

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS-R7-ES-2009-0051; 9221050083]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Pacific Walrus as Threatened or Endangered****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Pacific walrus (*Odobenus rosmarus divergens*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Following a review of the petition, we find that the petition presents substantial scientific or commercial information indicating that listing this subspecies may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the Pacific walrus is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this subspecies.

**DATES:** We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that you send us information on or before November 9, 2009.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for docket FWS-R7-ES-2009-0051 and then follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R7-ES-2009-0051; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Rosa Meehan, Alaska Regional Office, Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road,

Anchorage, AK 99503; by telephone (800-362-5148); or by facsimile (907-786-3816). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Information Solicited**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Pacific walrus (*Odobenus rosmarus divergens*). We request information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Pacific walrus. We are seeking information regarding:

(1) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(2) The historical and current status of the population, including distribution, abundance, trends in abundance, population dynamics, taxonomy, and stock structure.

(3) Habitat selection and use, including both sea-ice and terrestrial haulouts; disturbance at haulouts; food habits; and effects of disease, competition, and predation on Pacific walruses.

(4) The effects of climate and environmental changes, sea-ice changes, and ocean acidification on the distribution, abundance, and life history of Pacific walruses and their principal prey over the short and long term.

(5) Information on the effects of other potential threat factors, including, but not limited to, oil and gas exploration and development, commercial fishing and shipping, contaminants, and hunting.

(6) Information on the effects of ongoing conservation measures for the species and its habitat on the distribution and abundance of Pacific walruses and their principal prey over the short and long term.

If we determine that listing the Pacific walrus is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the Pacific walrus, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be informative to us in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be

available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours at the Alaska Regional Office (**SEE FOR FURTHER INFORMATION CONTACT**).

### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On February 8, 2008, we received a petition dated February 7, 2008, from the Center for Biological Diversity requesting that we list the Pacific walrus as threatened or endangered under the Act and that we designate critical habitat. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). We evaluated the immediacy of possible threats to the Pacific walrus and determined that emergency listing was not warranted. In a letter to the petitioner dated April 9, 2008, we informed the petitioner that all remaining available funds in the listing program for Fiscal Year (FY) 2008 had already been allocated to the Service’s highest priority listing actions and that no listing funds were available to further evaluate the walrus petition in FY 2008. In the case of *Center for Biological Diversity v. U.S. Fish and Wildlife Service, et al.* (3:08-cv-00265-JWS), the plaintiff filed a complaint for declaratory judgment and injunctive relief challenging the failure of the Service to make a 90-day finding on its petition to list the Pacific walrus, under section 4(b)(3) of the Act (16 U.S.C. 1533(b)(3)) and the Administrative Procedure Act (5 U.S.C. 706(1)). The complaint was filed in U.S. District

Court for the District of Alaska on December 3, 2008. On May 18, 2009, a settlement agreement between the Center for Biological Diversity and the Service was approved by the court. This agreement requires us to submit our 90-day finding on the petition to the **Federal Register** by September 10, 2009. If we find that the petition presents substantial information that listing may be warranted, we must submit our 12-month finding to the **Federal Register** by September 10, 2010.

### Species Information

The family Odobenidae is represented by a single modern species, *Odobenus rosmarus*, of which two subspecies are generally recognized: The Atlantic walrus (*O. r. rosmarus*) and the Pacific walrus (*O. r. divergens*). The two subspecific pinnipeds occur in geographically isolated populations. The Pacific walrus is a large, heavy-bodied pinniped that has thick, rough, creased skin; a wide head and muzzle; small, protruding eyes; hundreds of forward-facing, short, stiff, vibrissae, and upper canine teeth that develop into long tusks (Jefferson *et al.* 2008, pp. 376–377).

Pacific walrus use floating sea ice as a substrate for birthing and nursing calves, for resting, for isolation from predators, and for passive transport to new feeding areas (Fay 1974, pp. 393–394). Pacific walrus is thus identified as an ice-associated species. They range throughout the continental shelf waters of the Bering and Chukchi Seas and can be found in low numbers in the East Siberian Sea and the Beaufort Sea. In winter and early spring, walrus concentrate in the Bering Sea pack ice where open leads, polynyas, or thin ice allow access to water (Fedoseev 1982, p. 2 of translation; Fay 1982, p. 21).

