

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME OFFICE OF THE COMMISSIONER

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The Honorable Gary F. Locke  
Secretary of Commerce  
United States Department of Commerce  
1401 Constitution Avenue, NW, Room 5516  
Washington, D.C. 20230

Re: Petition to Remove the Eastern Distinct Population Segment of the Steller Sea Lion (*Eumetopias jubatus*) from the List of Endangered and Threatened Species under the Endangered Species Act

Dear Secretary Locke:

Petitioner State of Alaska petitions the Secretary of Commerce (“Secretary”), pursuant to 16 U.S.C. § 1533(b) and 50 C.F.R. § 424.14, to remove (delist) the Eastern distinct population segment (“DPS”) of the Steller sea lion (*Eumetopias jubatus*) from the List of Endangered and Threatened Species under the Endangered Species Act (“ESA”), 16 USC §§ 1531 *et seq.* The Steller sea lion was listed as threatened by rules dated April 5, 1990 and November 26, 1990. 55 Fed. Reg. 12645 (Apr. 5, 1990) (emergency interim rule); 55 Fed. Reg. 49204 (Nov. 26, 1990) (final rule). In 1992, a recovery plan (“1992 Recovery Plan”) for the Steller sea lion was completed and implemented. See National Marine Fisheries Service (“NMFS”), “Final Recovery Plan for Steller Sea Lions, *Eumetopias jubatus*” (“1992 Recovery Plan”), NMFS, Silver Spring, Maryland, (Dec. 1992) pp. i-viii, 1-92.

The Eastern and Western distinct population segments of Steller sea lion were designated on May 5, 1997. 62 Fed. Reg. 24345 (May 5, 1997). The Eastern DPS maintained a threatened listing. *Id.* In 2008, a recovery plan for the Eastern and Western distinct population segments of the Steller sea lion was completed and implemented. See 73 Fed. Reg. 11872 (Mar. 5, 2008) (notice of availability); NMFS, “Recovery Plan for the Steller Sea Lion, Eastern and Western Distinct Population Segments (*Eumetopias jubatus*), Revision” (“2008 Recovery Plan”), NMFS, Silver Spring, Maryland (Mar. 2008) pp. i-xvi, I-1 through VIII-31.

On the basis of substantial scientific and commercial information available since the Steller sea lion’s original listing and as summarized in this petition, the delisting of the Eastern DPS of the Steller sea lion is now warranted for the principal reason that the Eastern DPS of the Steller sea

lion has recovered to the point that it is no longer threatened with extinction and protection under the ESA is no longer required.

The State of Alaska requests that the National Marine Fisheries Service (“NMFS” or “Service”) make a determination as to whether this petition presents substantial scientific or commercial information indicating that this petitioned delisting action may be warranted within 90 days by publishing that determination in the Federal Register and acknowledging, in writing, receipt of this petition within 30 days. *See* 16 U.S.C. § 1533(b)(3)(A); 50 C.F.R. §§ 424.14(a), (b)(1). NMFS should find that delisting may be warranted and propose the Eastern DPS of the Steller sea lion for delisting.

## I. Background and Regulatory History

On November 21, 1989, NMFS was petitioned by the Environmental Defense Fund and 17 other environmental non-governmental organizations to list the Steller sea lion as endangered under the ESA. Under Section 4 of the ESA, NMFS determined that the petition contained substantial evidence suggesting the listing may be warranted, and requested comments. 55 Fed. Reg. 6301 (Feb. 22, 1990).

The Steller sea lion was listed as threatened throughout its range under the ESA by an emergency rule published by NMFS on April 5, 1990 which expired December 3, 1990. *See* 55 Fed. Reg. 12645. A subsequent rule published on November 26, 1990 listed the species as threatened rangewide effective December 4, 1990, with no set expiration date. *See* 55 Fed. Reg. 49204. As cause for the listing, NMFS cited observed Steller sea lion population declines of 63% since 1985, and 82% since 1960 on certain Alaska rookeries. Significant declines were also cited for the Kuril Islands, USSR. The declines appeared to be accelerating and moving into areas that previously contained stable populations. The cause or causes for the declines were undetermined at the time of initial listing.

