**SUPPLEMENTARY INFORMATION:**

## Background

On August 20, 2012, we published a proposed rule to designate critical habitat for the jaguar (77 FR 50214). That proposal had a 60-day comment period, ending October 19, 2012. On July 1, 2013, we published a revised proposal that incorporated new information received since the August 20, 2012, proposal (78 FR 39237). That revised proposal had a comment period that ended August 9, 2013. In the July 1, 2013, revised proposed rule, we proposed to designate approximately 858,137 acres (ac) (347,277 hectares (ha)) as critical habitat in six units located in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico. In the July 1, 2013, revised proposed rule, we also noticed the availability of a draft economic analysis and draft environmental assessment for public comment. We received requests for a public hearing, and a public hearing was held in Sierra Vista, Arizona, on July 30, 2013. We are now reopening a comment period on the August 20, 2012, proposed rule, as revised on July 1, 2013. Finally, pursuant to a court-approved settlement agreement, the Service agreed to deliver the final designation of critical habitat to the **Federal Register** no later than December 16, 2013.

## Information Requested

We will accept written comments and information during this reopened comment period on our July 1, 2013, revised proposed rule to designate critical habitat for the jaguar (78 FR 39237), draft economic analysis, and draft environmental assessment. For more information on the specific information we are seeking, please see the July 1, 2013, revised proposed rule. You may submit your comments and materials concerning the proposed rules by one of the methods listed in **ADDRESSES.**

If you submitted comments or information on the proposed rule (77 FR 50214; August 20, 2012) during the initial comment period from August 20, 2012, to October 19, 2012; or the revised proposed rule (78 FR 39237; July 1, 2013) during the second comment period from July 1, 2013, to August 9, 2013, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rule. Further, any comments and information received after the closing of the second comment period on August 9, 2013, will be incorporated into the record during this comment period and will be fully considered. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during all three comment periods. On the basis of public comments and other relevant information, we may, during the development of our final determination on the proposed critical habitat designation, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the revised proposed rule, draft economic analysis, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

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

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the original proposed rule, the revisions published on July 1, 2013, the draft economic analysis, and the draft environmental assessment on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2012–0042, or by mail from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Fish and Wildlife Office, Southwest Region, U.S. Fish and Wildlife Service.

## Authority

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

Dated: August 21, 2013.

**Stephen Guertin,**

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

[FR Doc. 2013–21168 Filed 8–28–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 224

**[Docket No. 130708594–3594–01]**

**RIN 0648–XC751**

## Endangered and Threatened Wildlife; 90-Day Finding on a Petition To Delist the North Pacific Population of the Humpback Whale and Notice of Status Review

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

**ACTION:** 90-day petition finding, request for information, and initiation of status review.

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition to identify the North Pacific population of the humpback whale (*Megaptera novaeangliae*) as a Distinct Population Segment (DPS) and delist the DPS under the Endangered Species Act (ESA). The humpback whale was listed as an endangered species in 1970 under the Endangered Species and Conservation Act of 1969, which was later superseded by the Endangered Species Act of 1973, as amended (ESA). We find that the petition viewed in the context of information readily available in our files presents substantial scientific and commercial information indicating that the petitioned action may be warranted.

We are hereby initiating a status review of the North Pacific population of the humpback whale to determine whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this population from any interested party.

**DATES:** Scientific and commercial information pertinent to the petitioned action must be received by October 28, 2013.

**ADDRESSES:** You may submit information or data, identified by

''NOAA–NMFS–2013–0106,'' by any one of the following methods:

• *Electronic Submissions:* Submit all electronic information via the Federal eRulemaking Portal *http://www.regulations.gov*. To submit information via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–NMFS–2013–0106'' in the keyword search. Locate the document you wish to provide information on from the resulting list and click on the ''Submit a Comment'' icon to the right of that line.

• *Mail or Hand-Delivery:* Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* All information received is a part of the public record and may be posted to *http://www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept information from anonymous sources. Attachments to electronic submissions will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Marta Nammack, NMFS, Office of Protected Resources, (301) 427–8469.

**SUPPLEMENTARY INFORMATION:**

## Background

On April 17, 2013, we received a petition from the Hawai'i Fishermen's Alliance for Conservation and Tradition, Inc., to identify the North Pacific population of the humpback whale as a DPS and to delist it under the ESA. Copies of the petition are available upon request (see **ADDRESSES**, above).

## ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable, within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted, as is the case here, we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 12 months of receipt of the petition, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a comprehensive review of all best available information, as compared to the narrow scope of review at the 90-day stage, which focuses on information set forth in the petition, this 90-day finding does not prejudge the outcome of the status review.

Under the ESA, the term ''species'' means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint policy issued by NMFS and the U.S. Fish and Wildlife Service (the Services) clarifies the Services' interpretation of the phrase ''Distinct Population Segment,'' or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: Discreteness of the population segment in relation to the remainder of the species; and, if discrete, the significance of the population segment to the species.

A species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''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, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define ''substantial information,'' in the context of reviewing a petition to list, delist, or reclassify a species, 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 whether substantial information is contained in a petition, the Secretary must consider whether the petition (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains 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; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) 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)).

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action may be warranted. As a general matter, these decisions hold that a petition need not establish a strong likelihood or a high probability that the petitioned

action is warranted to support a positive 90-day finding.

To make a 90-day finding on a petition to list, delist, or reclassify a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates that the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be disregarded at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for delisting is not required to make a positive 90-day finding.

In evaluating whether a petition to delist a population is warranted, first we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for delisting under the ESA. If so, we then evaluate whether the information indicates that the species no longer faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

**Distribution and Life History of the North Pacific Population of the Humpback Whale**

The following description of the distribution and life history of the North Pacific population of the humpback whale is from Fleming and Jackson (2011), Global Summary of the Humpback Whale, information that was recently compiled for NMFS' 5-year review of the humpback whale and published as a NOAA Technical Memorandum. Humpback whales are large, globally distributed, baleen whales with long pectoral flippers, distinct ventral fluke patterning, dark dorsal coloration, a highly varied acoustic call (termed song) and a diverse repertoire of surface behavior (Fleming and Jackson, 2011). The mating system for humpback whales is generally thought to be male-dominance polygyny, also described as a 'floating lek' (Clapham, 1996). In this system, multiple males compete for individual females and exhibit competitive behavior. Humpback song is a long, complex vocalization (Payne and McVay, 1971) produced by males on the winter breeding grounds, and also, less commonly, on migration (Cato, 1991; Clapham and Mattila, 1990) and seasonally on feeding grounds (Clark and Clapham, 2004). Behavioral studies suggest that song is used to advertise for females, and/or to establish dominance among males (Darling and Bérubé, 2001; Darling *et al.,* 2006; Tyack, 1981).

In the Northern Hemisphere, sexual maturity has been estimated at 5–11 years of age and appears to vary both within and among populations (Clapham, 1992; Gabriele *et al.,* 2007b; Robbins, 2007). Gestation is 11–12 months, and calves are born in sub-tropical waters (Matthews, 1937). In the Northern Hemisphere, humpback whales exhibit maternal fidelity to specific feeding regions (Baker *et al.,* 1990; Martin *et al.,* 1984). The sex ratio of adults is roughly 1:1 males:females. The average generation time for humpback whales (the average age of all reproductively active females at carrying capacity) has been estimated at 21.5 years, based on a compilation of some of the life history parameters reviewed above (Taylor *et al.,* 2007). Estimated annual rates of population increase range from 0–4 percent to 12.5 percent for different times and areas throughout the range and in the Northern Hemisphere (Baker *et al.,* 1992; Barlow and Clapham, 1997; Clapham *et al.,* 2003a; Steiger and Calambokidis, 2000); however, it is generally accepted that any rate above 11.8 percent per year is biologically impossible for this species (Zerbini *et al.,* 2010). Annual adult mortality rates between 0.049 and 0.037 have been estimated for the Gulf of Maine and the North Pacific Hawaiian Islands populations (Barlow and Clapham, 1997; Mizroch *et al.,* 2004). Using associations of calves with identified mothers (newborn calves are not uniquely identifiable) on North Pacific breeding and feeding grounds, Gabriele (2001) estimated 6-month mortality to be 0.182 (95-percent confidence intervals (CI) 0.023–0.518).

In the Northern Hemisphere, humpback whales summer in the biologically productive northern higher latitudes and most individuals travel south to sub-tropical and tropical waters in winter to mate and calve. Migratory routes and behavior are likely to be maternally directed (Baker *et al.,* 1990; Martin *et al.,* 1984). Feeding areas are often near or over the continental shelf and associated with cooler temperatures and oceanographic or topographic features that serve to aggregate prey. Feeding areas in the North Pacific Ocean range widely in latitude from California north into the Bering Sea. There are at least four known breeding areas in the North Pacific Ocean (with different subareas) including the western Pacific Ocean and waters off the Hawaiian Islands, Mexico, and Central America.

Humpback whales take in large mouthfuls of prey during feeding rather than continuously filtering food, as may be observed in some other large baleen whales (Ingebrigtsen, 1929). Humpback whales have a diverse diet that appears to vary slightly across feeding aggregation areas. The species is known to feed on both small schooling fish and on euphausiids (krill). Feeding behavior is varied as well and frequently features novel capture methods involving the creation of bubble structures to trap and corral fish; bubble nets, clouds and curtains are often observed when humpback whales are feeding on schooling fish (Hain *et al.,* 1982). Lobtailing and repeated underwater looping movements have also been observed or recorded during surface feeding events, and it may be that certain feeding behavior is spread through the population by cultural transmission (Friedlaender *et al.,* 2009; Weinrich *et al.,* 1992).

**Analysis of Petition and Information Readily Available in NMFS Files**

The petition contains information, much of it from Fleming and Jackson (2011), on the humpback whale, including its biology and ecology, geographic range and migratory

patterns, feeding ecology, reproduction, and genetics, including supporting information. The petitioner asserts that the North Pacific population of the humpback whale qualifies as a DPS under our DPS Policy and that it should be delisted if the best scientific and commercial information available substantiate that it is neither endangered nor threatened and protection under the ESA is no longer required. The petitioner notes that in determining whether a species should be delisted NMFS considers: (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. The petitioner also asserts that the interim goal set forth in NMFS' Final Recovery Plan for the Humpback Whale (NMFS, 1991) has been met and that the long-term goal has also likely been met.

Below, we summarize our analysis and conclusions regarding the relevant information presented by the petitioner and in our files.

*Does the information in the petition and in our files support identification of the North Pacific population as a DPS?*

To support the assertion that the North Pacific population of the humpback whale should be identified as a DPS, the petitioner provides information indicating that the population is discrete from other humpback whale populations and significant to the global species.

The petitioner states that the population is discrete from other humpback whale populations because it is spatially separated, genetically distinct, and morphologically different from other populations. The petitioner notes that humpback whales in the northern and southern hemispheres of the Pacific Ocean are separated spatially based on their seasonal migratory patterns. In the North Pacific Ocean, humpback whales feed in higher latitudes during the boreal summer and breed in lower latitudes north of the equator during the boreal winter. In the South Pacific, humpback whales feed in the Antarctic during the austral summer (boreal winter) and breed in lower latitudes south of the equator during the austral winter (boreal summer). Individual humpback whales in the Southern Hemisphere differ from those in the two Northern Hemisphere oceans in the timing and location of reproduction. Differing estimates of testis weight from the breeding and feeding grounds (and no spermatozoa detected on feeding grounds (Symons and Weston, 1958)) indicate that there is seasonal variation in sperm production (Chittleborough, 1965; Omura, 1953), further supporting the asynchrony of seasonal mating between the Northern and Southern Hemisphere populations. Finally, ovulation is also seasonal (Chittleborough, 1957), suggesting that if individual whales travel between the hemispheres outside their usual estrus period, this seasonality may prohibit successful reproduction.

The petitioner also notes that significant differences among the three principal oceanic populations in the North Pacific, North Atlantic, and Southern Oceans have been shown through mitochondrial DNA (mtDNA) and microsatellite analyses, suggesting that gene flow between oceans is minimal and migration between oceanic populations is limited to no more than a few females per generation (Baker *et al.,* 1993, 1994; Valsechi *et al.,* 1997). Of the 22 mtDNA haplotypes found in the world-wide survey of 230 individuals, only three were found in more than one ocean (Baker *et al.,* 1994), and of these three, only one was found to be common to the North Pacific and Southern Oceans. No haplotype was common to all three oceanic populations.