During spring, most of the population, including females and calves, migrates from the Bering Sea into the Chukchi Sea, where they form mixed groups along the southern edge of the pack ice. As summer sea ice recedes, walrus may haul out on shore on Wrangel and other islands and along the Chukchi Sea coast. The number of walrus using coastal haulouts in Chukotka are highly variable among years and seasons (*see* Fay *et al.* 1984 for summary up through the 1970s, pp. 270–271). Many adult males remain in the Bering Sea for the summer, using coastal haulout sites in the Gulf of Anadyr, Bering Strait region, and in Bristol Bay (Fay 1982, p. 14). In the fall, walrus that summered in the Chukchi Sea follow the formation of sea ice as they migrate south through the Bering Strait and back into the Bering Sea.

Walrus feed on a broad array of benthic invertebrate prey, including sea anemones, worms, sea cucumbers, tunicates, snails, and clams (Sheffield *et al.* 2001, p. 311). Occasionally, walrus consume large nonbenthic organisms such as fish, birds, or seals (summarized in Sheffield *et al.* 2001, p. 311). Although capable of diving to deeper depths, walrus usually feed in shallow waters of 100 meters (328 feet) or less (Fay 1982, p. 163; Fay and Burns 1988, p. 240).

The current size and trend of the Pacific walrus population is unknown. Between 1975 and 1990, cooperative, contemporaneous, visual aerial surveys were carried out by the United States and the former Soviet Union at 5-year intervals, producing population estimates ranging from about 170,000 to 250,000 individuals (*see* Gilbert 1999 for review, pp. 76–79). Observers counted or estimated numbers of walrus hauled out on pack ice and land, but could not accurately detect or quantify walrus that were swimming in the water. Surveyed areas included all known terrestrial haulout sites, but were limited to an unknown but very small percentage of available ice habitats. Efforts to survey the Pacific walrus population were suspended by both countries after 1990, due to unresolved problems with survey methods that produced population estimates with unknown bias and large or unknown, but presumably large, variances that severely limited their utility (Gilbert *et al.* 1992, p. 1; Gilbert 1999, p. 82). The population estimates generated from these surveys are considered minimum values that cannot be used for detecting trends in population size (Hills and Gilbert 1994, p. 205).

During 2002–2005, the Service and Russian partners developed a survey method that uses thermal imaging systems to reliably detect walrus groups hauled out on sea ice (Burn *et al.* 2006, p. 54; Udevitz *et al.* 2008, pp. 63–64). At the same time, the U.S. Geological Survey developed satellite transmitters that record information on the haulout status of individual walrus (Jay *et al.* 2006, p. 231), which can be used to estimate the proportion of the walrus population in the water. These technological advances led to a joint United States-Russia aerial survey in March and April of 2006, to estimate the size of the Pacific walrus population (USFWS and USGS 2006, p. 7). Analysis of data collected during the 2006 walrus survey is ongoing. Final results are expected in late 2009.

## Threats Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR Part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to the Pacific walrus, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

### *A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The petition asserts that the Pacific walrus' sea-ice habitats in the Bering and Chukchi Seas are disappearing and being degraded by global climate change (Petition, pp. 26–63). It states that the Arctic is warming faster than other regions of the globe (p. 31; Anisimov *et al.* 2007, p. 656), and that Arctic summer sea ice, including the ice of the Chukchi Sea, is predicted to disappear or nearly disappear between 2012 and 2030 (p. 27; Amos 2007, p. 1; Stroeve *et al.* 2008, p. 14). By 2050, the Bering Sea is predicted to lose about 40 percent of its winter sea ice unless emissions scenarios change (Overland and Wang 2007, p. 1).

The petition states that global warming will impact the Pacific walrus by degrading and eliminating critical sea-ice habitat, decreasing prey availability, altering interactions with predators and disease, and increasing human disturbance throughout the range (Petition, p. 58). It claims that, without sea ice, the Pacific walrus will be forced into a shore-based existence for which it is not adapted (Petition, p. 27).

After reviewing the supporting references cited in the petition, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific

or commercial information indicating that the petitioned action may be warranted due to effects on walruses resulting from changes in climate and sea-ice habitats.

### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petition does not claim that overutilization of Pacific walruses for commercial, recreational, scientific, or educational purposes is taking place or will take place, and does not provide any evidence that this factor is impacting or will impact Pacific walruses (Petition, pp. 63–64). We do not have substantial information in our files to suggest that overutilization for commercial, recreational, scientific, or educational purposes may threaten the Pacific walrus. However, all factors, including threats from utilization for commercial, recreational, scientific, or educational purposes, will be evaluated when we conduct our status review.

### *C. Disease or Predation*

The petition asserts that global warming is likely to markedly increase depredation and disease occurrence in the Pacific walrus population (Petition, p. 64), but does not support this statement with any evidence that this factor is impacting or will impact Pacific walruses. We do not have substantial information in our files to suggest that disease or predation may threaten the Pacific walrus. However, all factors, including threats from disease and predation, will be evaluated when we conduct our status review.