A Steller Sea Lion Recovery Team was appointed in March 1990, just prior to the emergency threatened listing. The team was responsible for drafting the recovery plan and providing NMFS with recommendations regarding protective regulations for the species. At the time of initial listing in 1990, NMFS established an incidental take quota, and several observer programs were put in place to monitor incidental take of sea lions by Federally-licensed vessels in fisheries off of Alaska. In addition, NMFS prohibited any harassment or shooting near Steller sea lions and established three nautical mile buffer zones around principal rookeries in the Gulf of Alaska and the Aleutian Islands as protective regulations associated with Federal listing under the ESA.

On August 27, 1993 critical habitat was designated for the Steller sea lion by NMFS in parts of coastal Alaska, Oregon, and California. *See* 58 Fed. Reg. 45269. Critical habitat was determined based on the location of terrestrial rookery and haul-out sites, spatial extent of foraging trips, and availability of prey.

Overall abundance of the eastern portion of the Steller sea lion (Southeast Alaska, Canada, Washington, Oregon, and California, combined) increased at an average annual rate of 3.1%

since the 1970s. Pitcher et al. 2007.<sup>1</sup> The eastern portion of Steller sea lions continued to increase while western portion continued to decrease through the 1990s, leading NMFS to designate two DPSs based on genetic discreteness and differences in population demographics. 62 Fed. Reg. 24345 (May 5, 1997). The Eastern DPS, which occurs east of 144° W longitude (a line near Cape Suckling, AK), retained its threatened status in the May 5, 1997 rule. Due to continued population declines, the Western DPS (west of 144° W longitude) was reclassified as endangered, effective June 4, 1997.

Two separate Steller Sea Lion Recovery Teams completed three Recovery plans for this species. The first plan was drafted by the Team established in 1990, and was published in 1992. The second Team wrote a draft Recovery Plan that was published in draft form in 2006. The second Team significantly revised the 2006 draft plan and published the new draft in 2007, with the revised final Recovery Plan published in 2008. These plans summarized the status of both Western and Eastern DPSs and outlined goals and recommended recovery actions. The 1992 plan addressed the Steller sea lion species in its entirety, while the 2006 and 2008 plans addressed the Eastern and Western DPSs separately.

## II. Statutory and Regulatory Framework for Delisting

The ESA and its implementing regulations set out five criteria to be considered, either singly or in combination, to determine whether a listed species should be reclassified or removed from the list. *See* 16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11. The five factors are:

- (1) present or threatened destruction, modification, or curtailment of habitat or range;
- (2) overutilization for commercial, recreational, scientific, or educational purposes;
- (3) disease or predation;
- (4) inadequacy of existing regulatory mechanisms; or,
- (5) other natural or manmade factors affecting its continued existence.

16 U.S.C. § 1533(a)(1); 50 C.F.R. § 424.11(c). The Secretary may delist or reclassify a species on the basis of any one of these five factors. *See id.*

The ESA provides that “after receiving the petition of an interested person under” 5 U.S.C. § 553(e) to “remove a species” from “either of the lists published under subsection (c)” of 16 U.S.C. § 1533, the Secretary “shall make a finding as to whether the petition presents

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<sup>1</sup> Pitcher, K.W., P.F. Olesiuk, R.F. Brown, M.S. Lowry, S.J. Jeffries, J.L. Sease, W.L. Perryman, C.E. Stinchcomb, and L.F. Lowry. 2007. Abundance and distribution of the eastern North Pacific Steller sea lion (*Eumetopias jubatus*) population. Fishery Bulletin 107: 102-115.

substantial scientific or commercial information indicating that the petitioned action *may be warranted.*" 16 U.S.C. § 1533(b)(3)(A) (emphasis added).

The regulations adopted by NMFS largely track the relevant statutory provisions, while elaborating on the standards the Secretary should apply. The regulations specify that "substantial information" means "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." 50 C.F.R. § 424.14(b)(1).

