



# Sea Otters in SW Alaska Listed as Threatened

Recent survey data indicate that the southwest Alaska population of northern sea otters (*Enhydra lutris kenyoni*) has undergone a precipitous population decline of at least 56 to 68 percent since the mid-1980s. Based on a thorough review of public comments and best available scientific and commercial information, the Service has published a Final Rule in the Federal Register to list the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter as threatened under the Endangered Species Act (ESA).

## Final Rule

Based on the magnitude of the population decline and the fact that more recent surveys conducted in 2003 and 2004 show continuing declines, the Service published the Final Rule in the Federal Register on August 9, 2005, to list the southwest Alaska DPS of the northern sea otter as threatened (70 FR 36366). The Final Rule does not include a proposal for designation of critical habitat for the southwest Alaska DPS of the northern sea otter. Sufficient information to analyze the potential impacts of a critical habitat designation is lacking at this time. Also, the identification of specific areas that contain physical and biological features essential to the conservation of the species, and which therefore may meet a key aspect of the ESA's definition critical habitat, is complicated by uncertainty as to the extent to which habitat may or may not be a limiting factor for this DPS.

The Final Rule will become effective 30 days after it is published in the Federal Register. Recovery planning will then begin and a draft Recovery Plan will be available for public comment within eighteen months.

## Proposed Special Rule

During the 120-day public comment period for the Proposed Rule to list the southwest Alaska DPS as threatened, Alaska Natives, organizations, and tribes expressed concern regarding the prohibition on the export of listed species. Under the MMPA, the Service



currently allows for the export of authentic Native articles of handicraft and clothing for personal, non-commercial purposes. Section 4(d) of the ESA and our implementing regulations at 50 CFR 17.31(c) provide the Secretary with regulatory flexibility regarding the prohibitions and exemptions for threatened species. The Service has determined that the current level and geographic distribution of the subsistence harvest of sea otters in southwest Alaska does not materially and negatively impact the population, therefore regulation of the harvest is not warranted at this time. A proposed Special Rule was concurrently published in the Federal Register that would align the provisions of the ESA relating to the creation, shipment, and sale of authentic Native articles and clothing made from northern sea otters in the southwest Alaska DPS by Alaska Natives with what is already allowed under the MMPA (70 FR 46387).

## How does listing the southwest DPS of the northern sea otter impact human activities in southwest Alaska?

The ESA and its implementing regulations include some general requirements, prohibitions, and exceptions that apply to threatened

and endangered wildlife. Once the southwest Alaska DPS of the sea otter is listed as threatened becomes final, actions of Federal agencies will be subject to the consultation requirements under Section 7 of the ESA. Under Section 7, Federal agencies are required to ensure, in consultation with the Service, that an action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species (this includes a subspecies or a DPS).

Also, Section 9 of the ESA prohibits take of endangered wildlife. The Service has issued regulations (50 CFR 17.31) that generally apply these prohibitions to threatened wildlife. Once the DPS is listed, these prohibitions on take would come into effect. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these. However, the Endangered Species Act also provides for the authorization of take and exceptions to the prohibitions. Section 10 of the Act provides for an exemption Alaska Natives that would allow them to continue to conduct traditional subsistence harvesting of sea otters if the DPS is listed. The Service is

concurrently publishing a Special Rule under Section 4(d) of the ESA that would allow for the export of legally purchased articles of Native Alaskan handicraft and clothing made from sea otters from the listed DPS. The articles would have to be exported by their owner as personal effects, and would be subject to existing CITES regulations.

### **Why was critical habitat not proposed in the Final Rule?**

As explained in the Final Rule, critical habitat for this DPS is not determinable at this time. As part of our request for public comments on the Proposed Rule the Service requested information regarding features and specific areas that may meet the definition of critical habitat. We will use that information, along with the best available scientific information, to help us determine whether to propose critical habitat for this DPS. If the Service does propose critical habitat in the future, the public would have an opportunity to comment on such a proposal.

### **What will be the impact of critical habitat on human activities in southwest Alaska?**

Under Section 7 of the ESA, a critical habitat designation would require Federal agencies to ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Activities with no Federal nexus are not subject to the critical habitat consultation requirements. For example, oil and gas development within critical habitat would, if federal permitting or federal funding were involved, require consultation with the U.S. Fish and Wildlife Service. However, if no federal permits or funds were involved in such a project, consultation with the Service would not be required.

### **Would listing or the designation of critical habitat close commercial fishing in southwest Alaska, similar to what happened with Steller sea lions?**

We do not anticipate that listing the southwest DPS of the northern sea otter will result in closure of commercial



**Southwest Alaska DPS  
of the Northern Sea Otter**

fishing in southwest Alaska. Although there is some overlap in the range of the Steller sea lion and the sea otter DPS, the two situations are very different. Steller sea lions are fish eaters, and they congregate in large numbers at specific sites known as haulouts and rookeries but feed in open waters. In contrast, sea otters eat primarily benthic (bottom-dwelling) invertebrates; for example, in the Aleutians their diet consists mostly of sea urchins, crabs, octopus, and some benthic fishes. Because of their dependence on benthic prey items, sea otters spend the vast majority of their time in shallow water, quite close to the shore. The U.S. Fish and Wildlife Service recently contracted the Alaska Department of Fish and Game to analyze its commercial fishing database. The results indicate that the species which otters most often prey upon have little or no commercial interest, and the areas where they live generally do not overlap with those where most commercial fishing occurs.

### **Is subsistence hunting a contributing factor in the decline?**

Subsistence hunting does not appear to be contributing significantly to the decline. The combined harvest from southwest Alaska villages has averaged fewer than 100 otters per year. Given this relatively low level, we do not believe the subsistence harvest is a significant contributing factor in the decline.

### **Is subsistence hunting affected by this action?**

No. The Endangered Species Act (like the MMPA) has a provision that allows Alaska Natives to conduct subsistence harvesting. The Service would consider enacting rules to regulate subsistence harvest only if it were seen to have a population-level impact upon the southwest Alaska DPS. There is no evidence to date to indicate that such regulation will be required or needed for the conservation of the species.

### **Is it legal to buy items made of sea otter fur?**

Yes. Both the ESA and MMPA contain provisions that allow Alaska Natives to make authentic Native articles of handicraft and clothing from sea otters. These articles may legally be sold to non-Natives within the United States.

### **Can a foreign tourist buy an item made with sea otter fur and take it home?**

Yes. Although export of listed species is prohibited under the ESA, the purpose of the proposed Special Rule (concurrently published in the Federal Register) is to allow for the export of authentic Native articles of handicraft and clothing created from members of the southwest Alaska DPS of the northern sea otter as personal effects for non-commercial purposes.

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Photo courtesy of Dr. Randall Davis,  
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