure that those decisions are based on the best available scientific information. Therefore, timely review and revision of the SARs is critical to effective management efforts.

In light of FWS's history of neglecting its obligations to conduct timely reviews and revisions of the SARs for the marine mammal stocks under its jurisdiction, the Commission recommends that the agency take all steps necessary to adhere to the schedule set forth in section 117(c) of the MMPA. Among other things, conducting timely reviews and preparing updated stock assessment reports in accordance with the statutory schedule should be included as specific elements in the performance plans of the responsible officials.

Although not part of the lawsuit or the settlement agreement, the SAR for the Washington stock of northern sea otters is also due for an update. That SAR was last published in April 2019 (84 Fed. Reg. 16688), based on revisions to the SAR made in July 2018. An update is required because of new information that has become available since 2018, namely a new analysis of survey data for this stock for the years 1977-2019 (Hale et al., 2022). Therefore, the Commission also recommends that FWS review and make appropriate revisions to the SAR for the Washington stock of northern sea otters within the next six months.

### **Estimates of human-caused mortality and serious injury for northern sea otters**

The estimates of human-caused mortality and serious injury (M/SI) in the SARs for the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters are based almost entirely on subsistence harvest data collected by FWS's marking and tagging program. However, it is unclear whether or not all subsistence harvests are reported, and some M/SI of sea otters from other sources (e.g., illegal and unreported hunting and incidental taking by fisheries) likely occurs.

FWS discusses "illegal" takes of sea otters (including possession, transport, and sale of sea otter hides) in the SARs for the Southeast and Southwest stocks in the subsections on "Alaska Native Subsistence Harvest Information." However, referencing illegal takes of sea otters and illegal handling of sea otter hides in that subsection is inappropriate, given that taking of sea otters and other marine mammals by Alaska Natives for subsistence purposes and to create and sell authentic articles of handicrafts and clothing is not illegal as long as the taking is not conducted in a wasteful manner. The Commission recommends that FWS move the discussion of illegal takes of sea otters to a separate subsection within the "Annual Human-Caused Mortality and Serious Injury" section of the SARs (i.e., not the subsection on "Alaska Native Subsistence Harvest Information"). FWS also indicated that it was unable to quantify the extent to which illegal taking was occurring. If illegal takes are indeed known to occur for any or all three stocks, the Commission recommends that FWS seek to develop means for quantifying the degree to which such taking is occurring, and include that information in the SARs.

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<sup>2</sup> *Center for Biological Diversity v. Kempthorne*, Northern District of California (C 07 5109).

Ms. Martha Williams

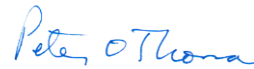
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In the “Fisheries Information” subsections, draft SARs note that the National Marine Fisheries Service (NMFS) maintains an observer program to detect and estimate M/SI of marine mammals. The Alaska Marine Mammal Observer Program was designed specifically to collect data on marine mammal M/SI in nearshore salmon drift gillnet and set gillnet fisheries, where sea otters are at relatively high risk of entanglement. However, that program has not operated since 2013 and, when it was operating, observer coverage was low. As such, although FWS concludes that M/SI from fisheries is likely low, there are actually no reliable estimates of sea otter M/SI in the commercial fisheries that pose the highest entanglement risk to sea otters. The Commission understands that NMFS is planning to resume the Alaska Marine Mammal Observer Program in 2024 or 2025, likely focusing on Southeast Alaska salmon set gillnet and drift gillnet fisheries. It remains unclear whether other fisheries posing a risk of entangling and killing sea otters (e.g., nearshore pot fisheries, or salmon net fisheries operating in other parts of Alaska) will have any observer coverage. The Commission recommends that FWS coordinate with NMFS to ensure sufficient levels of observer coverage in all nearshore fisheries that may pose a significant entanglement risk to any of the three stocks of sea otters in Alaska. Observer coverage should be sufficient to (1) generate reliable estimates of serious injury and mortality, as required under section 118 of the MMPA, and (2) provide a basis for introducing measures to reduce sea otter bycatch if and as necessary.

The Commission appreciates the opportunity to provide comments and recommendations on these draft SARs. Please contact me if you have any questions regarding the Commission’s rationale or recommendations.

Sincerely,



Peter O. Thomas, Ph.D.,  
Executive Director

cc: Patrick Lemons, U.S. Fish and Wildlife Service

## Reference

Hale, J. R., Laidre, K. L., Jeffries, S. J., Scordino, J. J., Lynch, D., Jameson, R. J., and Tinker, M. T. 2022. Status, trends, and equilibrium abundance estimates of the translocated sea otter population in Washington State. *Journal of Wildlife Management* 86:e22215.