The petition process establishes "mandatory bright lines of both timing and behavior that are readily open to judicial review." *See Wyoming v. U.S. Dep't of Interior*, 360 F. Supp.2d 1214, 1229 (D. Wyo. 2005). In those cases in which the Secretary determines that a petition does present "substantial scientific or commercial information" that indicates that the requested delisting "may be warranted," the Secretary is then required to "promptly commence a review of the status" of the species at issue. *See id.* § 1533(b)(3)(A).

Thereafter, the Secretary must, within 12 months of initially receiving the petition, make one of the following findings:

- (i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.
- (ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action . . . .
- (iii) The petitioned action is warranted, but that –
  - (I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action . . . is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and
  - (II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections [under the ESA] are no longer necessary;

in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

*See* 16 U.S.C. § 1533(b)(3)(B)(i)-(iii). A finding that the petition is “not warranted” under clause (i), or that the petition is “warranted” but “precluded” under clause (iii), is subject to judicial review. *See id.* § 1533(b)(3)(C)(ii).

While the Secretary is not required to undertake a status review for every petition it receives, the “standard for evaluating whether substantial information has been presented by an ‘interested person’ is not overly-burdensome,” in that “conclusive information” is not required at this stage of the process, and a “reasonable person” standard is used to determine whether “substantial information has been presented to indicate that the action may be warranted.” *See Moden v. U.S. Fish and Wildlife Service*, 281 F. Supp. 2d 1193, 1204 (D. Or. 2003).

In assessing whether a petition meets the “may be warranted” threshold, the Secretary is directed to consider whether the petition:

- (1) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved;
- (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;
- (3) provides information regarding the status of the species over all or a significant portion of its range; and,
- (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

*See* 50 C.F.R. § 424.14(b)(2)(i)-(iv).

The regulations indicate that a species may be delisted if the petition-submitted information “substantiate[s] that [the species] is neither endangered nor threatened for one or more of the following reasons:” (1) the species is considered to be extinct; (2) the species has recovered to the point that “protection under the Act is no longer required;” or (3) the initial classification of the species as endangered or threatened was in error. *See* 50 C.F.R. § 424.11(d)(1)-(3). The Secretary must take into account the efforts of States in protecting the species. *Id.* § 424.11(f).

The Secretary’s decision to delist a species for these reasons “should be based on the information presented by the petitioner.” *See* U. S. Fish and Wildlife Service and NMFS, “Endangered Species Petition Management Guidance” (“1996 Petition Guidance”), Division of Endangered Species, (July 1996) 21 pp., at 14. The Secretary “will make a ‘substantial’ 90-day finding if information submitted with and referenced in the petition and unassessed information added to the Service’s files after a species was listed indicates that the species may have achieved the

recovery objectives for . . . delisting.” *Id.* at 15 (emphasis added). Similarly, the Secretary will make a “substantial” 90-day finding if information submitted with and referenced in the petition indicates that the original data for listing the species may be in error. *Id.* at 16.

A species is considered to have recovered if the best scientific and commercial data available indicate that it is no longer endangered or threatened. *See* 50 C.F.R. § 424.11(d)(2); *see also* “Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy on Information Standards Under the Endangered Species Act,” 59 Fed. Reg. 34271 (July 1, 1994) (discussing “best scientific and commercial data”). “Threatened species” means “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20). “Endangered species” means “any species that is in danger of extinction throughout all or a significant portion of its range . . . .” *Id.* at § 1532(6).

A species reaches “recovery” when there is “improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in [16 U.S.C. § 1533(a)(1)].” 50 C.F.R. § 402.02.; *see also* NMFS, “Interim Endangered and Threatened Species Recovery Planning Guidance Version 1.3” (“2010 Recovery Guidance”), (June 2010), 122 pp. at § 1.1 (“Recovery is the process by which listed species and their ecosystems are restored and their future is safeguarded to the point that protections under the ESA are no longer needed.”). Importantly, recovery does not mean that all threats to a species have been eliminated. Rather, recovery means that threats to the species have been “controlled.” 2008 Recovery Plan at VII-4; *see also* *Center for Biological Diversity v. Kempthorne*, 607 F. Supp. 2d 1078, 1088 (D. Ariz. 2009) (recovery is “the process that stops or reverses the decline of a species and neutralizes threats to its existence”) (*quoting Defenders of Wildlife v. Babbitt*, 130 F. supp. 2d 121, 131 (D.D.C. 2001)). Thus, recovery represents the point at which a species is no longer declining and threats to its survival have been controlled or neutralized, but not necessarily eliminated.

### **III. Endangered Species Act Delisting Factors**

The five factors to be considered in determining whether a listed species should be reclassified or removed from the list of endangered and threatened species are discussed below. This analysis indicates that the delisting of the Eastern DPS of the Steller sea lion is warranted.

#### **Factor A: The present or threatened destruction, modification, or curtailment of its habitat or range has been sufficiently reduced**

Human disturbance has been shown to impact Steller sea lions, even leading to the abandonment of a rookery. Pitcher et al. 2007, 2008 Recovery Plan at VI-7. However, rookeries are located at remote sites, normally isolated offshore reefs and islands unsuitable for development. *Id.* at VI-1. Many rookeries are in protected areas such as parks, refuges, wilderness areas, and ecological reserves where development is unlikely. In the 2008 Recovery Plan, NMFS concluded that “terrestrial habitat for the eastern population [of Steller sea lions] has been either protected or not impacted to any large degree based in large part on the remote areas occupied by sea lions.” *Id.* at VII-4.

Moreover, “[p]rey resources currently appear to be adequate to support recovery.” *Id.* “[N]o evidence suggests that Steller sea lions in the eastern DPS were nutritionally limited during the 1970s and 1980s.” *Id.* at VI-6.

Currently, both the MMPA and ESA provide protection for sea lions and their habitat. The Magnuson-Stevens Fishery Conservation and Management Act, and Fisheries Act of Canada provide further protection and provide for appropriate fisheries management. Following delisting of the Eastern Steller sea lion DPS, the MMPA and the fisheries Acts will continue to provide protections for sea lions and their habitat, and further conservation actions can be pursued by Federal, State, and local governments to ensure that rookery and haul-out sites are adequately protected for the Eastern DPS. In addition, Section 4(g), added to the ESA in the 1988 reauthorization, requires that NMFS cooperate with states to implement a system to monitor for at least five years that status of all species that have recovered and been removed from the threatened and endangered species lists. This post-delisting monitoring plan will provide data on the delisted DPS.

The decline of the Steller sea lion is largely attributed to direct mortality from predator control programs and shooting by fishermen. Pitcher et al. 2007, 2008 Recovery Plan. And as the 2008 Recovery Plan points out, “[t]he most important protection has likely been prohibitions on lethal takes.” 2008 Recovery Plan at VI-1. Such protection will continue under the MMPA after delisting.

*Factor B: Overutilization for commercial, recreational, scientific, or educational purposes is no longer a threat*

Commercial and recreational harvest of Steller sea lions is not allowed under the MMPA. Human-caused mortality does occur due to subsistence harvest, incidental take in fisheries, illegal shooting, and take during scientific research. 2008 Recovery Plan at VII-5. Subsistence harvest data collected during 1992-1998 in over 60 coastal communities throughout the range of Steller sea lions found only 20 animals taken from the Eastern DPS during this time period. Wolfe and Mishler 1998,<sup>2</sup> Wolfe and Hutchinson-Scarborough 1999.<sup>3</sup>

Observer programs required by amendments to the MMPA in 1988 and 1994 estimated that 1.2 Steller sea lions were killed each year during 1993-1997 in the California/Oregon thresher shark and swordfish drift gillnet fishery. Hill and DeMaster 1999.<sup>4</sup> Three Steller sea lion mortalities were reported in the California/Oregon/Washington groundfish trawl fishing in 1994 and 1997,

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<sup>2</sup> Wolfe, R.J., and C. Mishler. 1998. The subsistence harvest of harbor seal and sea lion by Alaska Natives in 1997. Alaska Department of Fish and Game, Juneau, AK, Subsistence Division. Technical Paper No. 246. 70 pp.

