

12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

#### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

#### List of Subjects in 49 CFR Part 71

Time.

#### PART 71—[AMENDED]

For the reasons discussed above, the Office of the Secretary proposes to amend Title 49 Part 71 to read as follows:

1. The authority citation for Part 71 would continue to read:

**Authority:** Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (c) of § 71.5, *Boundary line between eastern and central zones*, would be revised to read as follows:

#### § 71.5, Boundary line between eastern and central zones.

\* \* \* \* \*

(c) Kentucky. From the junction of the east line of Spencer County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) line of Taylor County and northeasterly along the east (south-east) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey and Pulaski Counties to the intersection with the western boundary of Wayne County; and then south along the western boundary of Wayne County to the Kentucky-Tennessee boundary.

\* \* \* \* \*

Issued this 11th day of June 1999, at Washington, DC.

**Rosalind Knapp,**

*Acting General Counsel.*

[FR Doc. 99–15706 Filed 6–18–99; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 990614161–9161–01; I.D. 061199B]

#### Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Eighteen Species of Marine Fishes in Puget Sound, Washington

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

**ACTION:** Notice of finding; request for information and comments.

**SUMMARY:** NMFS has received a petition to list 18 species of Puget Sound marine fishes and to designate critical habitat under the Endangered Species Act (ESA). The petitioned fishes include 1 herring, 1 cod, 1 hake, 1 pollock, and 14 rockfish species. NMFS determines that the petition presents substantial scientific information indicating that the petitioned action may be warranted for seven of the species: Pacific herring, Pacific cod, Pacific hake, walleye pollock, brown rockfish, copper rockfish, and quillback rockfish. NMFS solicits information and comments pertaining to these seven species in Puget Sound and seeks suggestions from

the public for peer reviewers for the agency's review of the petitioned action.

**DATES:** Information and comments on the action must be received by September 20, 1999.

**ADDRESSES:** Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, NMFS, Northwest Region (503) 231-2005, or Marta Nammack, NMFS, Office of Protected Resources (301) 713-1401.

#### SUPPLEMENTARY INFORMATION:

#### Background

On February 8, 1999, the Secretary of Commerce (Secretary) received a petition from Sam Wright of Olympia, Washington, to list and designate critical habitat for 18 species of marine fishes in Puget Sound, Washington. The following are the species petitioned: Pacific herring (*Clupea pallasii*), Pacific cod (*Gadus macrocephalus*), Pacific hake (Aka Pacific whiting) (*Merluccius productus*), walleye pollock (*Theragra chalcogramma*), brown rockfish (*Sebastes auriculatus*), copper rockfish (*S. caurinus*), greenstripe rockfish (*S. elongatus*), widow rockfish (*S. entomelas*), yellowtail rockfish (*S. flavidus*), quillback rockfish (*S. maliger*), black rockfish (*S. melanops*), blue rockfish (*S. mystinus*), China rockfish (*S. nebulosus*), tiger rockfish (*S. nigrocinctus*), bocaccio (*S. paucispinis*), canary rockfish (*S. pinniger*), redstripe rockfish (*S. proriger*), and yelloweye rockfish (*S. ruberrimus*). Although the petitioner identified Pacific herring as "*C. harengus pallasii*," NMFS has followed the naming convention of Robins *et al.* (1991) which considers *C. harengus* (Atlantic herring) and *C. pallasii* as separate species. Therefore, NMFS considered only the latter as the petitioned species. Copies of this petition are available from NMFS (See **ADDRESSES**).

#### Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). 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 information indicating that the petitioned action may be warranted. NMFS' ESA implementing 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. In evaluating a petitioned action, the Secretary considers several factors, including whether the petition 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 (50 CFR. 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR. 424.14(b)(2)(iii)).

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). The petitioner requested listings for “—species/populations’ or evolutionary[*sic*] significant units” in Puget Sound. The term Evolutionarily Significant Unit or “ESU” is currently defined only for DPSs of Pacific salmonids (see 56 FR 58612, November 20, 1991). For these petitioned species, NMFS would instead rely on the DPS framework described in a NMFS/U.S. Fish and Wildlife Service policy regarding the identification of distinct vertebrate population segments (61 FR 4722, February 7, 1996). Since the petitioner focused on stocks within Puget Sound (rather than on the entire species or subspecies), NMFS considered the petition in the context of defining DPSs in this area that may warrant listing under the ESA.