The petitioner asserts that, morphologically, individual humpback whales in the Southern Hemisphere differ from those in the two Northern Hemisphere oceans in the patterning and extent of ventral fluke and lateral pigmentation (Rosenbaum *et al.,* 1995). There are significantly more dark-colored flukes in the North Pacific populations of humpback whales, and significantly more light-colored flukes in the Southern Ocean populations (Rosenbaum *et al.,* 1995).

The petitioner asserts that the North Pacific population of the humpback whale is significant to the taxon to which it belongs because: (1) There would be a significant gap in the species' range if the North Pacific population were lost, as there are no other breeding populations in the northern hemisphere of the Pacific Ocean that migrate to higher latitudes of the North Pacific; and (2) the North Pacific population of the humpback whale has unique genetic traits. Migration between North Pacific, Southern Ocean, and North Atlantic populations of humpback whales is considered to be approximately one female per generation (Baker *et al.,* 1994), making timely repopulation from the southern hemisphere unlikely if the North Pacific population were extirpated from its range. The petition suggests that the genetic uniqueness of the North Pacific population further increases the importance of the population, as complete extirpation of the North Pacific population would eliminate those genetic traits and lineages from the worldwide population of humpback whales. The information presented by the petitioner is also in our files, with Fleming and Jackson (2011) providing some of the most updated information. The petition presents substantial information indicating that the North Pacific population of the humpback whale may qualify as a DPS.

*Does the information in the petition and in our files support the assertion that none of the ESA Section 4(a)(1) factors are contributing to the extinction risk of the North Pacific population of Humpback Whale?*

We must determine whether a species is an endangered species or a threatened species on the basis of any of the following factors: (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. Here we evaluate the information provided in the petition and in our files with regard to these factors to determine whether it would lead a reasonable person to conclude that none of these factors are contributing to the extinction risk of the North Pacific population of humpback whale.

*The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The petitioner states that we identified chemical pollution (including oil spills) and coastal development as two primary threats to humpback whale habitat in our 1991 recovery plan and notes that a recent assessment of humpback whales worldwide (Fleming and Jackson, 2011) identified pollution as a threat but did not identify coastal development as a threat. The petitioner notes that humpback whale populations throughout the Pacific Ocean have more than doubled since the recovery plan was completed, during which time coastal development has continued in both breeding and feeding habitats. According to Fleming and Jackson (2011), the highest levels of DDT were found in whales feeding off southern California, a highly urbanized region of

the coast with substantial discharges (Elfes et al., 2010). The health effects of different doses of contaminants are currently unknown for humpback whales (Krahn *et al.,* 2004). There is evidence of detrimental health effects from these compounds in other mammals, namely disease susceptibility, neurotoxicity, reproductive and immune system impairment (Reijnders, 1986; DeSwart *et al.,* 1996; Eriksson *et al.,* 1998). Contaminant levels have been suggested as a causative factor in lower reproductive rates found among humpback whales off southern California (Steiger and Calambokidis, 2000), but at present the threshold level for negative effects and transfer rates to calves are unknown for humpback whales. For humpback young of the year biopsy-sampled in the Gulf of St. Lawrence, Metcalfe *et al.* (2004) found PCB levels similar to that of their mothers and other adult females, indicating that bioaccumulation can be rapid and that transplacental and lactational partitioning did little to reduce contaminant loads. According to the petition, however, the health effects of different contaminants are currently unknown for humpback whales (Fleming and Jackson, 2011), and Elfes (2010) suggests the levels found in humpback whales are unlikely to have a significant impact on their persistence as a population (Fleming and Jackson, 2011).

The petition also notes that very little is known about the effects of oil or petroleum on cetaceans and especially on mysticetes (Fleming and Jackson, 2011), but that the Exxon Valdez oil spill of 1989 did not significantly impact humpback whales in Prince William Sound (Dahlheim and Von Ziegesar, 1993). The petitioner adds that naturally occurring toxin poisoning can be the cause of whale stranding events and is particularly implicated when unusual mortality events occur, but that the threat is negligible to North Pacific humpback whales because the several documented cases of these events have all occurred on the U.S. East Coast. As noted in Fleming and Jackson (2011), however, but not in the petition, regional-level stranding networks and sampling protocols in Oceania and the United States, Canada, Bahamas, and Australia can provide the means for monitoring trends in humpback whale mortality events and their causes, but there is still a great need for better diagnostic testing of marine mammal tissue samples from these stranding events to determine the cause of death (Gulland, 2006).

