

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 223 and 224

[Docket No. 080318441-8467-01]

[RIN 0648-AV36]

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition to List the Ribbon Seal as a Threatened or Endangered Species

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

ACTION: Notice of a 90-day petition finding; request for information; and initiation of status reviews of ribbon, bearded, ringed, and spotted seals.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list the ribbon seal (Histiophoca fasciata) as a threatened or endangered species under the Endangered Species Act (ESA). We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we initiate a status review of the ribbon seal to determine if listing under the ESA is warranted. Concurrently, we also initiate a status review of the other ice seal species: bearded (Erignathus barbatus), ringed (Phoca fasciata), and spotted (Phoca largha). To ensure these status reviews are comprehensive, we solicit scientific and commercial information regarding all of these ice seal species.

DATES: Information and comments must be submitted to NMFS by [Insert date 60 days after date of publication in the FEDERAL REGISTER]

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN), 0648-AV36, 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 Resources Division, NMFS, Alaska Regional Office, P. O Box 21668, Juneau, AK 99802.

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. 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 ribbon 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 of 1973, as amended (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 or not 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(15)). 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 established 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) 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 December 20, 2007, we received a petition from the Center for Biological Diversity to list the ribbon seal as an endangered species under the ESA. The petitioner also requested that critical habitat be designated for ribbon seals concurrent with listing under the ESA. The petition states the ribbon seal population is a “species” under the definition of the ESA, with distinctive characteristics, morphology, and mtDNA to be considered its own genus, which is the current accepted taxonomy. The petitioner provides genetic and physiological information to support that ribbon seals are discrete from other pinnipeds of the Arctic shelf region. It is the petitioner’s contention that the ribbon seal faces global extinction in the wild, and therefore, is an endangered species as defined under 16 U.S.C. 1532(6). 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) “current oil and gas 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 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 that literature and 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.

It is also our prerogative to broaden the scope of the review if available information indicates such an action is appropriate. In this case, we have also chosen to initiate a status review of the other ice seal species (bearded--Erignathus barbatus, ringed--Phoca fasciata, and spotted--Phoca largha) in the Alaska region that share similar habitat and biological requirements as ribbon seals (Histiophoca fasciata). This status review is not subject to the statutory timelines which govern the ribbon seal status review, as outlined above, and will be completed as agency resources allow.

#### Status Review

As a result of this finding, we will commence a status review to determine whether or not listing ribbon seals under the ESA is warranted. We intend that any final action resulting from this status review be as accurate and as effective as possible. Because the ribbon seal is one of three marine mammals in Arctic waters (the other two are polar bears--Ursus maritimus--and walrus--Odobenus rosmarus divergens), which have been petitioned under the ESA in recent years primarily due to the effects of global climate change, we have decided to also initiate a status review of the other ice seals in U.S. waters. These other ice seal species include the bearded, ringed, and spotted seals. 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 ribbon seal and other 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 ribbon seals and other ice seals;

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

(4) Information on management programs for ribbon 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 ribbon seals and other ice seals; and

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

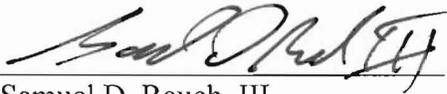
We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

Authority

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

Dated:

**MAR 25 2008**



Samuel D. Rauch, III,  
Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.