

action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule proposing to approve the redesignation of the Pittsburgh Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2007.

**W.C. Early,**

*Acting Regional Administrator.*

[FR Doc. 07-3325 Filed 7-10-07; 8:45 am]

**BILLING CODE** 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 12 Penguin Species as Threatened or Endangered under the Endangered Species Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 12 penguin species: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi* (*E. chrysocome moseleyi*)), fiordland crested penguin (*Eudyptes pachyrhynchus*), snares crested penguin (*Eudyptes robustus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), royal penguin (*Eudyptes schlegeli*), white-flippered penguin (*Eudyptula albosignata* (*E. minor albosignata*)), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing 10 species of penguins may be warranted. We, therefore, are initiating a status review of 10 species of penguins to determine if listing under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these species. We find the petition does not provide substantial scientific or commercial information indicating that listing of two species may be warranted: snares crested penguin and royal penguin. Therefore, we will not be initiating a status review for these two species in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of these two species or threats to them or their habitat at any time.

**DATES:** We must receive your comments on or before September 10, 2007.

**ADDRESSES:** Submit any comments, information, and questions by any one of the following methods: By mail to the Special Assistant to the Deputy Assistant Director, International Affairs, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 760, Arlington, VA 22203; by fax to 703-358-2276; by e-mail to [DSAPenguins@fws.gov](mailto:DSAPenguins@fws.gov); or through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter O. Thomas at the above address, or by telephone, 703-358-1708; or e-mail, [DSAPenguins@fws.gov](mailto:DSAPenguins@fws.gov).

**SUPPLEMENTARY INFORMATION:** If you submit information or comments, please include "Attn: Penguins" in the beginning of your message. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

#### Public Comments Solicited

We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party. We are opening a 60-day public comment period to allow all interested parties an opportunity to provide information on the statuses of 10 species of penguins: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi* (*E. chrysocome moseleyi*)), fiordland crested penguin (*Eudyptes pachyrhynchus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), white-flippered penguin (*Eudyptula albosignata* (*E. minor albosignata*)), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*) throughout their range, including:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) on these species;

(2) Information on the effects of climate change and changing ocean or land or sea ice conditions on the distribution and abundance of these species and their principal prey species over the short and long term (especially information on known prey substitutions, and what their effects would be on these species);

(3) Information on the effects of other potential threat factors, including commercial fishing activities, contaminants, habitat loss, harvest, predation by other animals, and diseases of these species or their

principal prey over the short and long term;

(4) Information on management programs for penguin conservation, including mitigation measures related to conservation programs, fisheries management, and any other private, tribal, or governmental conservation programs which benefit these species; and

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

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

#### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

All comments and supporting information will be available for public inspection, by appointment, Monday through Friday from 8 a.m. to 4 p.m. (see **ADDRESSES**).

#### Background

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding we relied on information provided by the petitioner and evaluated that information in accordance with 50 CFR 424.14(b). Our process of making a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the “substantial information” threshold.

On November 29, 2006, the Service received a petition dated November 28, 2006, from the Center for Biological Diversity to list 12 penguin species under the Act. The 12 penguin species range from Antarctica, Argentina, Australian Territory Islands, Chile, French Territory Islands, Namibia, New

Zealand, Peru, South Africa, and United Kingdom Territory Islands. The petition, which was clearly identified as such, contains detailed information on the natural history, biology, status, and distribution of each of the 12 species. It also contains information on what the petitioner reported as potential threats to the species from climate change and changes to the marine environment, commercial fishing activities, contaminants and pollution, guano extraction, habitat loss, hunting, nonnative predator species, and other factors. The petition also discusses existing regulatory mechanisms and the perceived inadequacies to protect these species.