Finally, the petitioner notes that while several possible impacts from global climate change have been suggested, including impacts to abundance and distribution of prey (Fleming and Jackson, 2011), there are no known adverse effects to humpback whales.

On the basis of this information, the petitioner concludes that the North Pacific humpback whale population does not appear to be faced with any threatened destruction, modification, or curtailment of its habitat or range. We find that the petition presents substantial information indicating that the North Pacific humpback whale population may not be at risk from destruction, modification, or curtailment of its habitat or range.

*Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petitioner asserts that the North Pacific humpback whale population is not subject to commercial harvest. It acknowledges that tissue from 17 different humpback whales has been detected in Japanese market whale products (1993–2009) through genetic monitoring surveys, but states that these takes are likely to have negligible impact on the population.

The petitioner notes that although whale watching operations have been documented on many humpback whale feeding grounds, breeding grounds, and migratory corridors (O'Connor *et al.,* 2009), Weinrich and Corbelli (2009) concluded that calving rate and calf survival at age two were not negatively affected by whale watching activities. Senigaglia *et al.* (2012) concluded that the most common response of humpback whales to whale watch boats is increased swimming speed and that little evidence exists that whale watching activities have significant effects on interbreath intervals and blow rates. The petitioner adds that efforts to manage whale watching operations include limiting the number of whale watching vessels, limiting vessel approach distances to whales, specifying the manner of operating around whales, and establishing limits to the period of exposure of the whales. Also, in Hawaii and Alaska, Federal law prohibits approaching humpback whales closer than 100 yards (91.4 m) when on the water or disrupting behavior (50 CFR 224.103). Operating any aircraft within 1,000 feet (305 m) of humpback whales is also prohibited in Hawaii.

On the basis of this information, the petitioner concludes that the North Pacific humpback whale population is not subject to overutilization for commercial or recreational purposes. We find that the petition presents substantial information indicating that the North Pacific humpback whale population may not be at risk from overutilization for commercial, recreational, scientific, or educational purposes.

*Disease and Predation*

The petitioner states that there is little published information on humpback whale disease, but that the humpback whale does carry a crustacean ectoparasite (the cyamid *Cyamus hoopis*). While the whale is the main source of nutrition for this parasite (Schell *et al.,* 2000), there is little evidence that it contributes to whale mortality (Fleming and Jackson, 2011). The petitioner also asserts that predation of the North Pacific population of the humpback whale by the killer whale (*Orcinus orca*) occurs at or near the wintering grounds, but that it is unlikely to be significantly affecting the humpback whale's recovery; attacks by large sharks and false killer whales (*Pseudorca* crassidens) are rare. The petitioner concludes that disease and predation are not significantly affecting the North Pacific humpback whale's recovery. We find that the petition presents substantial information indicating that disease and predation may not be contributing to the North Pacific humpback whale's extinction risk.

*Inadequacy of Regulatory Mechanisms*

The petitioner asserts that the humpback whale is protected by local, Federal, and international regulatory mechanisms. It is protected as indigenous wildlife under Hawaii Administrative Rule 13–124, which prohibits the capture, possession, injury, killing, destruction, sale, transport, or export of indigenous wildlife. All marine mammals are protected under the U.S. Marine Mammal Protection Act of 1972 (MMPA), which prohibits, with certain exceptions, the ''take'' of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. Because human-caused mortality and serious injury (M&SI) levels for the three North Pacific humpback whale stocks are below Potential Biological Removal (PBR) as calculated under the MMPA (Allen and Angliss, 2012; Caretta *et al.,* 2011), no Take Reduction Team has been convened to date for these stocks to

develop a plan to reduce incidental take to sustainable levels.

The Hawaii breeding population of the North Pacific humpback whale is protected by the Hawaiian Islands Humpback Whale National Marine Sanctuary, and five additional National Marine Sanctuaries are located within the North Pacific humpback whale range: Olympic Coast, Cordell Bank, Gulf of the Farallones, Monterey Bay, and Channel Islands. Additional protection for humpback whales and their habitat is provided by the Papahanaumokuakea Marine National Monument, which encompasses 139,797 square miles (~36.2 hectares) of ocean around the Northwestern Hawaiian Islands.

