



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

August 28, 2020

Simon Kinneen, Chair
North Pacific Fishery Management Council
1007 West Third Avenue, Suite 400
Anchorage, Alaska 99501-2252

Dear Mr. Kinneen:

This letter provides a brief update on the National Marine Fisheries Service's (NMFS) progress toward designating critical habitat for threatened Arctic ringed seals and Beringia Distinct Population Segment (DPS) bearded seals under the Endangered Species Act (ESA).

As you may recall, NMFS listed these two seal species as threatened under the ESA in 2012. The listing for bearded seals was challenged in court before NMFS proposed critical habitat. NMFS published a proposed rule to designate critical habitat for Arctic ringed seals in 2014, and then the ringed seal listing was challenged in court. Ultimately, the U.S. Court of Appeals for the Ninth Circuit upheld both listing decisions, reinstating the bearded seal listing decision in 2017 and the ringed seal listing decision in 2018.

In 2019, the Center for Biological Diversity filed a complaint in U.S. District Court alleging NMFS failed to timely designate critical habitat. Under a court-approved stipulated settlement agreement between the parties, NMFS agreed to submit proposed determinations concerning the designation of critical habitat for these species to the Federal Register by September 15, 2020, and (to the extent proposed rules have been published) final rules by September 15, 2021. NMFS might seek an extension of those deadlines if more time is needed for review by the Office of Management and Budget.

NMFS has drafted a revised proposed rule to designate critical habitat for ringed seals and a proposed rule to designate critical habitat for bearded seals, both of which are currently under review by the Department of Commerce. For each species we have identified proposed critical habitat comprising contiguous areas of state and federal waters in the Bering, Chukchi, and Beaufort seas, within the geographic area presently occupied by the species, that contain the physical and biological features essential to the conservation of the species and that may require special management considerations or protection. The essential features identified for both species include sea ice habitat suitable for whelping, nursing, and molting, primary prey resources, and for bearded seals, acoustic conditions that allow for effective communication for breeding purposes. While we limited the proposed designations to areas where one or more essential features are found, the areal extent of the proposed critical habitat is necessarily large because both species have broad distributions and range widely. The seasonality of ice cover strongly influences the seals' habitat use, and the essential habitat features, in particular the sea ice essential features, are temporally and spatially dynamic.



Section 4(b)(2) of the ESA requires consideration of the economic impact, the impact on national security, and any other relevant impacts of designating any particular area as critical habitat. NMFS has the discretion to exclude any area where the benefits of exclusion outweigh the benefits of designation, so long as such exclusion does not result in the extinction of the species. Based on existing protections for ringed and bearded seals under the Marine Mammal Protection Act and as threatened species under the ESA, we do not anticipate that ESA section 7 consultations between NMFS and federal action agencies will result in additional requests for project changes specifically to protect critical habitat. As a result, the direct incremental costs of these critical habitat designations are expected to be limited to the additional administrative costs of considering the critical habitat in future ESA section 7 consultations. The proposed rules will include estimates of the anticipated costs and will also discuss potential exclusions from the critical habitat designations.

We are unable to release maps or other specific details of the proposed critical habitat at this point. Once the proposed rules have completed the clearance process, we anticipate publishing them in the Federal Register for public comment, seeking external peer review, and scheduling public hearings. We would also be happy to brief the Council on the proposed rules at that stage if that would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'JB', with a small dot above the 'i'.

James W. Balsiger, Ph.D.
Administrator, Alaska Region