We have determined that the petition presents substantial scientific or commercial information to indicate that listing 10 species of penguins as endangered or threatened may be warranted: emperor penguin, southern rockhopper penguin, northern rockhopper penguin, fiordland crested penguin, erect-crested penguin, macaroni penguin, white-flipped penguin, yellow-eyed penguin, African penguin, and Humboldt penguin. Therefore, we are initiating a status review to determine if listing each of the 10 species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these 10 species. Under section 4(b)(3)(B) of the Act, we are required to make a finding as to whether listing each of the 10 species of penguins is warranted, not warranted, or warranted but precluded by pending listing proposals by November 29, 2007.

Furthermore, we have also determined that the petition does not provide substantial scientific or commercial information indicating that listing the snares crested penguin and the royal penguin as threatened or endangered may be warranted at this time.

The snares crested penguin is endemic to Snares Island, New Zealand. The petition states that the population of snares crested penguin was “estimated at 23,250 breeding pairs in 1995–1986.” No current population data were provided. The Department of Conservation of New Zealand in its Action Plan for Seabird Conservation in New Zealand (Taylor 2000) cited by the petitioner, ranks snares crested penguins as a third priority species for conservation action. In contrast, other New Zealand endemic penguins included in the petition are ranked within the New Zealand Action Plan as second priority threatened species. This lower priority conservation status for the snares crested penguin reflects the

statement in the Action Plan that “possibly the population is stable or has increased slightly since the 1960s.” As quoted in the petition, the action plan cites no human disturbance of colonies and no records of snares crested penguins being caught in trawl nets, as well as the absence of introduced mammalian predators on the Snares Islands. Unlike some of the other penguin species included in the petition, competition with fisheries for prey species has not been documented for this species. The petitioner reports that the greatest threat to this species is reduced prey availability due to changing ocean conditions; however, specific data to support this are not provided. Citations in the petition on possible specific or general impacts of climate change on penguins at various Antarctic and sub-Antarctic latitudes do not mention the snares crested penguin, yet the petitioners assert the species will be affected on the basis of inferred similarity with other species for which the petitioner cites such impacts. We note that the petitioners do not include all penguin species in the petition. This indicates a conclusion by the petitioners that not all penguin species are equally under threat from the cited climate change factors and reduces confidence in the extrapolation of information, whether general, or directly tied to other specific locations or other species, to species included in the petition for which no specific information on these factors is provided. On the basis of the information provided on population data, trends, and threats, we find that the petitioner does not present substantial scientific or commercial information to indicate that listing the snares crested penguin may be warranted at this time.

The petitioners present information on the distribution and abundance of the royal penguin. The royal penguin is endemic to Macquarie Island, Australia. This information indicates that population levels are stable for this species which has recovered from heavy exploitation for their oil in the 19th and early 20th Centuries to a stable population of approximately 850,000 pairs, located in 57 colonies ranging from 60 to 160,000 pairs primarily on Macquarie Island and a few nearby islands. The petitioners cite a number of general references describing possible threats to the species. Unlike other species included in the petition, substantial evidence of current or recent population declines or of large scale or significant local impacts on this species from the possible threat factors cited in the petition are not presented. With

respect to the threat of nest predation by introduced predators which is documented as a serious threat by the petitioner in citations for other endemic species, the IUCN Red List of Threatened Species citation for this species, based on a 2005 assessment, states for the royal penguin that “rats take some eggs and young” but goes on to state that “feral cats have now been eliminated from Macquarie Island.” This suggests that conservation actions related to removing introduced predators prescribed in the Penguin Conservation Assessment and Management Plan for the royal penguin cited by the petitioner (Ellis 1999) are being successfully implemented. In fact, this recommendation regarding removing introduced predators is not included in the 2005 update of the IUCN Red List citation (Birdlife International 2006). Similarly, according to this cited source, the threat of human disturbance is being managed; “tourists on breeding islands are managed to prevent disturbance.” Citations in the petition on possible specific or general impacts of climate change on penguins at various Antarctic and sub-Antarctic latitudes do not mention the royal penguin, yet the petitioners assert the species will be affected on the basis of inferred similarity with other species for which the petitioner cites such impacts. We note that the petitioners do not include all penguin species in the petition. This indicates a conclusion by the petitioners that not all penguin species are equally under threat from the cited climate change factors and reduces confidence in the extrapolation of information, whether general, or directly tied to other specific locations or other species, to species included in the petition for which no specific information on these factors is provided. Because the petitioner provided no information indicating population declines or documenting specific threats to the species supported by scientific data or studies, we find that the petitioner does not present substantial scientific or commercial information to indicate that listing the royal penguin as threatened or endangered may be warranted at this time.