<sup>3</sup> Wolfe, R.J., and L.B. Hutchinson-Scarborough. 1999. The subsistence harvest of harbor seal and sea lion taken by Alaska Natives in 1998. Alaska Department of Fish and Game, Juneau, AK, Subsistence Division. Technical Paper No. 250. 72 pp.

<sup>4</sup> Hill, P.S., and D.P. DeMaster. 1999. Alaska Marine Mammal Stock Assessments, 1999. NOAA Technical Memo. NMFS-AFSC-110. 166 pp.

and one was recorded in the northern Washington marine set gillnet fishery. 2008 Recovery Plan. Injuries to sea lions have been recorded in logbooks from Southeast Alaska and California/Oregon/Washington salmon troll fisheries. Hill and DeMaster 1999.

Shooting of sea lions is illegal, and permits are required from the NMFS Protected Resources Division for educational and scientific uses of this species. NMFS determined in the 2008 Recovery Plan that “the MMPA provides adequate protection for sea lions from the eastern population.” 2008 Recovery Plan at VII-5. NMFS concluded that “[n]one of these factors now appear to be preventing recovery at this time,” although these causes of mortality should be closely monitored and reduced when appropriate. *Id.*

**Factor C: Disease or predation is not a threat**

Although Steller sea lions are taken by killer whales throughout their range (2008 Recovery Plan), and by white sharks in California (Long et al. 1996<sup>5</sup>), there is no indication that this predation is outside of normal levels expected in this DPS at this abundance level. 2008 Recovery Plan at VI-1 through VI-2, VII-5. Predation does not appear to be limiting the strong recovery observed over the last 30 years. As NMFS concluded in the 2008 Recovery Plan, “[t]he final evaluation is that *predation is not limiting recovery.*” *Id.* at VII-5 (emphasis added).

Diseases are known to occur within this DPS but appear to be limited to those endemic to the population and are unlikely to have population level impacts. *Id.* “No evidence has been found of disease limiting population growth.” *Id.* at VI-4. NMFS concluded in the 2008 Recovery Plan that no further actions are needed to achieve reductions in disease or predation. *Id.*

**Factor D: Existing regulatory mechanisms are adequate to conserve the species**

The MMPA provides adequate protections for the Eastern DPS of the Steller sea lion. Existing regulatory mechanisms, including the ESA, have led to the strong recovery of this DPS, resulting in the achievement of all recovery goals. We now have a better understanding of this species including necessary management and conservation actions that keep this species healthy. Through continued monitoring and management under the MMPA, the Magnuson-Stevens Fishery Conservation and Management Act, and the Fisheries Act of Canada, the potential threat from human disturbance can be controlled. Further, conservation actions by Federal, State, and local governments can be implemented in order to continue to protect the Eastern DPS of the Steller sea lion.

As indicated in the 2008 Recovery Plan, “[t]he most important protection has likely been prohibitions on lethal takes.” 2008 Recovery Plan at VII-1. Such protection will continue under the MMPA after delisting.

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<sup>5</sup> Long, D.J., K. Hanni, P. Pyle, J. Roletto, R.E. Jones, and R. Bandar. 1996. White shark predation on four pinniped species in central California waters: geographic and temporal patterns inferred from wounded carcasses. Pages 263-274, in: A.P. Klimley and D.G. Ainley (eds.), Great white sharks, the biology of *Carcharodon carcharias*. Academic Press, San Diego, CA.

Besides these existing regulatory mechanisms, the delisting process includes a post-delisting monitoring plan. *See id.* at VII-8 through VII-9. After the final rule to delist a species has become effective, NMFS:

shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary [and] which . . . have been removed from either of the lists.

