

## Marine Mammals Committee

**Committee Members:** R. L. Brownell, Jr., C. M. Callahan, J. P. Dines (Chair), S. C. Eaton, H. H. Edwards, J. M. Lapsieritis, I. Martinez-Serrano, S. L. McDonald, T. J. McIntyre, D. K. Odell, T. J. O'Shea, M. Ostroff, C. W. Potter, S. Sheffield, R. J. Small, and J. A. Thomas.

### **Mission:**

The marine mammals committee was formed in 1921 and Chaired by E. W. Nelson. It is the longest-standing active committee of the American Society of Mammalogists. Its mission is to maintain and encourage interest in marine mammals in the ASM, to provide the Society membership with information about marine mammalogy, including conservation and legislative issues, to spearhead resolutions and legislation involving marine mammals, and to serve as a liaison between ASM and the Society for Marine Mammalogy (SMM). Members of the Marine Mammals Committee are frequently active in both ASM and SMM.

### **Information Items:**

Members of the Committee have monitored and communicated with each other over the course of the year on issues pertinent to the conservation of marine mammals.

(1) The Committee considered preparing a statement in conjunction with the Conservation Committee regarding a proposal by USFWS to issue permits for the non-lethal “take” of polar bears and walrus during oil and gas development activities in the Beaufort Sea, but postponed action until the Committee gathers for the Annual Meeting in Portland. The Committee is staying alert to issues having potential impacts on the polar bear, walrus, and other marine mammal species.

(2) Summary of actions by the USFWS regarding the management of marine mammals

Pacific walrus (*Odobenus rosmarus divergens*)

In a proposed rule dated February 2011, the USFWS found that listing of the Pacific walrus as Endangered or Threatened is warranted but declined to do so, citing the need to focus resources on higher priority species. Instead, the Pacific walrus has been added to the Candidate Species list.

Polar bear (*Ursus maritimus*)

In December 2010, USFWS designated critical habitat for the polar bear population in the United States, which was listed as threatened in 2008. Critical habitat includes 484,734 km<sup>2</sup> located in Alaska and adjacent waters.

(3) Summary of actions by the NOAA/NMFS regarding the management of marine mammals.

Beluga Whale (*Delphinapterus leucas*)

NOAA/NMFS announced a final ruling on the designation of critical habitat for the Cook

Inlet Beluga Whale Distinct Population Segment under the Endangered Species Act. Two areas encompassing 7,800 km<sup>2</sup> (3,013 miles<sup>2</sup>) of marine habitat were designated. This rule will become effective on 11 May 2011.

North Atlantic Right Whale (*Eubalaena glacialis*)

A 90-day finding and a 12-month determination to revise the critical habitat for the North Atlantic Right Whale found substantial scientific information indicating that the requested revision may be warranted. The petition sought to revise the existing critical habitat by expanding the areas designated as critical feeding and calving areas and include a migratory corridor. NOAA/NMFS intends to continue the ongoing rulemaking process with the expectation of a proposed rule to be submitted to the Federal Register for publication in the second half of 2011.

Gray Whale (*Eschrichtius robustus*)

A petition was filed by the California Gray Whale Coalition requesting a status review to designate the Eastern North Pacific stock of Gray Whales as depleted. NOAA/NMFS found that the petition did not provide substantial evidence to indicate the ENP Gray Whale stock is below its Maximum Net Productivity Level and determined that the petition action was not warranted.

False Killer Whale (*Pseudorca crassidens*)

NOAA/NMFS proposed to list the Hawaiian Insular False Killer Whale as endangered under the Endangered Species Act. A comprehensive status review was conducted in response to a petition filed by the Natural Resources Defense Council and substantial evidence indicates the Hawaiian Insular population to be a Distinct Population Segment that qualifies as a species under the ESA. NOAA/NMFS determined the DPS is declining and although critical habitat is not designated at this time, information is being solicited to inform the development of the final listing ruling and designation of critical habitat in the event the DPS is listed. Comments were solicited through 15 February 2011.

Fin Whale (*Balaenoptera physalus*)

NOAA/NMFS announced the adoption of an Endangered Species Act Recovery Plan for the Fin Whale. The revised recovery plan presents a recovery strategy to address the potential threats based on the best available science and presents guidance for use by agencies and interested parties to assist in the recovery of the Fin Whale.

Humpback Whale (*Megaptera novaeangliae*)

Effective beginning 28 May 2010, NOAA/NMFS issued a permit for a period of three years to authorize the incidental, non-intentional taking of individuals from the Central North Pacific stock of Humpback Whales by Hawaii-based longline fisheries. NOAA/NMFS concluded that incidental mortality and serious injury will have a negligible impact on CNP Humpback Whales based on a rate of 5.4 whales per year (26.5 percent of the stock's Potential Biological Removal level).

Killer Whale (*Orcinus orca*)

NOAA/NMFS issued a final ruling effective 16 May 2011 prohibiting vessels from approaching Southern Resident Killer Whales within 200 yards (182.9 m) and from parking in the path of whales when in inland waters of Washington State. The purpose of this final rule is to protect Killer Whales from interference and noise associated with vessels, which have been identified as potential contributing factors in the recent decline of this population.

Sperm Whale (*Physeter catodon*)

NOAA/NMFS announced the adoption of an Endangered Species Act Recovery Plan for the Sperm Whale. The revised recovery plan contains revisions solicited by the public as well as independent peer-reviewers. The revised recovery plan presents a recovery strategy to address the potential threats based on the best available science and presents guidance for use by agencies and interested parties to assist in the recovery of the Sperm Whale. NOAA/NMFS concluded that the recovery plan meets the requirements of the ESA.