Internationally, humpback whales are protected under the International Whaling Commission (IWC), established under the International Convention for the Regulation of Whaling of 1946 (ICRW). The IWC prohibited commercial whaling of North Pacific humpback whales in 1966, and an international moratorium on the whaling of all large whale species was established in 1982. Some nations have continued to hunt whales under Article VIII of the ICRW, which allows the killing of whales for scientific research purposes, but no humpback whales are currently declared as a target of scientific research takes. The current moratorium on commercial whaling will remain in place unless a 75-percent majority of IWC signatory members vote to lift it.

We find that the petition presents substantial information indicating that the North Pacific population of the humpback whale may be sufficiently protected by state, Federal, and international regulatory mechanisms.

*Other Natural or Man-Made Factors*

As the petitioner points out, the NMFS recovery plan for the humpback whale identified several known and potential impacts to humpback whales, including collision with ships, entrapment and entanglement in fishing gear, and acoustic disturbance (NMFS, 1991).

The petitioner notes that collisions with ships have been reported in both feeding and breeding areas of the North Pacific humpback whale range, adding that ship strikes may result in life-threatening trauma or mortality for the whale, though the severity of injuries depends primarily on speed and size of the vessel. According to Fleming and Jackson (2011), humpback whales are the second most commonly reported species involved in vessel strikes after fin whales. Calves and juvenile whales are thought to be more susceptible to vessel collisions (Wiley and Asmutis, 1995). The petitioner provides some information on vessel strike reports and attributes the increased number of ship strike reports in Hawaii and Alaska over the years to the increasing abundance of humpback whale populations and the increase in vessels operating in humpback whale habitat (Lammers *et al.,* 2003). According to the petitioner, a large percentage of ship strikes in Hawaii and Alaska are non-fatal and primarily occur with pleasure crafts and commercial whale watching vessels (Douglas *et al.,* 2008). The petitioner notes that the most recent stock assessment reports for the three North Pacific humpback whale stocks report a small number of ship strikes. For the California/Oregon/Washington stock, the average number of documented humpback whale deaths by ship strikes for 2004–2008 was 0.4 animals per year, with a PBR of 11.3 (Caretta *et al.,* 2011) and for the Central North Pacific stock, the average number of M&SI from ship strikes for 2003–2007 was estimated at 1.6 animals per year, with a PBR of 61.2 (Allen and Angliss, 2012). However, the petitioner acknowledges that no estimate of ship strike mortality is reported for the Western North Pacific stock. The petitioner concludes that the available data on ship strikes in the North Pacific show that vessel strikes are not affecting the continued existence of humpback whales. The petition presents substantial information indicating that vessel strikes may not be affecting the continued existence of humpback whales in the North Pacific.

Entanglement in fishing gear and other marine debris is a documented source of injury and mortality to cetaceans. Since 2002, the Hawaiian Islands Large Whale Entanglement Response Network has confirmed 112 reports of entangled large whales as true entanglement of large whales, with all but three reports involving humpback whales (Lyman, 2012). The petitioner notes that these reports have increased over time, corresponding to the increasing wintering population in Hawaiian waters. Though not noted in the petition, NMFS' Alaska Region received over 170 reports of humpback whale entanglement (both confirmed and unconfirmed) in Alaska from 1990–2011. According to the petitioner, the average number of humpback whales resulting in M&SI from commercial fisheries is 3.2 animals for the California/Oregon/Washington stock (Caretta *et al.,* 2011) and 3.8 animals for the Central Pacific stock (Allen and Angliss, 2012), and these interaction rates are below the stocks' calculated PBRs, suggesting that fishery interactions do not affect the continued existence of these stocks. Again, limited information is available on entanglement and fishery interactions in the western Pacific (Allen and Angliss, 2012). We find that the petition presents substantial information indicating that fishery interactions may not be affecting the continued existence of these stocks.

Acoustic disturbance is another threat to cetaceans, especially anthropogenic low-frequency sound produced by shipping, oil and gas development, defense related activities, and research activities. The petitioner asserts that available evidence suggests that anthropogenic noise does not threaten the continued existence of North Pacific humpback whales, pointing out that only one record is known in which two humpback whales were stranded with extensive damage to the temporal bones from a large-scale explosion (Fleming and Jackson, 2011). Impact of low-frequency noise on variation of humpback whale songs appears to be minimal, though studies have shown that song length increased in response to low-frequency broadcasts (Miller *et al.,* 2000; Fristrup *et al.,* 2003).

