

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

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October 13, 2009

Ms. Shannon Bettridge  
National Marine Fisheries Service  
Office of Protected Resources  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Humpback Whale (*Megaptera novaeangliae*) Information (RIN 0648-XQ74)

Dear Ms. Bettridge:

Attached is the information gathered by the State of Alaska in response to your solicitation of information regarding the humpback whale (Federal Register Vol. 74, No. 154, August 12, 2009). Included are descriptions of existing State of Alaska regulatory and environmental programs that potentially aid in the conservation of humpback whales.

In addition to the attached information provided by the Department of Environmental Conservation and the Department of Natural Resources please be aware that the Alaska Department of Fish and Game Divisions of Sport Fish and Commercial Fisheries gather data on eulachon and herring that may be valuable to your status review. Please contact me if you would like assistance in accessing these data.

The Alaska Comprehensive Wildlife Conservation Strategy includes a Wildlife Action Plan for humpback whales (Appendix 4, pages 417-421) which can be found online at: [http://www.sf.adfg.state.ak.us/statewide/NGPlan/NG\\_outline.cfm](http://www.sf.adfg.state.ak.us/statewide/NGPlan/NG_outline.cfm) The goal stated in the Action Plan differs from the recovery goals for Federally threatened and endangered species, and should not be used in the NMFS decisions to de-list or down-list humpback whales.

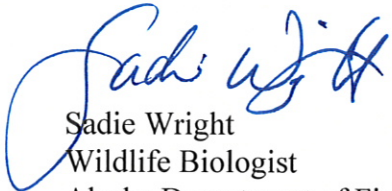
We would like to commend the National Marine Fisheries Service for conducting this review to ascertain the current status of humpback whales in order to determine if this species should be de-listed or down-listed. One measure of the success of the Endangered Species Act is the recovery of species listed under the Act, and subsequent de-listing actions. The humpback whale is one such success story. Population rate increases as high as 14.4% have been reported for humpback whales off of South Africa. In the Gulf of Maine, population rate increases were reported in 1997 and 2003 to be 6.5% and 3.1% respectively, and increases continue. Alaska

stocks are also reported to be increasing significantly with a 7% annual rate of increase of the Central North Pacific Stock from 1993-2000, and 6.6% from 2001-2003.

These numbers certainly justify consideration for de-listing or down-listing of this species or specific stocks. If NMFS determines that de-listing or down-listing is not appropriate at this time, at the very least, clear recovery goals should be delineated.

Thank you for the opportunity to provide you with these comments and information. We are willing to discuss this information in more detail if you wish. I can be contacted at [sadie.wright@alaska.gov](mailto:sadie.wright@alaska.gov) or (907) 465-6197.

Sincerely,

A handwritten signature in blue ink that reads "Sadie Wright". The signature is fluid and cursive, with the first name "Sadie" being larger and more prominent than the last name "Wright".

Sadie Wright  
Wildlife Biologist  
Alaska Department of Fish and Game

cc: Doug Vincent-Lang—ADF&G, Endangered Species Coordinator  
Kim Titus—ADF&G, Wildlife Scientist  
Doug Larsen—ADF&G, Division Director  
Gary Mendivil—DEC, Program Coordinator  
Samantha Carroll—DNR, Special Assistant  
Brad Meyen—DOL, Attorney

## STATE OF ALASKA HUMPBACK WHALE INFORMATION

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### Department of Environmental Conservation:

#### Oil Spill Prevention and Response

The Alaska Department of Environmental Conservation (DEC) Spill Prevention and Response Division's activities are specifically focused on oil spill prevention and assurance of adequate oil spill response. DEC focuses its resources on the consequences of an oil spill, rather than predicting the probability of an oil spill occurring. It is the specific responsibility of DEC to ensure that the environmental consequences of a discharge can be mitigated to a degree protective of human health and the environment by requiring regulated operators to be prepared to respond to and clean up oil spills under typical environmental conditions. Oil spill contingency plans are required under Alaska Statute AS 46.04.030 and Alaska Administrative Code regulations at 18 AAC 75. Oil Spill Proof of Financial Responsibility is required under Alaska Statute AS 46.04.030. The State of Alaska (SOA) requires oil spill contingency plans for the following facilities:

- Offshore oil and gas exploration facilities
- Onshore oil and gas exploration facilities
- Crude oil transmission pipelines
- Oil flow lines and gathering lines
- Noncrude oil terminals (over 10,000 bbls)

The Industry Preparedness Program requires regulated facilities and vessels to develop state-approved oil spill response and contingency plans, to establish a facility-wide spill prevention program and to ensure that personnel, equipment and financial resources are available to respond to spills. In the event of a spill, the Prevention and Emergency Response Program (PERP) serves as the State's emergency responders to oil and hazardous substance spills and ensures that cleanup measures are implemented as soon as possible.

Detailed information on historical oil spills is available in the department's latest report, *DEC 10-Year Statewide Summary: Oil and Hazardous Substances Spill Data*, and the *Summary of Oil and Hazardous Substances Spills by Subarea*, both of which are available on the program's web site. These reports provided the following conclusions and highlights relating to the humpback whale's marine habitat:

- Oil (both crude and noncrude oil products) constitute the vast majority (82%) of the reported spills
- Spills from unregulated vessels were most common for the coastal areas of Southeast Alaska, Prince William Sound, Kodiak, Cook Inlet and the Aleutians.
- Seasonal trends for marine spills occur in the coastal areas of the state during the commercial fishing season, typically April through September.

### **Water Quality Monitoring and Assessment**

The Clean Water Act mandates that each state develop a program to monitor the quality of its surface and groundwaters and prepare a report describing the status of its water quality. The U.S. Environmental Protection Agency (EPA) then compiles and summarizes the information from all the state reports and sends this information to Congress.

As part of these efforts, DEC and EPA already performed field monitoring in Southcentral (2002) and Southeast Alaska (2004). DEC and EPA plan to perform field monitoring in the Arctic in the near future. Until an assessment comparable to that underway for Southcentral and Southeast Alaska coastal waters is completed, DEC has no independent baseline water quality data for the Arctic Ocean. A final report on the 2002 efforts may be found at the website cited below. Details on Alaska's Environmental Monitoring and Assessment Program (EMAP) is available at <http://www.dec.state.ak.us/water/wqamp/emap.htm>

The DEC Water Division regulates water quality for the SOA through the water quality and wastewater standards found in the Alaska Administrative Code at 18 AAC 70, 18 AAC 72 and 18 AAC 83. These regulations provide specificity for the SOA's implementation of the federal Clean Water Act. The SOA's water quality standards and wastewater regulations are based upon the general prohibition principle, such that no person may cause or contribute to a violation of the water quality standards in state waters and any discharges to state waters must be authorized by a permit. These water quality standards apply to both marine and fresh waters and protect water quality for a wide variety of uses, including growth and propagation of aquatic life.

For waters that are of naturally high quality, the water quality standards include an antidegradation provision that prohibits any degradation of water quality unless certain conditions are met and even then all uses still have to be protected. SOA's water quality standards are also applicable to waters of the outer continental shelf adjacent to Alaska by virtue of consistency review of federal permitting under the Alaska Coastal Management Program. The Division's Wastewater Discharge Authorization Program also regulates stormwater pollution of water bodies through review and approval of construction plans and stormwater pollution prevention plans from industrial sites.

### **Additional Information**

*Alaska's Final 2008 Integrated Water Quality Monitoring and Assessment Report, April 1, 2008* available at <http://www.dec.state.ak.us/water/wqsar/waterbody/2008FinalIntegratedReport3-19-08.pdf>

DEC Wastewater Permits Database, available at <http://www.dec.state.ak.us/ias/permitsearch/default.aspx>

DEC (2007) *DEC 10-Year Statewide Summary: Oil and Hazardous Substances Spill Data* (July 1, 1995 – June 30, 2007) available at <http://www.dec.state.ak.us/spar/perp/subreports.htm>

DEC (2007) *Summary of Oil and Hazardous Substance Spills by Subarea* (July 1, 1995 – June 30, 2005) [http://www.dec.state.ak.us/spar/perp/docs/10year\\_rpt/10Yr\\_Subareas\\_FINAL.pdf](http://www.dec.state.ak.us/spar/perp/docs/10year_rpt/10Yr_Subareas_FINAL.pdf)

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## Department of Natural Resources:

With respect to conservation measures, the Alaska Department of Natural Resources (DNR) has two primary methods to protect humpback whales and other species listed under the Endangered Species Act of 1973 (ESA). These are mitigation measures through area oil and gas lease sales and planning provisions DNR through Area Plans.

Alaska Statute 38.05.035(e) provides DNR with the authority to impose conditions or limitations, in addition to those imposed by statute, to ensure that a resource disposal is in the state's best interests. Consequently, to mitigate potential adverse social and environmental effects of specific lease related activities, DNR has developed mitigation measures and conditions plans of operation, exploration, or development, and other permits based on these mitigation measures.

There are two oil and gas lease sale areas that are within the range of humpback whales. These are 1) Cook Inlet Areawide and 2) Alaska Peninsula Areawide. Please see the following links for oil and gas mitigation measures that may benefit the conservation humpback whales in certain Alaska waters.

Cook Inlet Areawide oil and gas mitigation measures:

[http://www.dog.dnr.state.ak.us/oil/products/publications/cookinlet/ciaw\\_2009\\_final\\_finding/CI%20Final%20BIF%20Chap09-MitMeasures.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/cookinlet/ciaw_2009_final_finding/CI%20Final%20BIF%20Chap09-MitMeasures.pdf)

Alaska Peninsula Areawide oil and gas lease sale mitigation measures:

[http://www.dog.dnr.state.ak.us/oil/products/publications/akpeninsula/ff/akff\\_ch\\_7.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/akpeninsula/ff/akff_ch_7.pdf)  
[http://www.dog.dnr.state.ak.us/oil/products/publications/akpeninsula/2007/ap\\_suppl\\_2007.pdf](http://www.dog.dnr.state.ak.us/oil/products/publications/akpeninsula/2007/ap_suppl_2007.pdf)

A process is in place to ensure that mitigation measures address current issues and incorporate new information as it becomes available. Annually, DNR requests new information from agencies and the public. DNR seeks information that has become available since the most recent mitigation measures were issued. This information may address fish and wildlife species and their habitats in the area; current and projected uses in the area, including uses and value of fish and wildlife such as subsistence and recreation; reasonably foreseeable cumulative effects of exploration, development, production, and transportation for oil and gas on the area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources; lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of oil and hazardous substances; and air and water quality. DNR may then modify or add mitigation measures as necessary to ensure the continued protection of fish and wildlife populations and habitats, and their uses.

In addition to mitigation measures implemented through DNR Areawide Oil and Gas Lease Sales, DNR offers protection of ESA species through planning requirements implemented in DNR Area Plans. These plans require that all land use activities will be conducted consistent with state and federal Endangered Species Acts to avoid jeopardizing the continued existence of threatened or endangered species of animals or plants, to provide for their continued use of an area, and to avoid modification or destruction of their habitat. Please see the sections entitled

“Fish and Wildlife Habitat and Harvest Areas” in these plans for information regarding ESA listed species.

<http://dnr.alaska.gov/mlw/planning/areaplans/>