For each of the petitioned species, NMFS evaluated whether the information provided or cited in the petition met the ESA’s standard for “substantial information.” The agency also reviewed other information readily available to NMFS scientists (i.e., currently within agency files) and consulted with state and tribal experts on these species to determine whether there was general agreement on issues related to the uniqueness, distribution, abundance, and threats to the petitioned species/populations. With respect to uniqueness, NMFS assessed whether the petitioner’s and otherwise available information might support the identification of DPSs that may warrant listing under the ESA.

Information submitted by the petitioner varied considerably for each of the 18 species, and the level of detail was generally the greatest for the herring and cod species. In addition, some of the information was largely speculative or not directly relevant to the petitioner’s request. Hence, the amount

and quality of information in the petition played a major role in NMFS’ decision on whether to initiate a status review for a particular species.

For all of the petitioned species, the petitioner theorized that Puget Sound’s unique hydrological and physical characteristics (i.e., numerous fjord-like estuarine basins with sills and constricted entrances) could contribute to genetic differentiation and population subdivision (i.e., the formation of DPSs). While this is plausible, NMFS assessed whether more direct measures of distinctness (in particular, genetic or life history data) are evident in this area. NMFS also assessed whether the petitioner accurately reflected any known trends in abundance or threats to the 18 species and, moreover, whether these trends/threats would lead a reasonable person to believe that listing under the ESA may be warranted. A summary of the results of this assessment follows; members of the family Scorpaenidae (i.e., rockfishes) were assessed together because of the paucity of data for most of the species.

*Pacific herring* - The petitioner noted that several stocks have been identified in Puget Sound (Bargmann, 1998) and that life history differences (e.g., spawning timing and growth rates) and spawning site fidelity may contribute to stock separation. Populations in Puget Sound have not been examined in detail for genetic distinctness, but plans are being made to conduct genetic sampling for this species in the range petitioned. Also, several studies conducted in other areas of the North Pacific may help shed light on whether DPSs are present in Puget Sound.

The petitioner cited recent studies indicating that some Puget sound stocks are in “critical” or “depressed” condition, and noted that the 1998 run size was the lowest on record for at least one herring stock. The petitioner also expressed concern over the apparent increase in natural mortality and the concurrent decrease in number of age classes for some stocks. NMFS’ initial assessment corroborated that, overall, catches of Pacific herring reached a peak in the mid-1970s and then declined and have remained at low levels since the 1980s. The petitioner suggested that harvest, marine mammal predation, and urbanization/industrial development have played a role in the species’ decline (but noted that the decline of the Discovery Bay stock may not be attributable to overharvest or habitat degradation).

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will

initiate a status review of Pacific herring in Puget Sound.

*Pacific cod* - The petitioner noted that three stocks have been identified in Puget Sound (Palsson, 1990) and that tagging studies indicate that adults of the species may remain near specific spawning grounds. Also, the petitioner cited a study reporting high growth rates and egg production rates that may indicate the presence of DPSs of Pacific cod in Puget Sound (Palsson *et al.*, 1997). Allozyme studies show a major genetic demarcation across the North Pacific, but little genetic population structure has been detected among local stocks within these two major groups (Grant *et al.*, 1987).

The petitioner cited commercial and recreational catch data and recent surveys indicating that some Puget Sound cod stocks may have collapsed in the late 1970s and 1980s (Palsson, 1990; Palsson *et al.*, 1997). Also cited were recent acoustic surveys indicating that Agate Passage (south Puget Sound) populations may be at a critical or near-extinct level. NMFS has verified that Puget Sound cod populations have undergone a long-term decline since the mid-1970s and a marked decline since the late-1980s. The petitioner did not identify specific threats to this species, although the petition suggests that overharvest, marine mammal predation, and marine, estuarine, and terrestrial habitat degradation are potential factors in the species’ decline.

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of Pacific cod in Puget Sound.

