

# ESA

## STATUS, PROBLEMS AND NEEDED FIXES

***Doug Vincent-Lang***

**Alaska Department of Fish and Game**



# Status

## ▣ Endangered species

- Eskimo curlew – USFWS (likely extinct)
- Aleutian shield fern - USFWS
- Short-tailed albatross - USFWS
- Steller sea lion (western DPS) - NMFS
- Beluga whale (Cook Inlet DPS) - NMFS
- Bowhead whale - NMFS
- Fin whale – NMFS
- Humpback whale - NMFS
- Other rare species: North Pacific right whale, Blue whale, Sei whale, and the Leatherback turtle - NMFS



# Status

## ▣ Threatened

- Spectacled eider - USFWS
- Steller's eider (AK breeding DPS) – USFWS
- Polar bear - USFWS
- Northern sea otter, southwest Alaska DPS - USFWS
- Steller sea lion, eastern DPS - NMFS



# Status

## ▣ Pending

- Kittlitz's murrelet – USFWS (Underway)
- Ice seals (3 species) – NMFS (Underway)
- SE Alaska herring – NMFS (Underway)
- Yellow-billed loon – USFWS (Scheduled)
- Pacific walrus – USFWS (Scheduled)
- Alexander Archipelago wolves – USFWS (90 day underway)
- 47 Alaskan corals – NMFS (90 day underway)
- Great white sharks – NMFS (received)
- **More on the way ...**



# Problems with the ESA – The Alaska Perspective



# Problems

Precautionary listings of species irrespective of current health or abundance based solely on models speculating possible extinction in the distant future.

*Polar bear*

*Ringed seals*

*Corals*

***Alaska views this as an unprecedented federalization of species based solely on precautionary principles -***

***Requires federal management of “take”***



# Problems

Legal discretion forces courts to accept federal science views that is not based on the best available science

*Steller sea lions*

***This allows federal scientists to drive species and land/sea management policy decisions based on agency perspectives***



# Problems

Expansive designations of critical habitat that encompass any area potentially occupied by a species rather than those truly critical to the species survival and recovery

*Polar bear*

*This needlessly puts under federal oversight broad areas of land/seascapes, often with little acknowledged benefit to the species, and raises environmental justice and statehood issues*





# Problems

Inconsistent application of the same law by differing agencies.

*Candidate species*

***Shouldn't the same statute be implemented similarly by two federal agencies?***



# Problems

The Services routinely underestimate the costs of designation.

*Polar bear*

*Cook Inlet beluga*

***Actual costs are significantly higher  
and significantly more impacting.***



# Problems

States are not involved in the wide range of ESA decision processes.

*Coral 90-day review*

*Steller sea lions BiOp*

***State expertise and best available science is not being used to inform a wide range of ESA decisions***



# Problems

Recovery goals are often set to fully recover a species rather than simply remove the risk of extinction and contain non-related “ecosystem” goals

*Steller sea lions*

*Sea otters*

*Polar bear (under development)*

***Failure to attain such recovery goals are driving consultations and are having real impacts.***



# Problems

States are not allowed to fully participate in recovery plan development

*Cook Inlet beluga*

***State expertise and best available science is being excluded and is not being considered***



***Bottom line -  
It is time to  
fix the ESA.***



# ESA FIXES

Provide specific guidance on when and how the Services can designate Distinct Population Segments and/or subspecies.

Define foreseeable future and acceptable level of risk.

Disallow multi-species petitions.

Only allow a species to be listed if the factor can be addressed by the ESA.



# ESA FIXES

Give states equal deference to federal agencies in all ESA processes.

Stipulate that courts are not required to defer to an agency conclusion that runs counter to that of other agencies or individuals with specialized expertise in a particular technical area.





# ESA FIXES

Make designation of critical habitat discretionary and not required at the time of listing.

Require a co-extensive approach to estimating economic impacts of designations.



# ESA FIXES

Allow states to regulate take (including regulated hunting) under Section 6 agreements for species that are currently healthy but face possible risk sometime in the distant future.

Define meaningful involvement of states under Section 4(i).



# ESA FIXES

Relax requirement for 90-day findings and 12 month status reviews.

Limit settlement fees for missed deadlines.

Grant states the ability to automatically intervene in all lawsuits involving species within their jurisdictions.

A State affected by an ESA listing decision that can produce science challenging agency science or modeling, should be able to object, stop the process, and require an independent science board to review all the issues and issue an opinion before agency action on the petition can proceed any further.



# ESA FIXES

Define recovery as the number necessary to remove extinction, not to fully recover the species and its habitat.

Disallow recovery goals aimed at ecosystem restoration.

Add requirements for a State to be actively consulted and collaborated with and having standing to object to and challenge a recovery plan and refer it to an independent science panel.



# SUMMARY

The precautionary listing of currently healthy species based solely on models speculating possible future impacts and associated expansive critical habitat designations represents an unprecedented federalization of species and their land/seascapes.

We must bring the Act back to its original intent.

We have suggested fixes and look forward to a meaningful discussion.

We will continue to challenge unwarranted ESA actions to help ensure a bright future for Alaskans.



***Thank you***  
***for your time and interest***

