

The Endangered Species Act: Species Listings and Implications for Development in Alaska

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Species Listings: Implications and Opportunities to Engage

- Listings and Petitions to Watch:
 - Polar Bear
 - Beluga Whale
 - Walrus
 - Seals
- Opportunities to Engage
- Implications for Existing Projects, Development

Agency Roles

- U.S. Fish & Wildlife Service
 - terrestrial and freshwater species, plants (polar bear, walrus)
- National Marine Fisheries Service
 - marine species
- Charged with listing species, enforcing the “take” prohibition, and consulting with other federal agencies

Key Definitions

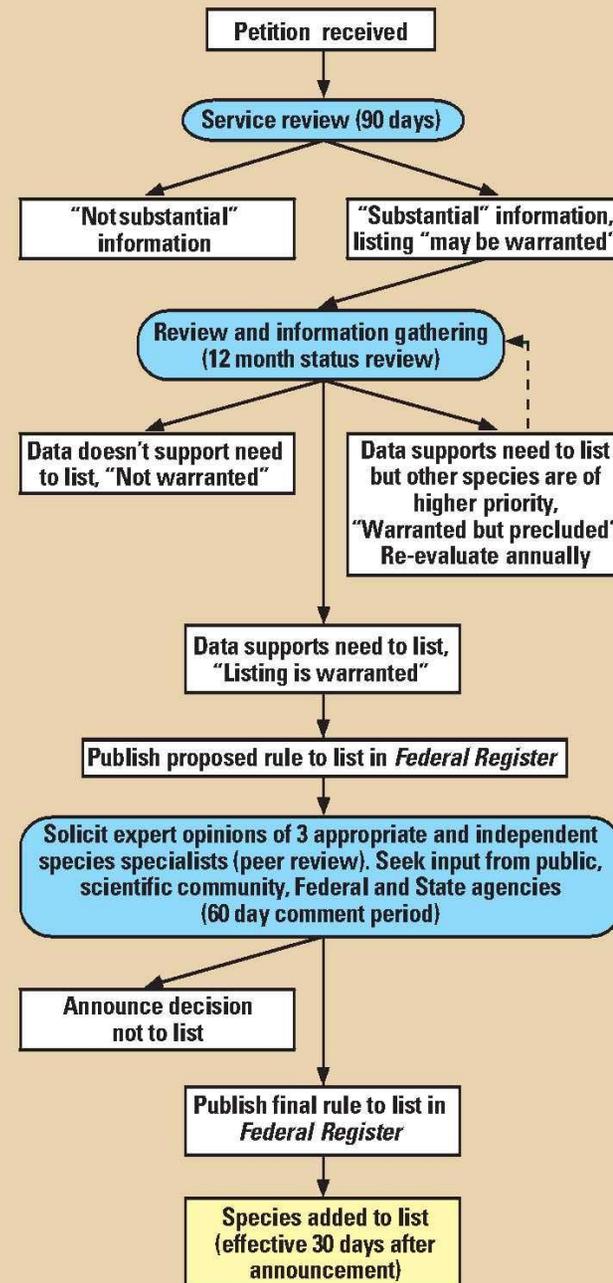
- Endangered
 - Any species in danger of extinction throughout all or a significant portion of its range
 - “Take” automatically prohibited
- Threatened
 - Any species likely to become endangered in the foreseeable future
 - Take can be prohibited through 4(d) rule
 - Section 4(d) allows rules for conservation of species
 - 4(d) rules extend take prohibition, but may include “limits”
- Critical Habitat
 - Specific geographic areas with physical and biological features essential to the conservation of a listed species

ESA Listing Steps

- Petition
- 90-day finding on Petition
- Species status review
–12-month finding
- Proposed listing
- Final listing

Later:

- Designation of
critical habitat
- Recovery plan



ESA Listing Criteria

1. Present or threatened destruction, modification, or curtailment of species range or habitat
2. Over-use for commercial, recreational, scientific, or educational purposes
3. Disease or predation
4. Inadequacy of existing regulatory mechanisms
5. Other natural or man-made factors affecting continued existence of species

Critical Habitat

- Use best scientific data to identify areas essential to conservation of species, and that may require special management consideration or protection
- Economic impact analysis required; areas may be excluded from protection based upon that analysis
- Notice and public comment on proposed designation
- Designation does not create a park or preserve, but does complicate activities within the habitat area