*Pacific hake* - The petitioner expressed principal concern for a resident population that occurs in south Puget Sound and migrates seasonally between Port Susan and Saratoga Passage. The petitioner cited studies reporting that Puget Sound hake are genetically distinct from coastal populations (Utter and Hodgins, 1971), and that hake within Puget Sound may be distinguishable as two separate stocks (Goni, 1988). NMFS has confirmed these findings and also reviewed information indicating that other species of hake tend to show subdivided population structure around geographically complex coastlines (Roldan *et al.*, 1998), but not along linear coastlines (Grant *et al.*, 1988; Roldan, 1991)

The petitioner cited commercial catch data and recent surveys documenting that south Puget Sound populations have declined from an estimated adult biomass of over 45 million pounds in

1983 to approximately 1 to 3 million pounds in 5 of the past 6 years (Palsson *et al.*, 1997). The petition did not document the status of north Puget Sound hake; however, Palson *et al.* (1997) reported that abundance peaked in the late 1970s and early 1980s (approximately 7–33 lb./hour in terms of effort) with a decline thereafter to approximately 5 lb./hour. The petitioner identified overharvest and marine mammal predation as important factors in the species' decline and suggested that marine, estuarine, and terrestrial habitat degradation have also played a role.

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of Pacific hake in Puget Sound.

*Walleye pollock* - The petitioner noted that Puget Sound stocks of this species represent the southernmost distribution of this species. The petition cited unpublished data indicating stock separation between north and south Puget Sound, with the latter stock being in the worse condition. While NMFS did not find genetic data specific to populations in Puget Sound, some studies have demonstrated genetic differences between Japanese and Northeastern Pacific pollock populations (Grant and Utter, 1980; Mulligan *et al.*, 1992; Shields and Gust, 1995).

The petitioner cited recreational catch data, trawl surveys, and cohort analysis indicating a decline (and possible collapse) in the southern Puget Sound pollock stock since the mid-1980s (Palsson *et al.*, 1997). These authors suggest that the South Sound pollock population is at a critical status and possibly extinct. No information was provided on pollock populations in other areas of Puget Sound, although NMFS has verified that a similar trend can be seen in the North Sound pollock populations as well. The current status of North Sound stock is less certain because of minimal catch data and because the status of pollock stocks in the nearby Strait of Georgia is relatively healthy. The petitioner did not identify specific threats to this species, although the petition suggests that overharvest, marine mammal predation, and marine, estuarine, and terrestrial habitat degradation are potential factors in the species' decline.

NMFS has determined that the available information is substantial and that the petitioned action may be warranted. Therefore, the agency will initiate a status review of walleye pollock in Puget Sound.

*Rockfishes* - Although 14 species of rockfish are identified in the petition, relatively little information was presented or is readily available on the population characteristics and status of individual species. Aside from the petitioner's general assertion that the physical characteristics of Puget Sound may promote greater population subdivision, the petitioner did not provide information specifically addressing the distribution or population structure of each species in Puget Sound. The petitioner noted that genetic studies using conventional techniques have not consistently shown population differentiation or structuring for Puget Sound rockfishes, adding that other techniques may be required to show such distinctness. NMFS did review evidence from high resolution molecular genetic data for some rockfish species that suggests genetic differences may exist between populations of these species within Puget Sound. However, these studies are limited in sampling and scope and address only three of the petitioned species (brown, copper, and quillback rockfish). The petitioner also stated that there are differences in growth rates for some species within Puget Sound, but failed to reference the particular species.

The petitioner provided no species-specific information on trends or past and current abundance, but did characterize three rockfishes (brown, copper, and quillback rockfish) as the most common species currently caught in Puget Sound. Instead, the petitioner relied on composite data for all members of the genus *Sebastes* that suggest a declining trend in recreational fisheries in both north and south Puget Sound. While these data are the primary stock indicator for Puget Sound, it is impossible to discern the status of particular species from these data. NMFS did review limited supplemental survey data (SCUBA and trawl) for south Puget Sound that demonstrate a reduction in counts from the late 1980s to early 1990s, but these data also fail to distinguish among species.

With respect to threats facing the species, the petitioner identified an array of factors potentially contributing to the decline of Puget Sound rockfishes, including overharvest, marine mammal predation, and marine, estuarine, and terrestrial habitat degradation. The petitioner expressed particular concern over the lack of adequate "no-take" refuges for these species and the risks associated with overfishing these relatively long-lived species.