### *D. The Inadequacy of Existing Regulatory Mechanisms*

The petition presents information regarding existing and planned regulatory mechanisms, stating that the primary international regulatory mechanisms addressing greenhouse gas emissions and global warming, the United Nations Framework Convention on Climate Change and the Kyoto Protocol, are ineffective in mitigating many of the climate-based threats to the species (Petition, pp. 64–70). The petition claims that the ineffectiveness of these regulatory mechanisms is demonstrated by their failure to significantly reduce greenhouse gas emissions (Petition, pp. 69–70). See our analysis of Factor A above, where we found that the petitioned action may be warranted due to effects on walruses resulting from changes in climate and sea-ice habitats. The petition further claims that existing regulatory mechanisms are inadequate to address impacts of oil and gas development, as

made evident by the fact that important walrus habitats were not deleted from Minerals Management Service lease sales (Petition, pp. 70). It states that existing regulations both domestically and internationally are inadequate to protect Pacific walruses and their habitat from harm due to shipping and ocean acidification (Petition, pp. 71–72).

After reviewing the supporting references cited in the petition, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to inadequacy of existing regulatory mechanisms.

### *E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petition claims that ocean acidification poses a profound threat to marine ecosystems due to impacts on photosynthesis of phytoplankton, metabolic rates of zooplankton and fish, oxygen supply of squid, reproduction of clams, nitrification by microorganisms, and the uptake of metals (Petition, p. 72; WBGU 2006, p. 69). The petition further claims that ocean acidification threatens the Pacific walrus because of its deleterious effects on walrus prey species (Petition, p. 72), including mollusk species that are similar to those species consumed by the Pacific walrus (Berge *et al.* 2005, p. 1; Gazeau *et al.* 2007, p. 1).

The petition claims that additional impacts on the Pacific walrus include threats from offshore oil and gas development in the United States, Canada, and Russia, which has the potential to negatively impact large portions of the Pacific walrus' foraging and breeding habitat with oil and noise pollution (Petition, p. 73). The petition states that exposure to contaminants may also increase for Pacific walruses as a result of increasing precipitation and ice melt (Tynan and DeMaster 1997, p. 318). The petition also states that commercial fisheries pose a threat to the Pacific walrus by causing direct mortality through incidental take as fisheries bycatch (Woodley and Lavinge 1991, p. 12), and by depleting essential prey resources (Petition, p. 82).

After reviewing the supporting references cited in the petition, we find that some of the information provided in the petition, specifically information on threats due to ocean acidification, as well as other information in our files, present substantial scientific or commercial information indicating that the petitioned action may be warranted due to this factor. The petition does not

present substantial information, nor do we have substantial information in our files, to suggest that fisheries or oil and gas activities, with the possible exception of potential oil spills, may threaten the Pacific walrus. However, all factors will be evaluated when we conduct our status review.

### Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). As described in our threats evaluation, above, the petition presents substantial information indicating that listing the Pacific walrus throughout its entire range may be warranted based on Factors A, D, and E. Based on our threats evaluation, the petition does not present substantial information indicating that Factors B and C may be a threat to this species.

Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information indicating that listing the Pacific walrus throughout all or a significant portion of its range may be warranted due to current and future threats under Factors A, D, and E. Therefore, we are initiating a status review to determine whether listing the Pacific walrus under the Act is warranted.

The "substantial information" standard for a 90-day finding is not the same as the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. In a 12-month finding, we will determine

whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will indicate that listing is warranted.

### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Alaska Regional Office (**see FOR FURTHER INFORMATION CONTACT**).

### Author

The primary authors of this notice are the staff members of the Alaska Regional Office (**see FOR FURTHER INFORMATION CONTACT**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 1, 2009.

**Sam D. Hamilton,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. E9-21759 Filed 9-9-09; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R8-ES-2009-0047]

[MO 92210530083-B2]

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Amargosa Toad (*Bufo nelsoni*) as Threatened or Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Amargosa toad (*Bufo nelsoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the Amargosa toad is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data

and other information regarding this species.

**DATES:** We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before November 9, 2009.

**ADDRESSES:** You may submit information by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2009-0047; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

#### **FOR FURTHER INFORMATION CONTACT:**

Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130, by telephone (702-515-5230), or by facsimile (702-515-5231). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Information Solicited**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review (12-month finding) is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Amargosa toad. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Amargosa toad. We are seeking information regarding:

- (1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat.

- (2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are: