



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
*National Marine Fisheries Service*  
P.O. Box 21668  
Juneau, Alaska 99802-1668

June 21, 2006

MEMORANDUM FOR: Susan Salvesson  
Assistant Regional Administrator  
For Sustainable Fisheries

FROM: Kaja Brix   
Assistant Regional Administrator  
For Protected Resources

SUBJECT: Reinitiation of Endangered Species Act (ESA) Section 7  
Consultation for the Alaska Groundfish Fishery Management Plans  
(FMPs).

This memorandum acknowledges the receipt of your April 19, 2006 memorandum requesting reinitiation of formal section 7 consultation under the Endangered Species Act (ESA) and receipt of the accompanying biological assessment (BA). Formal consultation is considered "initiated" on the date the request is received, provided all relevant data required by 50 C.F.R. 402.14(c) are included. The consultation requested the evaluation of effects of the federal groundfish fisheries on ESA-listed cetaceans, sea turtles, Steller sea lions and proposed and designated critical habitat. As you described, the section 7 consultation for Pacific salmon is currently being conducted by the NMFS Northwest Region which maintains the expertise on ESA-listed salmon species; the section 7 consultation for listed sea otters is being conducted by the U.S. Fish and Wildlife Service. The proposed action being considered includes the State of Alaska parallel groundfish fisheries (your Attachment 1) and the Federal groundfish fisheries as authorized under the following FMPs:

- FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), January 2005
- FMP for Groundfish of the Gulf of Alaska (GOA), January 2005

All information required to initiate consultation (as described above in 50 C.F.R. 402.14(c)) was either included with your letter and biological assessment, or is otherwise accessible for our consideration and reference. We have assigned a tracking number F/AKR/2006/02532 to this consultation. Please refer to that number in future correspondence on this consultation.

Section 7 of the ESA allows NMFS up to 90 calendar days to conclude formal consultation and an additional 45 calendar days to prepare a biological opinion. However, we anticipate that this consultation process will take much longer, due in part to the complexity of the issues, the preparation and review of draft documents, and the preparation of a final biological opinion that comports with the timeline envisioned by the Sustainable Fisheries Division. Therefore, we request your concurrence to extend the completion date of this consultation to the end of 2007.



Section 3 of the BA provides your determinations on whether the Alaska groundfish fisheries are likely to adversely affect listed species or their critical habitat. We concur with your determinations in the BA that the following species or their critical habitat are *not* likely to be adversely affected by the proposed action, and therefore do not require formal consultation: blue whale, bowhead whale, right whale critical habitat, sei whale, olive ridley turtle, loggerhead turtle, green turtle, and leatherback sea turtle. We also concur with your determinations that the following species *are* likely to be adversely affected by the proposed action, and therefore do require formal consultation: eastern distinct population segment (DPS) of Steller sea lion and its critical habitat, western DPS of Steller sea lion and its critical habitat, sperm whale, and humpback whale.

However, we do not concur with your determination that fin whales and northern right whales are likely to be adversely affected by the proposed action. When determining likelihood of adverse impact under the ESA, it is necessary to examine both the probability of *exposure* and the probability of *harm*. Both of these parameters should be considered in balance, and determined to be significant, to warrant a *likely to adversely affect* determination. If a level of risk (as evaluated by the probability of exposure and harm from the action) does not meet these thresholds, and the effect is therefore considered discountable, insignificant, or beneficial to the population, a *not likely to adversely affect* determination results. Here, we believe effects of the proposed action on fin and right whales would not meet these thresholds. Discountable effects are those extremely unlikely to occur. When one considers the amount of effort over the period of record against the number of recorded “takes” by commercial fisheries (described below), it is apparent such takes are extremely unlikely. This does not, however, mean that the consequences of such a take would not be significant.

#### Fin Whales

Given the abundance of the fin whale population and the extent of the proposed action throughout the BSAI and GOA, there is a recognized potential for *exposure*; however at a low probability. The fishery activity described in the action is also likely to have a relatively low probability of *harm*. The BA itself supports this conclusion. The Fin Whale Impacts Conclusion section of the BA references only one documented fin whale take for the GOA pollock trawl fishery, which, as the BA states “indicates that either this is a very rare occurrence or the detection of the take is rare. Considering the detection of the take would be likely during the retrieval of the gear and hard to miss, it is more likely the entanglement occurrence is rare. In addition, no direct evidence of prey competition with groundfish fisheries exists.” Given the rarity of observed entanglement interactions and the lack of evidence of prey competition between fin whales and the Alaska groundfish fisheries, we conclude that the effects of the proposed action are not likely to adversely affect fin whales within the action area.

#### Right Whales

Likewise, based on a similar examination of the probability of exposure and harm to northern right whales from the Alaska groundfish fisheries, we conclude that the proposed action is not likely to adversely affect this species. If an interaction were to occur, the level of *harm* would be considered high given this species’ critical status. Based on the small number of documented individuals in this population, the take of an individual right whale could significantly impact the survival and recovery of this species. However, the likelihood of exposure must also be

weighed with the level of harm. The combination of few documented individuals, the rarity of these sightings, and the lack of any reports of fishery takes of northern right whales in Alaskan waters indicate that the probability of *exposure* is likely to be low (e.g., the likelihood of an individual whale encountering Alaska groundfish gear). Although entanglement in fishing gear is a significant source of injury and mortality for right whales in the North Atlantic ocean, we cannot conclude by inference a similar level of risk for animals in the Pacific ocean. The BA acknowledges that a higher concentration of fishing gear occurs in the Atlantic ocean than in the North Pacific ocean and the type of gear is different. Available data indicate that no right whale interactions have occurred in U.S. Pacific waters. The BA confirms this as well, stating “No records of fishery interaction with right whales in Alaskan waters exist.”

The only known records of northern right whale entanglement in the Pacific ocean are from interactions documented in Russian waters. Two right whale deaths were reported in association with the Russian gill net fishery, one each in 1983 and 1989. One right whale stranded near Kamchatka with salmon gill net around its tail was reported in 1994, and one right whale was observed entangled in fishing gear in the Okhotsk Sea in 1992. It is unlikely these interactions originated in the action area given that they appear to involve Russian fisheries.

By assessing information available on northern right whales in the Pacific ocean, the extent of the action, and the parameters of exposure and harm, we conclude that the effects of the proposed action are not likely to adversely affect northern right whales within the action area. We do not expect that the fisheries authorized by these actions are likely to result in the take of this species within the action area.

In summary, we propose that NMFS consult formally on the following listed species and their critical habitat: eastern distinct population segment (DPS) of Steller sea lion and its critical habitat, western DPS of Steller sea lion and its critical habitat, sperm whale, and humpback whale.