

**Chapter 62–256 Open Burning and Frost Protection Fires**

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BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 224**

[Docket No. 0808201128–81129–01]

RIN 0648–XJ97

**Endangered and Threatened Wildlife; Notice of 90–Day Finding on a Petition to List the Three Ice Seal Species as a Threatened or Endangered Species**

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

**ACTION:** Notice of 90–day petition finding; request for information.

**SUMMARY:** We (NMFS) announce a 90–day finding on a petition to list three ice seal species, [ringed (*Phoca hispida*), bearded (*Erignathus barbatus*), and spotted (*Phoca largha*)] as threatened or endangered under the Endangered Species Act (ESA). Although the petition identifies ringed seals as *Pusa hispida*, at this time we believe that the ringed seal is more properly identified as *Phoca hispida*. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action of listing the ice seals may be warranted. Therefore, we have initiated status reviews of the ice seals to determine if listing under the ESA is warranted. To ensure these status reviews are comprehensive, we are soliciting scientific and commercial information regarding all of these ice seal species.

**DATES:** Information and comments must be submitted to NMFS by November 3, 2008.

**ADDRESSES:** You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN), 0648–XJ97, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

Mail: Assistant Regional Administrator, Protected Resource Division, NMFS, Alaska Regional Office, P.O. Box 21668, Juneau, Alaska 99802–1668.

Facsimile (fax): (907) 586–7012.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only interested persons may obtain a copy of the ice seal petition from the above address or online from the NMFS Alaska Region website: <http://www.fakr.noaa.gov/protectedresources/seals/ice.htm>.

**FOR FURTHER INFORMATION CONTACT:** James Wilder, NMFS Alaska Region, (907) 271 6620; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

**SUPPLEMENTARY INFORMATION:** Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires, to the maximum extent practicable, that within 90 days of receipt of a petition to designate a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Joint ESA-implementing regulations between NMFS and U.S. Fish and Wildlife Service (50 CFR 424.14) 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.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the

species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information is presented in the petition, we are required to promptly commence a review of the status of the species concerned. Within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether the petitioned action is warranted.

Under the ESA, a listing determination may address a species, subspecies, or a distinct population segment (DPS) of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA-USFWS policy clarifies the agencies’ interpretation of the phrase “distinct population segment of any species of vertebrate fish or wildlife” (ESA section 3(16)) for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). The joint DPS policy establishes two criteria that must be met for a population or group of populations to be considered a DPS: (1) the population segment must be discrete in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the population segment must be significant to the remainder of the species (or subspecies) to which it belongs. A population segment may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management, conservation status, or if regulatory mechanisms exist that are significant in light of section 4(a)(1) (D) of the ESA. If a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it

belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon’s range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species. A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, or “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively).

### Background

On March 28, 2008, we issued a 90-day finding in response to a petition to list the ribbon seal as threatened or endangered (73 FR 16,617). We found that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. We therefore initiated a status review for the ribbon seal. Concurrent with that decision, we announced that we were also initiating a status review of three other ice seals (ringed, bearded, and spotted).

On May 28, 2008, we received a petition from the Center for Biological Diversity to list three species of ice seals (ringed, bearded, spotted) as threatened or endangered species under the ESA. The petitioner also requested that critical habitat be designated for ice seals concurrent with listing under the ESA. As described in this petition, the spotted seal is monotypic. The bearded seal contains two currently recognized subspecies, and the ringed seal contains five currently recognized subspecies: *Phoca hispida hispida*, *Phoca hispida botnica*, *Phoca hispida ochotensis*, *Phoca hispida ladogensis*, and *Phoca hispida saimensis*. Although the petition identifies ringed seals as *Pusa hispida*, we believe that the ringed seal is more properly identified as *Phoca hispida*. According to the petitioner, each of these subspecies meets the definition of a “species” eligible for listing under the ESA. In the event that we do not find that the entire species of ringed seal or bearded seal meets the requirements for listing, the petitioner requests that we evaluate whether each subspecies of bearded and ringed seals is eligible for listing. In the event that

we do not recognize the taxonomic validity of the bearded and ringed seal subspecies or the spotted seal species as described in this petition, the petitioner requests that we evaluate whether the spotted, ringed and bearded seals of the Bering, Chukchi, and Beaufort seas that are the subject of this petition constitute a DPS of the full species and/or represent a significant portion of the range of the full species and are therefore eligible for listing on such basis.

It is the petitioner's contention that ice seals face global extinction in the wild, and therefore, constitute a threatened or endangered species as defined under 16 U.S.C. 1532(6) and (20). The petition presents information on (1) "global warming which is resulting in the rapid melt of the seals' sea-ice habitat;" (2) "high harvest levels allowed by the Russian Federation;" (3) "oil and gas exploration and development;" (4) "rising contaminant levels in the Arctic;" and (5) "bycatch mortality and competition for prey resources from commercial fisheries." The petition also presents information on the species' taxonomy, distribution, habitat requirements, reproduction, diet, natural mortality, and demographics, as well as a discussion of the applicability of the five factors listed under ESA section 4(a)(1). We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on our review of the petition and other available information, we find that the petition meets the aforementioned requirements of the regulations under 50 CFR 424.14(b)(2) and therefore determine that the petition presents substantial information indicating that the requested listing action may be warranted.

#### Status Review

As a result of this finding, we will continue our ongoing status review to determine whether listing ringed, bearded, and spotted seals under the ESA is warranted. We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we are opening a 60-day public comment period to solicit comments, suggestions, and information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of the ice seals throughout their range, including:

(1) Information on taxonomy, abundance, reproductive success, age structure, distribution, habitat selection, food habits, population density and

trends, habitat trends, and effects of management on ice seals;

(2) Information on the effects of climate change and sea ice change on the distribution and abundance of ice seals, and their principal prey over the short- and long-term;

(3) Information on the effects of other potential threat factors, including oil and gas development, contaminants, hunting, poaching, and changes in the distribution and abundance of ice seals and their principal prey over the short-term and long-term;

(4) Information on management programs for ice seal conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs which benefit ice seals; and

(5) Information relevant to whether any populations of the ice seal species may qualify as distinct population segments.

We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

#### Authority

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

Dated: August 29, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 0808051052-81144-01]

**RIN 0648-AW85**

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Grouper and Tilefish Individual Fishing Quota Program**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to provide potential participants information concerning a referendum for an individual fishing quota (IFQ) program for the Gulf of Mexico (Gulf) commercial grouper and tilefish fisheries. This rule informs the potential participants of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendum. If the IFQ program, as developed by the Gulf of Mexico Fishery Management Council (Council), is approved through the referendum process, the Council may choose to submit the IFQ program to the Secretary of Commerce (Secretary) for review, approval, and implementation. The intended effect of this proposed rule is to implement the referendum consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before October 6, 2008.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648-AW85", by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Susan Gerhart.
- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments. Attachments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA), are available from NMFS at the address above.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, 727-824-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic