

Dated: April 7, 2008.

**Angela Somma,**

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 070727423-8495-02]

RIN 0648-XB75

#### Endangered and Threatened Species; Notice of Finding on a Petition to List the Lynn Canal Population of Pacific Herring as a Threatened or Endangered Species

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

**ACTION:** Notice of finding; initiation of status review.

**SUMMARY:** We, NMFS, announce a 12-month finding on a petition to list Lynn Canal Pacific Herring (*Clupea pallasii*) as a threatened or endangered Species under the Endangered Species Act (ESA). After a formal review of the best available scientific and commercial information, we find that listing Lynn Canal Pacific herring as threatened or endangered under the ESA is not warranted because this population does not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. However, the Lynn Canal population is part of a larger DPS of Pacific herring that may warrant listing under the ESA, and, therefore, we initiate a status review to evaluate its status.

**DATES:** The finding announced in this notice is effective immediately.

**ADDRESSES:** The complete file for this finding is available for public inspection by appointment during normal business hours at the office of NMFS Alaska Region, Protected Resources Division, 709 West Ninth Street, Room 461, Juneau, AK 99801. This file includes the status review report, information provided by the public, and scientific and commercial information gathered for the status review.

**FOR FURTHER INFORMATION CONTACT:** Erika Phillips, NMFS Alaska Region, (907) 586-7312, Kaja Brix, NMFS Alaska Region, (907) 586-7235 or Marta Nammack, NMFS Office of Protected Resources, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA) requires that when a petition to revise the List of Endangered and Threatened Wildlife and Plants is found to present substantial scientific and commercial information, we make a finding on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. This finding is to be made within 1 year of the date the petition was received, and the finding is to be published promptly in the **Federal Register**.

On April 2, 2007, we received a petition to designate the Lynn Canal stock of Pacific herring (*Clupea pallasii*) as a threatened or endangered DPS under the ESA. The petition was submitted by the Juneau Group of the Sierra Club, Juneau, Alaska. The Petitioner also requested that we designate critical habitat for Lynn Canal Pacific herring concurrent with listing under the ESA.

After reviewing the petition, the literature cited in the petition, and other literature and information available in our files, we found that the petition met the requirements of the regulations under 50 CFR 424.14(b)(2) and determined that the petition presented substantial information indicating that the petitioned action may be warranted. This finding was published on September 10, 2007 (72 FR 51619). At that time, we commenced a status review of Lynn Canal herring and solicited information pertaining to the stock structure and status of Pacific herring in southeast Alaska, including Lynn Canal.

#### Status Review

In order to determine whether the Lynn Canal Pacific herring population constitutes a species that warrants protection under the ESA, we convened a Biological Review Team of Federal scientists with expertise in Pacific herring biology, fish genetics and stock delineations, population ecology of forage fishes, nearshore marine ecology, fisheries stock assessment, and herring population status reviews. This expert panel reviewed Pacific herring life history, genetics data, stock structure research, information on larval distribution and transport, spawning distributions, tagging studies, metapopulation research, and other published and unpublished literature and data on herring stocks throughout the eastern North Pacific.

For the purposes of the ESA, Congress has defined a species as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature” (16 U.S.C. 1532(16)). Guidance on what constitutes a distinct population segment (DPS) is provided by the joint NMFS-USFWS interagency DPS policy (61 FR 4722; February 7, 1996). In order to be classified as a DPS, a vertebrate population must meet two criteria - discreteness and significance. A population, or group of populations, must first be “discrete” from other populations and then “significant” to the taxon (species or subspecies) to which it belongs.

According to the joint DPS policy, 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 or conservation status. If a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. When evaluating the significance of a discrete population, we consider the following: (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.

We considered several types of data and information when evaluating the DPS structure and discreteness of populations of Pacific herring in Lynn Canal and the eastern North Pacific. This information included: geographic variability in life-history characteristics, physiology, and morphology; ecosystem and oceanographic conditions; spawn timing and locations; tagging and recapture studies that would indicate the extent of migration and intermingling among stocks; and studies of genetic differentiation among stocks

that would suggest some degree of reproductive isolation.

After analyzing the best available scientific and commercial information, we conclude that Lynn Canal Pacific herring are not markedly discrete from other Pacific herring populations. The following evidence suggests that Lynn Canal Pacific herring are not markedly discrete: (1) there are no known genetic differences between the Lynn Canal stock and other stocks in Southeast Alaska; (2) spawn timing in Lynn Canal does not differ significantly from the timing of other Southeast Alaska stocks, but instead appears to follow a natural gradient based on climatic conditions; (3) growth rates, length-at-age, and weight-at-age of Lynn Canal Pacific herring are not significantly different from stocks elsewhere in Southeast Alaska; (4) tagging data are too limited to determine the extent of migration or degree of spawning site fidelity for individual southeast Alaska stocks; and (5) habitat conditions in Lynn Canal are not markedly different from those elsewhere in southeast Alaska. Therefore, we find that the best available scientific and commercial information does not support a finding that the Lynn Canal population is discrete from other nearby herring populations in Icy Strait, Seymour Canal, Sitka Sound, or other parts of southeast Alaska.

Furthermore, we conclude that, even if the evidence indicated that the Lynn Canal population is discrete, it is not significant with respect to the taxon. Lynn Canal does not provide a markedly unusual or unique ecological setting for herring; the population exists in a relatively small geographic area in close proximity to other herring populations, such that the loss of the population segment would not result in a significant gap in the range of a taxon; the population is not the only surviving natural occurrence of the taxon, but rather is one small part of an abundant, widely distributed taxon; and no evidence indicates that the population segment differs markedly from other populations of Pacific herring in its genetic characteristics. Because the Lynn Canal population does not meet the primary criteria required for recognition as a DPS, we conclude that the Pacific herring population in Lynn Canal does not constitute a DPS as defined under the ESA.

#### Description of Southeast Alaska DPS

Through the Status Review process, we have determined that the Lynn Canal Pacific herring stock is part of a larger, regional Southeast Alaska DPS. The Southeast Alaska DPS of Pacific herring

extends from Dixon Entrance northward to Cape Fairweather and Icy Point and includes all Pacific herring stocks in Southeast Alaska.

#### Discreteness

The delineation of the southern boundary is based on genetic differences between herring in Southeast Alaska and those in British Columbia, as well as differences in recruitment and average weight-at-age, parasitism, spawn timing and locations, and the results of tagging studies conducted in British Columbia. The northern boundary is defined by physical and ecological features that create migratory barriers, as well as large stretches of exposed ocean beaches that are devoid of spawning and rearing habitats.

#### Significance

Given the large scope of this geographic area and the large number of stocks found throughout Southeast Alaska, we have determined that the Southeast Alaska Pacific herring population is significant to the taxon as a whole. Specifically, the Southeast population persists in a unique ecological setting, and the extirpation of this population of Pacific herring would result in a significant gap in the range of the taxon.

#### DPS Conclusion

Because the Southeast Alaska population of Pacific herring meets the discreteness and significance criteria of the joint USFWS-NMFS DPS policy, this regional population constitutes a DPS under the ESA.

#### Next Steps

In order to determine whether this Southeast Alaska DPS of Pacific herring warrants protection under the ESA, we will proceed with a status review of the Southeast Alaska DPS described above. Because we have formally announced the initiation of a status review for the Southeast Alaska DPS of Pacific herring, we consider this DPS to be a candidate species under the ESA. The status review for this candidate species will include an analysis of extinction risk, an assessment of the factors listed under section 4(a)(1) of the ESA, and an evaluation of conservation efforts for the DPS as a whole. The results of the expanded status review and our determination on the status of the Southeast Alaska DPS of Pacific herring will be published in a subsequent **Federal Register** notice.

#### Authority

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

Dated: April 7, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XH16

#### Pacific Whiting; Joint Management Committee and Scientific Review Group

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

**ACTION:** Notice.

**SUMMARY:** NMFS is soliciting nominations for two advisory groups called for in the Pacific Whiting Act of 2006 (Act). Nominations received pursuant to this notice will be used to appoint one U.S. offshore whiting commercial sector representative to the Joint Management Committee and two U.S. representatives to the Scientific Review Group.

**DATES:** Nominations must be received by May 12, 2008.

**ADDRESSES:** You may submit nominations by any of the following methods:

- E-mail:

WhitingReps.nwr@noaa.gov: Include 0648-XH16 in the subject line of the message.

- Fax: 206-526-6736, Attn: Frank Lockhart.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA, 98115-0070.

Each submission should be specific to either the Joint Management Committee or the Scientific Review Group.

**FOR FURTHER INFORMATION CONTACT:** Frank Lockhart at 206-526-6142.

**SUPPLEMENTARY INFORMATION:** Title VI of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 entitled "The Pacific Whiting Act of 2006," implements the 2003 treaty "Agreement Between the Government of the United States of America and the Government