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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 010522134–1134–01; I.D. 050201D]

RIN 0648–XA69

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to list Bocaccio (*Sebastes paucispinis*) as Threatened

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notification of 90-day petition finding and request for comments.

SUMMARY: NMFS has received a petition to list the southern bocaccio (*Sebastes paucispinis*) as a threatened species and to designate critical habitat concurrent with the listing. NMFS finds that the petition presents substantial scientific and commercial information indicating that the request for listing may be warranted. Therefore, NMFS is conducting a status review to determine whether the petitioned action is warranted. To assure that the review is comprehensive, NMFS is soliciting information and data regarding this species and its habitat from any interested party. NMFS will use information received during the comment period and other information in its review of the status of the southern bocaccio.

DATES: Comments and information must be received by August 13, 2001.

ADDRESSES: Requests for copies of the petition and comments regarding the listing of bocaccio should be submitted to Jim Lecky, Assistant Regional Administrator for Protected Resources, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213. The petition and supporting data are available for public inspection by appointment, Monday through Friday, at the same address.

FOR FURTHER INFORMATION CONTACT: Jim Lecky, NMFS Southwest Region, 562/980–4000; or Marta Nammack, NMFS Office of Protected Resources, 301/713–1401, ext. 116.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act (ESA) contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. On January 30, 2001, NMFS received a petition from the Natural Resources Defense Council, Center for Biological Diversity, and Center for Marine Conservation (Petitioners) to list the central/southern distinct population segment of bocaccio, or, in the alternative, bocaccio throughout its entire range as threatened under the ESA and to designate critical habitat.

Petitioners contend that bocaccio have suffered precipitous population declines over the last several decades and that these population declines threaten bocaccio with extinction and compromise its ability to recover. The primary factor identified by Petitioners is overutilization, specifically overfishing by fisheries targeting bocaccio and as bycatch in other fisheries. Other factors identified by Petitioners as contributing to the status of bocaccio include inadequate regulatory mechanisms, habitat modification due to bottom trawl fishing gear, pollution of nearshore habitat used by juvenile bocaccio, and shifts in oceanographic conditions.

NMFS has recognized two separate West Coast bocaccio populations, divided at approximately 36° N. latitude. The southern population (south of 36° N. latitude), which ranges from Cape Mendocino to Baja California, Mexico, is the stock for which NMFS has received a petition and is synonymous with what Petitioners have called the central/southern population of bocaccio. In the 1999 stock assessment report for southern bocaccio, the spawning output of the southern bocaccio stock was estimated to be 2.1 percent of the estimated spawning output at its unfished level. This stock was designated as overfished under the Magnuson-Stevens Fishery Conservation and Management Act on March 3, 1999.

Initial stock rebuilding measures were implemented through the 2000 annual specifications and management measures for Pacific coast groundfish. These measures included the setting of a conservative allowable biological catch level and optimum yield level. These conservative levels precluded any directed targeting of bocaccio and reserved allowable catch to incidental catch in other fisheries. On September 5, 2000, NMFS announced formal approval of the rebuilding plan for southern bocaccio (65 FR 53646).

On December 29, 2000, NMFS published a final rule (65 FR 82947) approving Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan and disapproving three overfished stock rebuilding plans, including the plan previously approved for bocaccio. Amendment 12 provides framework procedures for developing overfished species rebuilding plans, for setting guidelines for rebuilding plan contents, and procedures for submitting rebuilding plans to NMFS for review and approval/disapproval. The three rebuilding plans that were disapproved in that action were disapproved because of inconsistencies with the new procedure and guidelines established by Amendment 12, not because the harvest limits were inadequate to provide for rebuilding of the stock. The Pacific Fishery Management Council (PFMC) will resubmit recommended rebuilding plans for review by NMFS, consistent with the requirements of Amendment 12, for the 2002 fishing year cycle.

In the presentation of their petition, Petitioners rely on the information produced by NMFS and the PFMC in their evaluation of southern bocaccio relative to overfishing criteria and a review of published literature on the status, distribution, and ecology of bocaccio.