16 U.S.C. § 1533(g)(1).

If the Eastern DPS of the Steller sea lion is delisted, NMFS is committed to conducting at least 5 years of monitoring of sea lion populations to ensure that the species remains stable or improving. *See* 16 U.S.C. § 1533(g). NMFS has committed to monitoring activities for 10 years post delisting. 2008 Recovery Plan at VII-7.

The purpose of this post-delisting monitoring is to verify that a species delisted due to recovery remains secure from the risk of extinction after it no longer has the protection of the ESA. *See* 2008 Recovery Plan at VII-7. If monitoring results indicate that the well-being of a recovered species is at significant risk, then NMFS can use the emergency listing provisions of the ESA to re-list the species. *See* 16 U.S.C. § 1533(g)(2). Thus, the ESA has a built-in regulatory mechanism which requires NMFS to develop and implement a monitoring plan to ensure protection of the Eastern DPS of the Steller sea lion.

As detailed, existing regulatory mechanisms adequately protect the Eastern DPS of the Steller sea lion. And in addition to these broad regulatory mechanisms providing protection to sea lion populations, the protection of the sea lion will be secured by the post-delisting monitoring plan. Such a plan can address any potential future threats such as increased human disturbance, which has not been quantified. 2008 Recovery Plan at VII-5. A plan could provide for research and monitoring of the potential impacts of increased vessel traffic and tourism related activities post-delisting to better manage and control any negative effects. At current levels, however, these activities do not appear to be limiting the recovery of the Eastern DPS of the Steller sea lion.

**Factor E: Other natural or manmade factors affecting its continued existence have been sufficiently reduced or do not pose a threat**

Entanglement is a manmade factor that affects individual sea lions inadvertently ensnared in marine debris. 2008 Recovery Plan at VI-3 through VI-4. At current levels, entanglement does not appear to have a population level effect on the Eastern Steller sea lion DPS, and does not appear to be limiting recovery. There are multiple ongoing efforts to remove marine debris from beaches, and to disentangle sea lions from debris. Communities and government agencies will need to continue to organize and support these efforts post-delisting to ensure a comparable level of effort in the future.

The 2008 Steller Sea Lion Recovery Plan recommends two actions to provide assurance that delisting is warranted and factors will not develop to threaten the persistence of the species. First, establish an outreach program to educate the public, commercial fishermen, and others on the continued need to conserve and protect Steller sea lions. Second, ensure that an Alaskan stranding network is in place and functional. 2008 Recovery Plan at VII-6. The State of Alaska agrees with and supports both of these suggestions and is working cooperatively to monitor entanglement of Steller sea lions in Alaska, and to develop disentanglement techniques, and we believe that increased awareness by the public regarding the success story of the recovery of this population will clearly demonstrate that conservation actions can make a difference.

*Overall Analysis of These Five Factors Indicates that Delisting is Warranted*

The consideration here of the five criteria to determine whether a species should be removed from the List of Endangered and Threatened Species indicates that, based on substantial scientific and commercial information, the delisting of the Eastern DPS of the Steller sea lion is warranted. The threats to the Eastern DPS of the Steller sea lion have been either completely eliminated or sufficiently reduced or controlled so that the long-term survival of the Eastern DPS of the Steller sea lion is ensured. The Eastern DPS of the Steller sea lion is no longer a species which “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *See* 16 U.S.C. § 1532(19) (definition of “threatened”). Therefore, delisting of the Eastern DPS of the Steller sea lion is appropriate.

#### **IV. The Eastern DPS of the Steller Seal Lion Has Recovered**

If consideration of the delisting factors discussed above indicates that a species is neither endangered nor threatened it may be delisted on the basis that it has recovered. 50 C.F.R. § 424.11(c)-(d). The ESA regulations specifically provide for delisting based on recovery of a species to a point which it is no longer endangered or threatened under the ESA. *See* 50 C.F.R. § 424.11(d)(2). Population and distribution data on the Eastern DPS of the Steller sea lion indicate that the Eastern DPS of the Steller sea lion has recovered.