NMFS concludes that the available information for Puget Sound rockfish is

insubstantial for most of the petitioned species. Still, there are reasons to believe that some of the species may warrant ESA protection. The agency believes that the best approach to identifying candidates for an ESA status review includes determining which rockfish species are most likely to yield conclusive information during the review. It is clear from the assessment made to date that the majority of the petitioned species have little or no prospects for yielding such information in the time required to complete a status review (i.e., by February 2000). However, NMFS believes that the petition provides substantial information indicating serious threats and trends for rockfish in general, and that the prospects are good for obtaining more detailed information for three of the better-studied species, i.e., brown, copper, and quillback rockfish. Therefore, the agency will initiate a status review of brown rockfish, copper rockfish, and quillback rockfish in Puget Sound. In addition, NMFS is hopeful that information obtained during status reviews for these three species may help determine whether other Puget Sound rockfish may warrant consideration for an ESA status review.

#### **Petition Finding**

After reviewing the information contained in the petition, as well as information readily available to NMFS scientists, the Secretary determines that the petition presents substantial scientific information indicating the petitioned action may be warranted for seven of the species identified in Puget Sound, namely: Pacific herring, Pacific cod, Pacific hake, walleye pollock, brown rockfish, copper rockfish, and quillback rockfish. In accordance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination whether the petitioned action is warranted for these seven species within 12 months from the date the petition was received (i.e., by February 8, 2000).

#### **Listing Factors and Basis for Determination**

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

determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

#### Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of Puget Sound populations of Pacific herring, Pacific cod, Pacific hake, walleye pollock, brown rockfish, copper rockfish, and quillback rockfish (see **DATES** and **ADDRESSES**). NMFS specifically requests the following information: (1) Biological or other relevant data that may help identify DPSs of any of these species (e.g., age structure, genetics, migratory patterns, morphology); (2) the range, distribution, and size of these species' populations in Puget Sound and coastal waters of Washington and British Columbia; (3) current or planned activities and their possible impact on this species (e.g., harvest measures and habitat actions); and (4) efforts being made to protect these species in Washington and British Columbia.

NMFS also requests quantitative evaluations describing the quality and extent of estuarine and marine habitats for these species, as well as information on areas that may qualify as critical habitat in Washington. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited, to the following: (1) Habitat for individual and population 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 rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing (1) the activities that affect the area 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. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic

effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 15, 1999.

#### Penelope D. Dalton,

*Assistant Administrator for Fisheries,  
National Marine Fisheries Services.*

[FR Doc. 99-15721 Filed 6-18-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223 and 224

[Docket No. 990614160-9160-01; I.D. 061199C]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Barndoor Skate ("*Raja laevis*") as Threatened or Endangered

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

**ACTION:** Notice of petition finding; request for information and comments.

**SUMMARY:** NMFS announces a 90-day finding for a petition to add barndoor skate (*Raja laevis*) to the list of threatened and endangered wildlife and to designate critical habitat. NMFS finds that the petition and the information available in NMFS records indicate that the requested action may be warranted. NMFS will conduct a stock assessment

to determine if the petitioned action is warranted. To assure that the review is comprehensive, NMFS is soliciting information and data on this species from any interested party.

**DATES:** Information and comments on the action must be received by August 20, 1999.

**ADDRESSES:** Information, comments, or questions on the barndoor skate petition should be submitted to Mary Colligan, NMFS, Protected Species Division, One Blackburn Drive, Gloucester, MA, 01930. The petition and supporting data are available for public inspection, by appointment, Monday through Friday at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mary Colligan, NMFS Northeast Region, 978/281-9116, or Marta Nammack, NMFS Office of Protected Resources, 301/713-1401.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531-1544) requires that the National Marine Fisheries Service (NMFS) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. In determining whether substantial information exists for a petition to list a species, NMFS will take into account information submitted with and referenced in the petition and all other information readily available in NMFS files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(B) of the ESA requires NMFS to make a finding as to whether or not the petitioned action is warranted within one year of the receipt of the petition.

On March 4, 1999, NMFS received a petition from GreenWorld to list barndoor skate as endangered or threatened and to designate Georges Bank and other appropriate areas as critical habitat. The petitioners also requested that barndoor skate be listed immediately, as an emergency matter. Finally, the petitioner requested that other similarly appearing species of skate also be designated as threatened or endangered so as to insure the protection of the barndoor skate. On April 2, 1999, the NMFS received a second petition from Center for Marine