The petitioner concludes that the steady increase in the humpback whale population throughout the North Pacific indicates that these threats have not cumulatively curtailed the recovery and growth of the humpback whale population, and therefore, are not affecting its continued existence. We find that the petition presents substantial information indicating that these factors may not be contributing to the extinction risk of this population.

**Petition Finding**

Based on the above information and criteria specified in 50 CFR 424.14(b)(2), we find that the petitioners present substantial scientific and commercial information indicating that identifying the North Pacific population of humpback whale as a DPS and delisting this DPS may be warranted. Under section 4(b)(3)(A) of the ESA, an affirmative 90-day finding requires that we promptly commence a status review of the petitioned species (16 U.S.C. 1533 (b)(3)(A)).

**Information Solicited**

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on the humpback whale, with a focus on the North Pacific population, in the following areas: (1) Historical and current population status and trends; (2) historical and current

distribution; (3) migratory movements and behavior; (4) genetic population structure, as compared to other populations; (5) current or planned activities that may adversely impact humpback whales; and (6) ongoing efforts to conserve humpback whales. We request that all information and data be accompanied by supporting documentation such as (1) maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

**References Cited**

A complete list of references is available upon request from the NMFS Office of Protected Resources (see **ADDRESSES**).

**Authority**

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

Dated: August 22, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, Performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2013–21066 Filed 8–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 130426413–3719–01]**

**RIN 0648–BD24**

## Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

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

**SUMMARY:** NMFS proposes to modify the declaration requirements for vessels required to use Vessel Monitoring System (VMS) units in Atlantic Highly Migratory Species (HMS) fisheries. This proposed rule would require operators of vessels that have been issued HMS permits and are required to use VMS to use their VMS units to provide hourly position reports 24 hours a day, 7 days a week (24/7). The proposed rule would also allow the operators of such vessels to make declarations out of the fishery when not retaining or fishing for HMS for specified periods of time encompassing two or more trips. These changes would make the current Atlantic HMS VMS requirements consistent with other VMS-monitored Atlantic fisheries and provide additional reporting flexibility for vessel operators by eliminating the requirement to hail-out two hours in advance of leaving port. Additionally, these changes will continue to provide NOAA's Office of Law Enforcement (OLE) with information necessary to facilitate enforcement of HMS regulations. This rule would affect all commercial fishermen who fish for Atlantic HMS who are required to use VMS.

**DATES:** Submit comments on or before September 30, 2013. We will hold an operator-assisted public hearing via conference call and webinar for this proposed rule on September 23, 2013, from 1 p.m. to 3 p.m., EDT. We will also discuss the proposed rule with the HMS Advisory Panel during the AP meeting the week of September 9, 2013; the details of that meeting were published in a separate **Federal Register** notice on July 23, 2013 (78 FR 44095).

**ADDRESSES:**

You may submit comments on this document, identified by NOAA–NMFS–2013–0132, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0132,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.
- *Fax:* 301–713–1917, Phone: 301–427–8503; *Attn:* Margo Schulze-Haugen.

*Instructions:* Please include the identifier NOAA–NMFS–2013–0132 when submitting comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We 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, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

**Public Hearing and Webinar Information**

The call-in information for the public hearing is phone number 888–997–8509; participant pass code 3166031. We will also provide a brief presentation via webinar. Participants can register for the webinar at *https://www1.gotomeeting.com/register/242124417.* Following the registration process, participants will receive a confirmation email with webinar log-in information. Presentation materials and other supporting information will be posted on the HMS Web site at: *http://www.nmfs.noaa.gov/sfa/hms.*

**FOR FURTHER INFORMATION CONTACT:** Cliff Hutt or Karyl Brewster-Geisz by phone at 301–427–8503 or by fax at 301–713–1917.

Copies of this proposed rule and any related documents can be obtained by writing to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, visiting the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/,* or by contacting Cliff Hutt.

**SUPPLEMENTARY INFORMATION:**

**Background**

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Maintaining the VMS monitoring program ensures compliance with both