



Washington
Department of
**FISH and
WILDLIFE**



August 30, 2010

Kaja Brix
National Marine Fisheries Service, Alaska Region
Protected Resources Division
P.O. Box 21668, 709 West 9th Street
Juneau, AK 99802.

Dear Ms. Brix,

NOAA Fisheries is proposing to conduct a 5-year review of the status of the Eastern Distinct Population Segment (EDPS) of the Steller sea lion ("Endangered and Threatened Species; Initiation of a 5-Year Review of the Eastern Distinct Population Segment of the Steller Sea Lion"; 75 FR 37385). It is the position of the States of Oregon and Washington that conducting such a review is unwarranted given that most scientists with extensive knowledge in this area, including many within NOAA Fisheries, believe that sufficient information currently exists to allow the Department of Commerce instead to immediately proceed with delisting the Steller sea lion EDPS. Indeed, information supporting an immediate delisting can be found in numerous NOAA Fisheries documents including the Stock Assessment Reports, the Federal Recovery Plan, and the 2010 Endangered Species Act – Section 7 Consultation Draft Biological Opinion on the Authorization of groundfish fisheries under the Fishery Management Plan for Groundfish of the Bering Sea, Aleutian Islands, Gulf of Alaska, and State of Alaska parallel groundfish fisheries. Initiating a 5-year review that will, in all likelihood, be immediately followed by a full delisting process is not a wise use of limited time and resources.

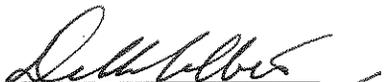
Of particular concern to state fish and wildlife management agencies are the increasingly negative interactions that the growing Steller sea lion population is having with other very important marine and anadromous fish resources. We are concerned that devoting scarce state resources to an unnecessary status review reduces our capacity to respond to these emerging challenges in a timely manner, and believe that proceeding directly to a delisting process is a more efficient use of our resources.

Therefore the States of Oregon and Washington intend to petition the U.S. Department of Commerce and NOAA Fisheries to remove the EDPS of the Steller sea lion from the federal Endangered Species List, and have enclosed a copy of the petition with this letter. The petition,

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and the supporting materials, constitute our comments regarding the status review. We look forward to working with you and your staff on the delisting process.

Respectfully,


Roy Elicker, Director
Oregon Dept. Fish & Wildlife


Philip Anderson, Director
Washington Dept. Fish & Wildlife

Enclosure

PETITION TO DELIST THE EASTERN DISTINCT POPULATION SEGMENT OF THE
STELLER SEA LION FROM THE ENDANGERED SPECIES ACT

Submitted to
U.S. Department of Commerce
by
Oregon Department of Fish & Wildlife
Washington Department of Fish & Wildlife

Background

The Steller sea lion (*Eumetopis jubatus*) ranges throughout the North Pacific Rim from California to Japan (Loughlin et al., 1984, Pitcher et al., 2007). The Steller sea lion population in the western portion of the range underwent dramatic declines from the late 1970s to the early 1990s (Braham et al., 1980; Merrick et al., 1987; Loughlin et al., 1992; Trites and Larkin, 1996). As a result the entire Steller sea lion population was listed as “threatened” under the U.S. Endangered Species Act (ESA) in 1990, and later as “endangered” in the western portion of the range (Loughlin, 1997; National Marine Fisheries Service (NMFS), 2008). Potential explanations for the obvious decline in abundance have included population redistribution, commercial and subsistence harvest, predation, pollution, entanglement in marine debris (Merrick et al., 1987) and changes in ocean climate and productivity, quantity, quality and availability of prey possibly resulting in nutritional stress, reductions in sea lion body size, productivity and survival of pups and juveniles (York 1994, Trites and Donnelly, 2003; Trites et al., 2007).

The 1990 Federal Register notice on the listing of the entire Steller sea lion population as “threatened” (55 FR 49204) focused almost exclusively on the serious declines in the abundance of Steller sea lions in the western portion of the animal’s range, and gave very brief mention and no meaningful analysis of the status of the Steller sea lion in the eastern portion of the range. In 1997 the Federal Register (62 FR 24346) presented the reclassification of the U.S. Steller sea lion population into two Distinct Population Segments, Eastern and Western (EDPS and WDPS). As part of the same action, the WDPS was reclassified as “endangered” while the EDPS remained listed as “threatened”. In the discussion of this latter action, somewhat more attention was given to the status of Steller sea lions in the eastern portion of the range. However, the justifications presented for retaining the “threatened” listing of the EDPS were general in nature and again, did not represent a thorough analysis of the distribution, abundance, status and trends of the Steller sea lion EDPS.

The stated reasons for maintaining the “threatened” listing status for the EDPS as presented in the Federal Register in 1997 included: 1) uncertainties about the future status of the EDPS in spite of its’ apparent stability at the time; 2) mention of very short term “declines”(over just two years) in counts of adults and pups at some locations in southeast Alaska; 3) concern for declines in abundance at the extreme southern fringe of the range in southern and central California, where California sea lion population growth and Steller sea lion northward redistribution may be responsible; 4) the fact that, before the decline of the WDPS, the EDPS represented a relatively

small portion of the overall population; and 5) the need to take a risk-averse approach to down-listing or de-listing a species under the ESA.

We believe, by undertaking a thorough analysis of all the information that is available regarding the current healthy status, increasing trends, adequate protection, and minimal threats to the EDPS of the Steller sea lion, the Department of Commerce and NOAA Fisheries will conclude that de-listing of the EDPS is justified and is the appropriate action to take at this time.

Status and Trends in Abundance of the EDPS

Regardless of the proximate and ultimate causes of the declines observed in the western portion of the range, the overall abundance of the Steller sea lion EDPS has increased at approximately 3.1% per year for the 25 year period up to and including 2002 (Pitcher et al., 2007; NMFS 2008, Boyd 2010). Based on pup counts from a population-wide survey conducted in 2002, total production was estimated at about 11,000 pups representing a total EDPS consisting of approximately 46,000-58,000 animals. Pitcher et al. (2007) concluded that this steady and significant increase in the eastern population can largely be attributed to population recovery from predator control kills and commercial harvest, and that the population is now probably as high as it has been in the past century. Boyd (2010) concluded that "the eastern and western segments of the population have probabilities of persistence that mean they do not meet the criteria for classification as endangered and it would be reasonable to de-list them."

In addition to the population growth reported through 2002 cited above, the Oregon Department of Fish and Wildlife (ODFW) has conducted abundance surveys from northern California to Washington that demonstrate continued population growth at nearly 4% through 2008 (Appendix 1). In addition, the Washington Department of Fish and Wildlife (WDFW) has conducted Steller sea lion surveys along the Washington coast that show both increasing Steller sea lion numbers at haul out areas as well as increasing numbers of newborn pups at several locations over recent years (WDFW unpublished data). These data, demonstrating continued population growth in the area of the primary Steller sea lion rookeries in U.S. waters south of Alaska, add an additional six years to the 25 year record of population growth previously documented (Pitcher et al., 2007).

Federal Recovery Plan

The Revised Recovery Plan for Steller sea lions (NMFS 2008) clearly presents information and conclusions supporting the immediate delisting of the Steller sea lion EDPS. The Recovery Plan states that the EDPS has been growing at a statistically significant rate for nearly 30 years. Section VII of the plan directly acknowledges that there is a "lack of significant threats" to this continued population growth and stated that any potential impacts to the EDPS are "not likely to affect recovery". It is also noteworthy that the Recovery Plan does not identify any specific recovery measures for the EDPS, but instead concludes that as long as the increase continues, recovery measures are not necessary.

The Recovery Plan identifies two points as recovery criteria for the Steller sea lion EDPS:

1) *The population has increased at an average annual growth rate of 3% for 30 years.*

Pitcher et al. (2007) reported the growth of the EDPS to be at least 3.1% per year over the 25 years prior to 2002. The Federal Recovery Plan directly acknowledges that the EDPS has been increasing at 3% or more per year. The Recovery Plan notes that the robustness of the observed positive trend for the EDPS over the last 25-30 years was confirmed by Bayesian trend analyses conducted by Goodman (2002) and more recent analyses by Boyd (2010). The NMFS Stock Assessment Reports for Steller sea lions also report the steady increase and healthy condition of the EDPS. Overall, the EDPS increased at over 3% per year between 1982 and 2009, more than doubling in Southeast Alaska, British Columbia, and Oregon (NMFS 2010). Similarly, data collected in the EDPS continue to document the steady growth of Steller sea lions in this portion of the range.

2) *The ESA criteria for delisting are met.*

ESA Listing Factors

The agencies submitting this petition have reviewed the best available scientific information regarding the listing factors in Section 4(a)(1) of the ESA and provide the following assessment for each factor.

The ESA criteria for delisting are based on the following five factors:

(A) Is there a present or threatened destruction, modification, or curtailment of its habitat or range?

A very large portion of the land-based habitat of Steller sea lions in the eastern population is included in some form of protection from state or federal law (e.g. federal or state managed reserves and refuges). In Oregon and Washington nearly all coastal rocks and islands used by Steller sea lions fall under the jurisdiction of the U.S. Fish and Wildlife Service refuge program. Along the north Washington coast where most haul-out areas in the state occur falls within the NOAA Olympic Coast Marine Sanctuary. The recent and ongoing establishment of marine aquatic reserves along the U.S. West Coast also stands to benefit sea lions and other marine species.

(B) Is the species subject to overutilization for commercial, recreational, scientific, or educational purposes?

The Steller sea lion EDPS has been protected from commercial exploitation under the Marine Mammal Protection Act (MMPA) since 1972. Any scientific or educational uses require permits obtained from the Permit Office of the NMFS Protected Species Division. Applications for such permits are rigorously scrutinized to prevent unnecessary, duplicative, or excessive activities that could have negative impacts.

(C) Is disease or predation a factor?

There currently is no evidence to suggest that disease or predation plays a significant role in the regulation of the Steller sea lion EDPS. Antibodies to marine caliciviruses have been documented in biological samples collected from Steller sea lions in Oregon (Skilling et al., 1987; Barlough et al., 1987), but no related evidence of negative impacts individuals, or the population as a whole, have been noted. No other disease factors that could have a significant negative affect on the Steller sea lion EDPS are known to exist at this time. No other indications of disease related issues have been noted in live animals or in samples collected from beachcast animals in the area.

White sharks and killer whales are the most likely natural predators of Steller sea lions in the EDPS. The numbers and distribution of white sharks that occur within the range of the EDPS is probably unknown, but evidence of shark attack on pinnipeds in this area is uncommon and is unlikely to occur frequently enough to affect Steller sea lions at the population level. Similarly, killer whales may occasionally attack Steller sea lions throughout the EDPS, the relatively low abundance and wide distribution of the whales probably present a small risk to the continued growth and health of the EDPS. The Federal Recovery Plan noted that the EDPS has increased at approximately 3% per year for more than 20 years while co-existing with killer whales in this portion of their range.

(D) Are there inadequate existing regulatory mechanisms in place outside the ESA (taking into account the efforts by the States and other organizations to protect the species or habitat)?

The existing regulatory mechanisms have clearly provided adequate protection Steller sea lions and all other pinnipeds in the Pacific Northwest. This is documented by: 1) the successful recovery of regional harbor seal populations to Optimum Sustainable Population (OSP) levels (Jeffries et al., 2002; Brown et al., 2005); 2) what appears to be the recovery or very near recovery of the California sea lion population to OSP levels (NMFS, 2008); 3) and the long-term growth and healthy status of Steller sea lions in the EDPS. In addition to the protection provided under the MMPA, federal and state refuges and reserves protect much of the coastal habitat used by Steller sea lions. In the late 1990s the Oregon State Marine Board implemented a boat closure area around one of the more important haul-out and rookery areas on the north coast of Oregon to minimize disturbance. The Oregon Department of Fish and Wildlife has established closure to sport fishing and commercial urchin harvest near the most important rookery rocks on the south coast also to minimize disturbance, particularly during the breeding season. The steady, continued growth of Steller sea lions in the EDPS strongly suggests that fisheries harvest and management actions have not had an obvious affect on sea lions in this area.

(E) Are other natural or manmade factors affecting its continued existence?

Current levels of mortality due to disease, contaminants, and direct human effects including direct fisheries effects (e.g., mortality due to catch in gear, shooting by fishermen, collisions with vessels), are unlikely to affect the ability of the Eastern DPS to continue to recover and survive (NMFS 2010).

Both ODFW and WDFW have conducted studies of Steller sea lion distribution, abundance, movements, survival, food habits, mortality (via examinations of beach cast animals), and have recorded data on interactions with fisheries and various human activities over many years. None of the potential natural or manmade causes for population decline examined in the western population range appear to be having negative impacts on eastern stock sea lions occurring in Oregon and Washington (ODFW, WDFW, unpublished data).

Similarly, none of the potential threats to recovery of sea lions identified in the Recovery Plan (predation, harvest, killing, human impacts, entanglement in debris, parasitism, disease, toxic substances, climate change, reduced prey biomass or quality, disturbance, or any cumulative affect of a combination of these factors) appear to be significant sources of mortality for EDPS sea lions, nor do they seem likely to prevent the continued population growth of the EDPS in the foreseeable future. The Recovery Plan also concludes that if current protection measures for the EDPS are maintained, we should expect this population to remain at very low risk of extinction.

Conclusion

We conclude that none of the potential threats identified in Section 4(a)(1) of the ESA for listing and delisting purposes (A-E above) constitutes a real threat to the continued healthy status of the Steller sea lion EDPS. We further conclude that the EDPS of the Steller sea lion has met the Federal Recovery Plan criteria for delisting. As necessary, we will provide you with additional details, references, and the unpublished data mentioned above during the process of proceeding with your review and delisting actions.

We believe that, based on your review of this material and additional information others can provide, the Department of Commerce and NOAA Fisheries will find that the EDPS of Steller sea lions from central California through southeast Alaska has recovered to healthy and sustainable levels of abundance, faces no significant threats as defined under the law, and no longer meets the criteria for listing as a threatened species under the federal Endangered Species Act (16 U.S.C § 1531-1534).

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Appendix 1. Counts of non-pup Steller sea lions ashore in Oregon, June-July, 1976-2008. Source: Oregon Department of Fish and Wildlife, unpublished data. Counts for 2006 and 2008 have not been finalized.