The Eastern DPS of Steller sea lion has been increasing since the late 1970s. Pitcher et al. 2007. This population was included in the original Federal threatened listing of this species due to rangewide declines that were occurring primarily in the Western DPS. In addition, the Eastern DPS retained its threatened status in the 1997 rule in which NMFS designated two separate DPSs due to concerns regarding human interactions and lack of recovery in California. 62 Fed. Reg. 24345 (May 5, 1997). These concerns have since been alleviated, the Eastern DPS of Steller sea lion is no longer in need of Federal threatened status, and the 2008 Steller Sea Lion Recovery Plan states that the Eastern DPS “should be considered for removal from the List.”

The Eastern Steller sea lion DPS is experiencing significant population increases throughout its range. The abundance of this DPS is now probably as high as it has been in the last century. Based on pup counts from a 2002 population-wide survey, pup production was estimated at 11,000, representing a total population size of approximately 46,000-58,000 animals. Pitcher et al. 2007.

In British Columbia, the average annual rate of increase of pup production was 3.2% from 1971 to 2002. Pup production increased much more quickly (8% annually) since the mid-1990s. *Id.* Numbers of non-pups on rookeries also increased significantly in British Columbia at approximately 3.1% annually from 1971 to 2002. The number of major haul-outs increased from 18 sites in the 1970s to 24 in 2005. *Id.*

According to the 2008 Plan, Steller sea lion pup numbers in Southeast Alaska increased at an average annual rate of 3.1% from 1979 to 2005. In 2009, 7,462 pups were counted at the five major Southeast Alaska rookeries where 5,510 were counted in 2005. D. DeMaster, unpublished memo, NMFS (Dec. 2, 2009). Pup production in Southeast Alaska increased at an average rate of 5% per year between 1996 to 2009 and 3.6% per year since the late 1970s. *Id.* Between 2001/02 and 2009, rookery pup production increased 50% in Southeast Alaska. *Id.* In 1979 Forrester Island was the only sea lion rookery in Southeast Alaska. A rookery developed at Hazy Islands in the early 1980s, and another at White Sisters in the early 1990s. Two additional rookeries, Graves Rocks and Biali Rocks, developed in the early 2000s. Approximately 74% of the increase in pup production since 1990 occurred at the four new rookeries. Pitcher et al. 2007. Numbers of Steller sea lions in Southeast Alaska are believed to be at an all time high. 2008 Recovery Plan.

In Washington state, non-breeding Steller sea lion numbers have not yet reached population estimates reported in the early 1900s (2,000-3,000 individuals). However, Pitcher et al. reported a 9.2% average annual rate of increase of non-breeding Steller sea lions in Washington since 1989. Pitcher et al. 2007. This species has benefited greatly in this region from protections put in place by the Marine Mammal Protection Act and the ESA, including the elimination of bounties offered for sea lions in Oregon and Washington during the early- to mid-1900s, and anti-harassment protections.

Approximately 4,000 sea lions were killed for bounties on the Oregon coast from 1925 to 1929. However, counts were not conducted until 1968. Non-pup Steller sea lions increased on the two Oregon rookeries and eight haul-out sites by an average annual rate of 3.7% between 1976 to 2002. Brown et al. 2002,<sup>6</sup> 2008 Recovery Plan. Pups also increased at the two Oregon rookeries at an average annual rate of 2.3% from 1990 to 2002. Pitcher et al. 2007. The 2002 counts represent the highest numbers of Steller sea lions ever counted in Oregon, however, numbers of sea lions in Oregon in the 1800s and early 1900s are unknown.

Historically Steller sea lions have used six rookeries in California. Counts of non-pups at these six rookeries in the first half of the 20<sup>th</sup> century were between 3,900-5,600. A count conducted in 2004 was 1,578 non-pups and 818 pups, suggesting that only about a third as many sea lions are present in California. Pitcher et al. 2007. However, numbers appear to have stabilized and begun to increase. In statewide counts conducted from 1996-2004 non-pup numbers were stable, while pup numbers increased by an average annual rate of 8%. *Id.* Recovery may be slowed in

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<sup>6</sup> Brown, R.F., S.D. Riener, and B.E. Wright. 2002 Population Status and food habits of Steller sea lions in Oregon. Report from Oregon Dept. of Fish and Wildlife to Oregon State University. Contract F0225A-01. 17pp.