#### Finding

We have determined that the petition presents substantial scientific or commercial information to indicate that listing 10 species of penguins as endangered or threatened may be warranted. We find the petition does not present substantial scientific or commercial information to indicate that listing the snares crested penguin and the royal penguin as threatened or

endangered may be warranted at this time.

#### References Cited

- Birdlife International (Birdlife). 2006. In IUCN 2006. 2006 IUCN Red List of Threatened Species. Available at: <http://www.iucnredlist.org>.
- del Hoyo, J., A. Elliott, and J. Sargatal (Eds.). 2002. Handbook of the Birds of the World. Vol. 1. Lynx Edicions, Barcelona.
- Ellis, S. 1999. The Penguin Conservation Assessment and Management Plan: a Description of the Process. Marine Ornithology 27:163–169.

#### Author

The primary author of this notice is Pat Ford, Division of Scientific Authority, 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: July 3, 2007.

#### H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 07–3355 Filed 7–6–07; 11:47 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

[I.D. 021607C]

#### Endangered and Threatened Species; Proposed Endangered Status for the Cook Inlet Beluga Whale; Public Hearing

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

**ACTION:** Notice of public hearing.

**SUMMARY:** On April 20, 2007, NMFS proposed the listing of the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA), as amended. As part of that proposal, NMFS announced a public comment period to end on June 19, 2007, and then extended the comment period to August 3, 2007. NMFS has received requests for public hearings on this issue. In response, NMFS announced two public hearings to be held in Alaska and one public hearing to be held in Maryland in two previous **Federal Register** notices. In addition, NMFS is announcing a separate hearing in this notice that will be held in

Soldotna, Alaska, in order to provide greater opportunity for public comment.

**DATES:** The hearing will be held on July 27, 2007, from 6 to 9 p.m. in Soldotna, AK. Written comments must be received by August 3, 2007.

**ADDRESSES:** The July 27, 2007, hearing will be held at the Kenai Peninsula Borough Assembly chambers, 144 North Binkley Street, Soldotna, AK.

Written comments can be sent to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- E-mail: [CIB-ESA-Endangered@noaa.gov](mailto:CIB-ESA-Endangered@noaa.gov). Include in the subject line the following document identifier: Cook Inlet Beluga Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Hand delivery to the Federal Building: 709 W. 9th Street, Juneau, AK.
- Fax: (907) 586–7557.

**FOR FURTHER INFORMATION CONTACT:** Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, AK 99517, telephone (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, NMFS, (301) 713–1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 20, 2007, NMFS published a proposed rule to list the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA), as amended (72 FR 19854). This action followed completion of the Cook Inlet beluga whale status review, which found this population to be at risk of extinction within the next 100 years and described NMFS= determination that this population constitutes a “species”, or distinct population segment under the ESA.

Following the publication of the proposed rule to list the Cook Inlet beluga whale as endangered, NMFS received requests to schedule public hearings on this issue. In response to these requests, NMFS published two separate notices in the **Federal Register** announcing public hearings in Alaska (72 FR 32605; June 13, 2007) and Maryland (72 FR 34661; June 25, 2007). Following these announcements, NMFS received an additional request for a public hearing to be held in Soldotna, AK. NMFS has decided to honor the request in order to provide additional opportunities for public comment.