Polar bears

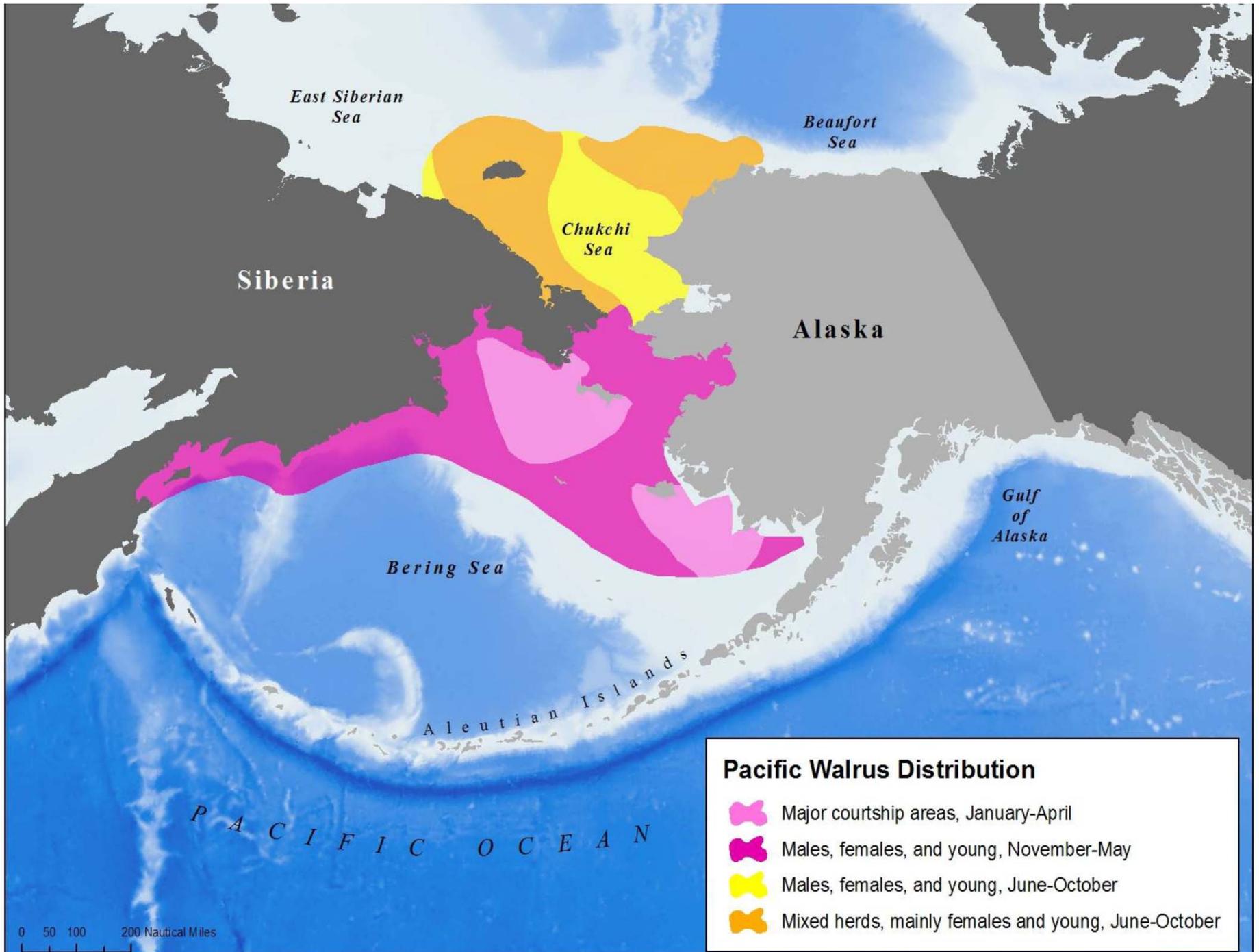
- Threatened (May 15, 2008)
 - FWS cites decrease in sea ice
- 4(d) Rule (Interim final rule)
 - Applies take prohibition
 - Does not apply to activities in compliance with MMPA
 - Does not apply to activities outside of Alaska (*i.e.*, GHG emissions)
- Lawsuits
 - Enviro. groups: "threatened" status and 4(d) rule (N.D. Cal.)
 - State challenging listing (D.C.)
 - Industry groups seeking geographic expansion of 4(d) rule (D.C.)
 - Safari Club challenging import ban on sport-hunted trophies (D.C.)
- **Today!** Multidistrict Litigation Panel hearing consolidation and venue arguments
- Next up:
 - Critical Habitat
 - Recovery Planning
 - Final 4(d) rule?
 - Redefining "indirect" effect

Cook Inlet beluga whale

- Endangered (October 22, 2008)
 - (No 4(d) rule)
- October listing cites failure to recover since harvest ended
- Still to come from NMFS:
 - Critical Habitat - within the year
 - Recovery Plan (see October Conservation Plan)