Finding

NMFS finds that Petitioners present substantial scientific and commercial information indicating that a listing may be warranted, based on the criteria specified in 50 CFR 424.14(b)(2). Although a positive 90-day finding under section 4(b)(3)(A) of the ESA is not a decision to list a species, this finding requires that a review of the status of southern bocaccio be completed within 12 months of receiving the petition (by January 30, 2002) to determine whether the petitioned action is warranted.

Listing Factors and Basis For Determinations

Under section 4 (a) (1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued

existence. Listing determinations are based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by states or foreign nations to protect such species.

Information Solicited

To ensure that the southern population of bocaccio (*Sebastes paucispinis*) status review is complete and based on the best available scientific and commercial data, NMFS is soliciting information and comments on whether the southern population of bocaccio is threatened by any of the listing criteria described above. Specifically, NMFS is soliciting information in the following areas: Historical abundance, current abundance, factors contributing to population declines, sources of mortality other than commercial and recreational fishing, habitat use, habitat condition, factors affecting habitat condition, and distinctness of the southern population. NMFS is also soliciting information on efforts to conserve bocaccio and the adequacy of those efforts in achieving their intended purpose.

Critical Habitat

NMFS is also requesting information on areas that may qualify for critical habitat for the southern population of bocaccio. Areas that include the physical and biological features essential to the conservation of the species and which may require special management considerations of protection should be identified. Areas outside the current range of the species may be included if they are necessary for the conservation of the species. Essential features should include, but are not limited to: (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distribution of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing: (1) the activities that affect the areas or could be affected by the designation; and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

Comments should include: (1) supporting documentation, such as maps, bibliographic references, or reprints of pertinent publications, if applicable, and (2) the commenting party's name, address, and association, institution, or business.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; and 16 U.S.C. 1361 *et seq.*

Dated: June 7, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 010522135–1135–01; I.D. 041601B]

RIN 0648–XA70

Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition To List Eastern North Pacific Gray Whales as Threatened or Endangered Under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of 90-day petition finding.

SUMMARY: NMFS received a petition to list Eastern North Pacific gray whales (*Eschrichtius robustus*) as threatened or endangered under the ESA. NMFS finds that the petition does not present substantial scientific or commercial information to warrant the petitioned action.

DATES: This petition finding was made on May 21, 2001.

ADDRESSES: Copies of the petition may be obtained by writing to Chief, Marine Mammal Conservation Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle at (301) 713–2322, ext. 105, e-mail *tom.eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4 (b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS' regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (see 50 CFR 424.14). Section 424.14(b)(2) of these regulations contains factors the Secretary considers in evaluating a petitioned action.

NMFS received a petition on March 28, 2001, from D.J. Schubert (Petitioner), on behalf of Australians for Animals, The Fund for Animals, and ''several other organizations,'' to list the Eastern North Pacific stock of gray whales as threatened or endangered under the ESA. Petitioner claims that listing the stock as threatened or endangered is necessary to protect the stock or its habitat from substantial threats. These suggested threats include an apparent decline in benthic amphipods (the gray whale's primary food supply) and a lack of adequate regulatory mechanisms to protect the gray whale and its habitat. Petitioner claims that threats to amphipods are caused by direct, indirect and cumulative impacts of global warming and El Niño-Southern Oscillation (ENSO) events, the destruction of benthic amphipods and their habitat by bottom trawling, and contaminant impacts to amphipod survival and production. In light of the suggested threats to its food supply and inadequacy of regulatory mechanisms, Petitioner also claims that gray whales are threatened by aboriginal harvests, documented and undocumented mortality, oil and gas exploration, and other impacts.

Gray Whales and the ESA

Prior to enactment of the ESA of 1973, the U.S. Fish and Wildlife Service (FWS) included gray whales (among several genera of baleen whales) on its 1970 list of endangered species (35 FR 8491, June 2, 1970). This list was compiled from information submitted by international conservation organizations, foreign fish and wildlife agencies, individual scientists, and trade sources. The endangered species list was appended to regulations that established conservation measures for endangered species through general restrictions on importation of listed species.

NMFS completed its first status review of gray whales in 1984 and concluded that the stock was not in danger of extinction. That status review recommended a change in the status of