



NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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Action Memo

File Number: REP 18-021

Agenda Date 4/2/2018

Agenda Number: B8

Dan Hull, Chairman
David Witherell, Executive Director

SUBJECT:

Protected Species Report (*including seabird conservation working group update*)

STAFF CONTACT: Steve MacLean (NPFMC)

ACTION REQUIRED:

Review Protected Species Report, action as necessary

BACKGROUND:

Short-tailed Albatross

On February 16, 2018, the U.S. Fish and Wildlife Service published a Biological Opinion for the Effects of the Pacific Halibut Fisheries in Waters off Alaska on the Endangered Short-tailed Albatross (*Phoebastria albatrus*). The National Marine Fisheries Service requested reinitiation of formal consultation in September 2017 because of the increased likelihood of observing short-tailed albatross takes in the halibut fisheries, resulting from increased observer coverage beginning in 2013 and the increasing short-tailed albatross population. After review of the current status of the short-tailed albatross, the effects of the proposed action on the short-tailed albatross, and the cumulative effects, the USFWS concluded that the proposed action is not likely to jeopardize the continued existence of the short-tailed albatross. The USFWS anticipates that no more than one short-tailed albatross could be taken annually in halibut fisheries off Alaska, but to allow for inter-annual variability, the Agency authorized up to two takes in a floating two-year period (January 1-December 31).

Also during this meeting, AnneMarie Eich (NMFS AKR) and Elizabeth Labunski (USFWS) will present the first annual update from the NOAA Short-tailed albatross and seabird working group established as a result of the 2015 short-tailed albatross BiOp for BSAI and GOA groundfish fisheries.

Sea otters

The State of Alaska is seeking changes to the Marine Mammal Protection Act to allow the State, tribal, and local managers authority to manage sea otters in Southeast Alaska. Sea otters are protected under the Marine Mammal Protection Act and managed by the U.S. Fish and Wildlife Service. Sea otters occur in the nearshore coastal waters of the U.S. from the Aleutian Islands to California. They generally occur in waters less than 40 meters deep to allow frequent access to benthic foraging habitat in the subtidal and intertidal zones. The historic global population of sea otters is estimated to be up to 300,000, with 150,000 in Alaska. Extirpated from most of their range by commercial fur harvests in the 18th and 19th centuries, sea otters were absent from Southeast Alaska for nearly 100 years. Sea otters were reintroduced to Southeast Alaska several times from 1965 to 1969, with varying degrees of success. The most recent population estimate of sea otters in Southeast Alaska is 25,712 (2016), and sea otters appear to be recolonizing their historical range (Esslinger and Bodkin 2009). As sea otters increase in numbers and expand into previously occupied habitat, they are coming into

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conflict with shellfish fisheries that have developed in the absence of otters. Senator Wilson Stedman (Sitka) introduced Senate Joint Resolution 13 that urges the United States Congress to amend the Marine Mammal Protection Act and urges the United States Department of Interior to permit Alaska Native organizations and the Alaska Department of Fish and Game to co-manage sea otters in Alaska. The resolution is supported by many in Southeast Alaska but opposed by The Alaska Sea Otter and Steller Sea Lion Commission that represents tribes across the State that rely on sea otters and Steller sea lions.

Ringed seal

On February 12, 2018 a three-judge panel of the 9th Circuit Court of Appeals overturned a lower court decision and ruled that the National Marine Fisheries Service acted properly in listing the Arctic subspecies of the ringed seal (*Phoca hispida hispida*) as threatened under the Endangered Species Act due to habitat loss as a result of climate warming. This decision is closely related to the judgement in the Agency's favor for bearded seals (reported to the Council in February 2018). The Agency concluded that ringed seals are likely to become endangered because of continued loss of sea ice and higher temperatures through the end of the 21st century. The ruling from the 9th Circuit is attached.

ESA Critical Habitat Designations

The Trump administration has settled a lawsuit filed by 20 States that challenge Obama administration rules concerning critical habitat for endangered and threatened species. Prior to the 2016 critical habitat updates, the NMFS and USFWS would only consider habitat that wasn't currently inhabited by a listed species if it was determined that the species could not recover without the proposed habitat. Under the new rules the agencies could consider both occupied and unoccupied habitat. The settlement returns the agencies to the previous rules. Environmental organizations have noted their intention to challenge the settlement on the grounds that the rules change violates the ESA's requirement that agencies protect habitats essential for species recovery.