Steller Sea Lion (*Eumetopias jubatus*)

Petitions were filed by the states of Washington, Oregon and Alaska to delist the eastern Distinct Population Segment of Steller Sea Lion under the Endangered Species Act. NOAA/NMFS found substantial scientific or commercial information indicating that the petitioned action may be warranted. Public comments were solicited through 11 February 2011 and NOAA/NMFS is currently reviewing whether the delisting of the eastern DPS of Steller Sea Lion under the ESA is warranted.

Hawaiian Monk Seal (*Monachus schauinslandi*)

NOAA/NMFS announced its intent to prepare a Programmatic Environmental Impact Statement to analyze the environmental impacts of implementing specific management actions and administering the associated research and enhancement programs for Hawaiian Monk Seals in the northwestern and main Hawaiian Islands. This notice begins the official public scoping process that will help identify alternatives and determine the scope of environmental issues to be considered in the PEIS.

Bearded Seal (*Erignathus barbatus*)

NOAA/NMFS announced completion of a comprehensive status review of the Bearded Seal under the Endangered Species Act and announced a 12-month finding on a petition to list the Bearded Seal. The agency issued a Proposed Rule to list the Beringia and the Okhotsk Bearded Seals as threatened species.

Ringed Seal (*Phoca hispida*)

NOAA/NMFS announced completion of a comprehensive status review of the Ringed Seal under the Endangered Species Act and announced a 12-month finding on a petition to list the Ringed Seal. The agency issued a Proposed Rule to list the Arctic, Okhotsk, Baltic, and Ladoga subspecies as a threatened species.

Spotted Seal (*Phoca largha*)

A Final Ruling effective 22 November 2010 listed the southern Distinct Population Segment of the Spotted Seal as a threatened species under the Endangered Species Act.

Critical habitat will not be designated for the southern DPS because it occurs outside the United States.

**(4) *Deepwater Horizon* Oil Spill in the Gulf of Mexico**

(a) The fire and explosion on the *Deepwater Horizon* drilling platform on 20 April 2010 killed 11 workers and released an estimated 5 million barrels of crude oil into the Gulf of Mexico over a 3 month period. Determining the true impact this ecological disaster has had on marine mammals is complicated by the fact that unusually high numbers of bottlenose dolphins were washing ashore dead for several months prior to the oil spill. Since February 2010, more than 400 bottlenose dolphins have stranded in the region affected by the oil spill. An unknown number of cetaceans were additionally affected but never recovered; one study estimates a true mortality rate of 50 times the reported number. With a spike in dolphin deaths beginning in February 2011 and continuing to present, NOAA/NMFS declared an Unusual Mortality Event retroactive to February 2010. All cetacean deaths are part of the ongoing investigation and are part of the criminal case against the parties found responsible for the oil spill. Some marine mammal researchers, including many who respond to these strandings, have expressed frustration at Federal rules that hamper the publication of Gulf stranding data. The next information item explains the Natural Resource Damage Assessment and Restoration Program (NRDA) and why data are seemingly “locked up” as a result of this legal process.

**(b) *Deepwater Horizon* Oil Spill and the Natural Resource Damage Assessment and Restoration Program (NRDA)**

The Natural Resource Damage Assessment and Restoration Program (NRDA) was established by the Department of Interior (DOI) to provide a series of laws, regulations, statutes, and guidelines that form the foundation to restore natural resources injured from oil spills or other hazardous substance releases into the environment. Actions taken by the Restoration Program are done with the goal of restoring injured natural resources for the American public (see <http://www.darrp.noaa.gov/about/nrda.html>). There are three phases to natural resource damage assessment: pre-assessment, restoration planning, and restoration implementation. Please see the links below for more details.

Following the *Deepwater Horizon* MC252 oil spill, trustees (e.g., NOAA, DOI USFWS, DOI National Park Service, states of Louisiana, Mississippi, Alabama, Florida) representing the public were tasked with demonstrating the causality between the release of oil and potential injury to natural resources, and the loss of public use of those resources. Data collected by the trustees as part of the NRDA process are used to determine whether impacts to natural resources have occurred. According to NRDA, for there to be an injury it must be determined that there was exposure, a pathway, and an adverse change to the natural resource. It is the responsibility of NRDA to determine the extent of the injury and to recommend actions based on the data provided by the trustees. NRDA is a legal process and therefore, data collected as part of that process must be able to withstand scrutiny in a court of law, and are considered part of the chain of custody

(evidence) in any legal action that arises from the oil spill. Consequently, the trustees were required to handle the data in a manner that avoids allegations of tampering or misconduct (e.g., upload data directly to the agencies tasked with holding the data), and to use the data in ways that do not compromise the NRDA process. Although this has given the appearance to some that data are not available, NOAA is currently posting pre-assessment data and it looks like they will continue to do so as data quality are checked. For more information about NRDA data, the NRDA process, and information about some of the wildlife studies funded please see the links below.

<http://www.darrp.noaa.gov/about/nrda.html>

<http://www.noaa.gov/deepwaterhorizon/data/nrda.html>

<http://www.gulfspillrestoration.noaa.gov/>

<http://www.doi.gov/oepec/response/a01.htm>

<http://www.bp.com/sectiongenericarticle800.do?categoryId=9036685&contentId=706778>

**Action Items:** None.

**Respectfully submitted,**

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