California by natural competition with other pinniped species whose populations have increased significantly in that region. Bartholomew and Boolootian 1960.<sup>7</sup>

Negative impacts to Steller sea lions from interactions with humans were drastically reduced with the passage of the Marine Mammal Protection Act (MMPA) in 1972 which banned predator control programs and commercial harvest of this species. Incidental take of sea lions in the course of commercial fishing operations is monitored and managed under the MMPA and the Magnuson-Stevens Fishery Conservation and Management Act.

## V. Conclusion

On June 29, 2010, NMFS published their intent to initiate a 5-year Status Review for the Eastern Steller sea lion DPS. 75 Fed. Reg. 37385; 75 Fed. Reg. 38979 (July 7, 2010) (revision). The best available information clearly demonstrates a successfully recovered population that has been increasing for over 30 years. The Eastern DPS of the Steller sea lion is stable or increasing throughout its range, and has increased to or above historic highs in some areas. The large number of rookeries and haul-outs throughout the range of the population provides a protective buffer from large-scale population declines due to disease or other catastrophic events.

In the 2008 Recovery Plan, NMFS concluded that “[n]o threats to recovery [of the Eastern DPS of the Steller sea lion] have been identified and the population has been increasing for over 25 years, new rookeries have been created, and the population is at historical high levels.” 2008 Recovery Plan at VII-7. The Eastern DPS of the Steller sea lion has recovered to a point that protection under the ESA is no longer required. The evaluation presented here of the five criteria to be considered to determine whether a species should be removed from the List of Endangered and Threatened Species, documents the recovery of the Eastern DPS of the Steller sea lion and establishes that threats to the Eastern DPS have been eliminated or sufficiently reduced.

Additionally, the 2008 Recovery Plan outlines key components for a post-delisting monitoring plan for the Eastern DPS. We suggest that NMFS work closely with the Alaska Department of Fish and Game to further develop the post-delisting monitoring plan and delist the Eastern DPS of the Steller sea lion.

The recovery of the Eastern Steller sea lion DPS is an ESA success story and a good example of government and non-government agencies and other stakeholders working together to develop and implement conservation actions to recover a species from significant declines. We offer our assistance in the delisting process. It is important to prioritize this delisting to document this ESA success story and accurately reflect the healthy status of this Steller sea lion DPS.

The Eastern DPS of the Steller sea lion is clearly not in danger of extinction now, nor is it likely to be in danger of extinction in the foreseeable future. Consequently, the State of Alaska respectfully requests that NMFS take immediate action to remove the Eastern Steller sea lion DPS from the threatened list under the ESA pursuant to 16 U.S.C. § 1533(b) and 50 C.F.R.

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<sup>7</sup> Bartholomew, G.A., and R.A. Boolootian. 1960. Numbers and population structure of pinnipeds on the California Channel Islands. *Journal of Mammalogy* 41:366-375.

Secretary Gary Locke

August 30, 2010

§ 424.14. Thank you for the opportunity to provide you with this petition and information. Copies of all references cited in this petition are available upon request. I can be contacted to discuss this petition and the next step in the delisting process at [douglas.vincent-lang@alaska.gov](mailto:douglas.vincent-lang@alaska.gov) or (907) 267-2339.

Respectfully,



Doug Vincent-Lang  
Endangered Species Coordinator

cc: Denby Lloyd—ADF&G, Commissioner  
Cora Campbell—Special Assistant to the Governor  
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Corey Rossi—ADF&G, Division Director  
Bob Small—ADF&G, Marine Mammal Program Coordinator  
Sadie Wright—ADF&G, Wildlife Biologist  
Brad Meyen—DOL, Attorney

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