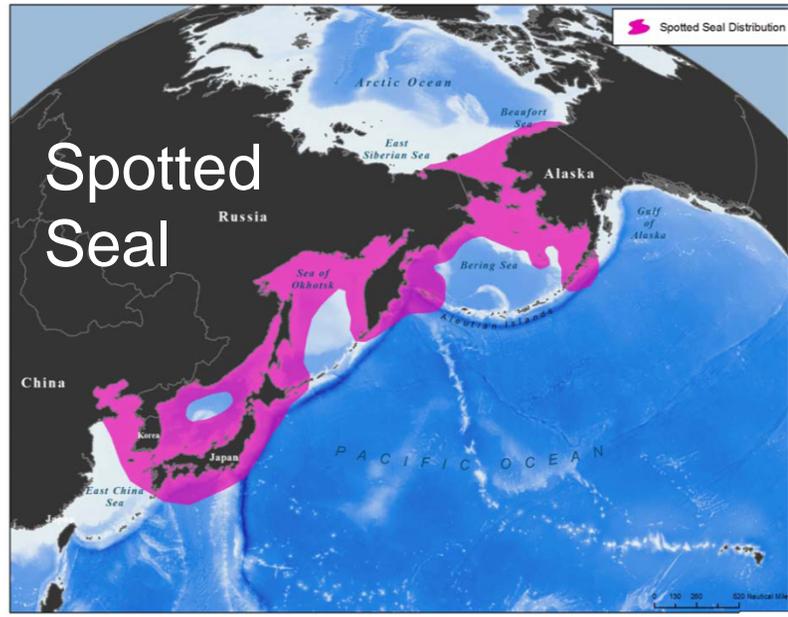
Pacific walrus

- CBD petition to list
(Feb 2008)
- FWS 90-day finding
delayed for funding
- CBD intent to sue
(May 2008)
- FWS has funding,
expect finding in early
2009



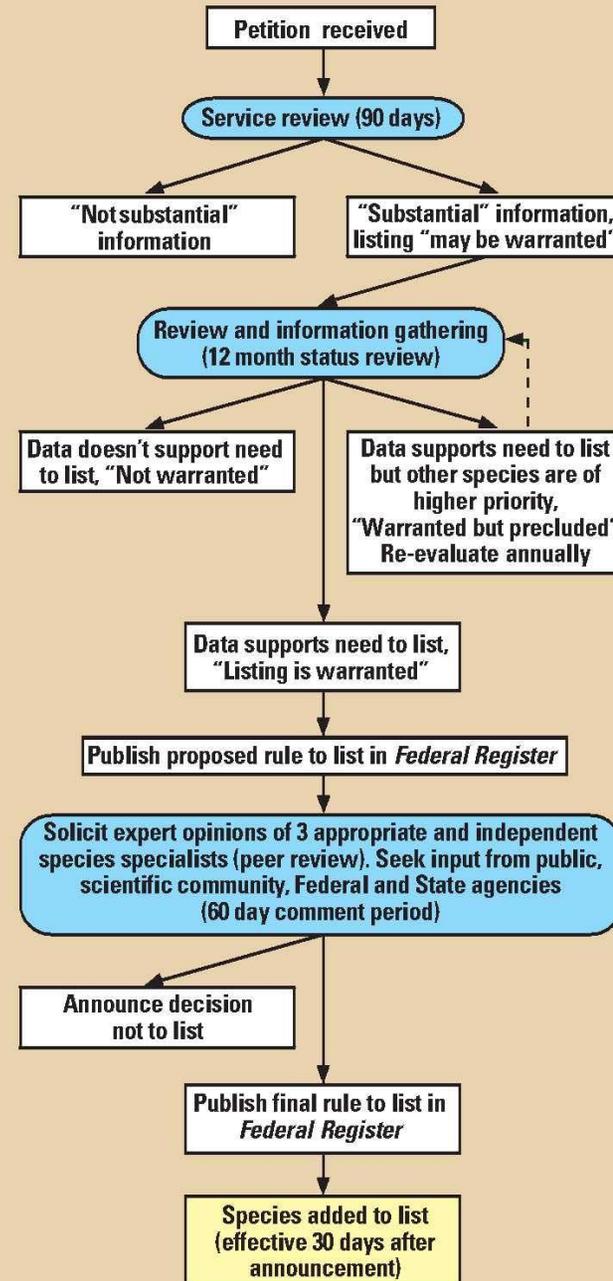
Seals

- Petition to list:
 - ribbon seal (March 2008)
 - ringed, bearded and spotted seals (May 2008)
- NMFS 90-day findings in May/Sept
 - listing may be warranted
 - 12-month status reviews underway
- Finding cites climate change, sea ice recession
- Species is currently healthy



Opportunities to Engage

- Before petition
- After petition (not solicited)
 - Walrus
- During 12-month status review
 - Seals
- On proposed listing
- On proposed designation of critical habitat
 - Cook Inlet beluga whales
- On draft recovery plan



What else can you be doing?

- Document effects to species under current regulatory structure
 - Species interactions?
 - Increased sightings?
 - Help close information gap
- Assess whether your activities are likely to “take”
- Pro-actively pursue MMPA authorizations and ESA section 7 consultations

Is the ESA being used to advance an anti-development agenda in Alaska?

- Yes.
- You can expect:
 - More petitions, listings and critical habitat proposals where you operate or hope to operate
 - Section 7 consultations and BiOps with more stringent terms and conditions
 - More lawsuits challenging your project authorizations
 - Agency enforcement actions to demonstrate attentiveness
 - Agency staff expecting more up-front mitigation
 - Lawsuits challenging activities based upon adverse impacts to critical habitat
- There is a path through this -
 - Think ahead, develop science
 - Proactively engage in listings
 - Be strategic about getting ESA and MMPA coverage

What is your plan?

How, when, and where are you engaged?

What resources are you devoting to these issues?

