

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 223 and 224

[Docket No. 0812291651–81652–01]

RIN 0648–XM05

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

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

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

**SUMMARY:** We, NMFS, announce a 90-day finding for a petition to list Atlantic wolffish (*Anarhichas lupus*) as endangered or threatened under the Endangered Species Act (ESA). We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We will conduct a status review of Atlantic wolffish to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species from any interested party.

**DATES:** Information related to this petition finding must be received by March 6, 2009.

**ADDRESSES:** You may submit comments, identified by the XRIN 0648–XM05, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or hand-delivery: Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). The petition and other pertinent information are also available electronically at the NMFS website at [http://www.nero.noaa.gov/prot\\_res/CandidateSpeciesProgram/csr.htm](http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm).

**FOR FURTHER INFORMATION CONTACT:** Kim Damon-Randall, NMFS, Northeast Regional Office (978) 281–9300 x6535 or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

## SUPPLEMENTARY INFORMATION:

## Background

On October 1, 2008, we received a petition from the Conservation Law Foundation, Dr. Erica Fuller and Dr. Les Watling (hereafter, the Petitioners), requesting that we list the U.S. distinct population segment (DPS) of Atlantic wolffish (*Anarhichas lupus*), an Atlantic wolffish DPS consisting of one or more subpopulations in U.S. waters, or the entire species of Atlantic wolffish as endangered or threatened under the ESA and designate critical habitat for the species. The petition contains information on the species, including the taxonomy; historic and current distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the species' decline. The Petitioners also included information regarding possible DPSs of Atlantic wolffish. The petition addresses the five factors identified in section 4(a)(1) of the ESA as they pertain to Atlantic wolffish: (1) current or threatened habitat destruction or modification or curtailment of habitat or range; (2) over-utilization for commercial purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or man-made factors affecting the species' continued existence.

*ESA Statutory Provisions and Policy Considerations*

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4 (b)(3)(A) of the ESA requires

the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4 (b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532 (16)). In 1996, the U.S. Fish and Wildlife Service and NMFS published a Policy on the Recognition of Distinct Vertebrate Population Segments (DPS) Under the Endangered Species Act (61 FR 4722; February 7, 1996) that described two criteria for identifying DPSs: discreteness and significance. The Petitioners present information in the petition supporting a single large DPS in the United States and also potentially dividing that DPS into three smaller DPSs in the United States northeast peak of Georges Bank, Great South Channel, and Stellwagen Bank/Jeffreys Ledge.

The ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range (ESA section 3(6)).” A threatened species is defined as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (ESA section 3(19)).” As stated previously, under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (1) present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

*Life History of the Atlantic wolffish*

Atlantic wolffish are distributed in the North Atlantic Ocean from the Northwest Atlantic Shelf region off North America, to Greenland, Iceland and the waters off of Northern Europe. In the Northwestern Atlantic, they are found in waters off western Greenland

and southern Labrador, in the Strait of Belle Isle and the Gulf of St. Lawrence, off the eastern and western coasts of Newfoundland and over the Grand Banks south to the Scotian Shelf, in the Gulf of Maine and on Georges Bank. The species distribution within the United States represents the most southern reach of its range in the Northwest Atlantic.

Atlantic wolffish are a large, slow growing, and late maturing species (COSEWIC, 2000). Maturity varies by region due to temperature influences, but most mature by age 6 and about 40 cm total length (Collette and Klein-MacPhee, 2002). Males and females form bonded pairs during the spring and summer. The spawning period for Atlantic wolffish remains unclear but most likely varies temporally depending on latitude. Prior to spawning, ripe female wolffish exhibit a pronounced pot-belly (Collette and Klein-MacPhee, 2002). Females produce between 5,000 and 12,000 eggs, with female fecundity increasing with fish size. Incubation is believed to last 4 to 9 months, depending on the water temperature (Collette and Klein-MacPhee, 2002). Eggs are laid in large clusters and are guarded by the parental male. The male stops feeding during this period and becomes more aggressive in his role as protector (Collette and Klein-MacPhee, 2002).

Atlantic wolffish appear to prefer areas with complex bottom substrates such as rocky outcroppings or seaweed beds (Collette and Klein-MacPhee, 2002). While they are believed to be a relatively sedentary and solitary demersal species, Collette and MacPhee (2002) suggest that feeding takes place away from their shelter sites. Atlantic wolffish feed primarily on benthic fauna. While the diet of this species shows strong regional variation, it consists mainly of various species of mollusks, crustaceans, echinoderms and less frequently, fishes. Their teeth are quickly worn down by the grinding of hard-shelled prey and are replaced annually after the spawning season (Collette and Klein-MacPhee, 2002). They fast during this replacement until the new teeth are fully functional (Collette and Klein-MacPhee, 2002). As predators, Atlantic wolffish may also be key factors in controlling density and distribution of certain benthic invertebrates, such as sea urchin (O'Dea and Haedrich, 2000).

#### Analysis of Petition

The Petitioners present information indicating that the U.S. population of Atlantic wolffish is discrete and significant, and thus, a DPS. They also

present additional information indicating that the U.S. DPS can be divided into three smaller DPSs.

The Petitioners contend that the U.S. DPS of Atlantic wolffish is discrete based on the international boundary between the United States and Canada and by its physical isolation from other populations of Atlantic wolffish in the Canadian waters of the Atlantic.

They note that discrete local populations (or subpopulations) have been postulated for Atlantic wolffish due to differences in life history studies (O'Dea and Haedrich, 2002; CMER Research Topics, 2005). Evidence for these subpopulation units is based on tag-recapture studies which indicate a high level of site fidelity and a strong preference for rocky habitat areas (Bigelow and Schroeder, 1953). The Petitioners also examined the nearest "neighbor" distances for Atlantic wolffish subpopulations in the United States and determined that distances among localities ranged from 14 km to approximately 85 km, with a median distance of 19 km. They note that the most substantial remaining subpopulation in the United States exists in the Jeffreys Ledge/Stellwagen area, which is approximately 350 km from similar areas of concentration on Browns Bank in Canadian waters.

According to the Petitioners, the Fundian Channel represents a significant barrier between the Gulf of Maine and Georges Bank and the Scotian Shelf subpopulations of Atlantic wolffish. They indicate that oceanographic features, such as the Fundian Channel, isolate subpopulations that are found in different areas, thereby leading to geographic and genetic isolation. Without corridors for mixing between these disparate subpopulations, migration and effective recruitment is limited, which could lead to the extirpation of subpopulations in the United States. Not only is the Jeffreys Ledge/Stellwagen subpopulation geographically isolated from other subpopulations, but much of the habitat between it and the Canadian subpopulations is comprised of clay and silt substrata. According to the Petitioners, the literature suggests that Atlantic wolffish have never been documented on mud bottoms (Bigelow and Schroeder, 1953) and are rarely observed over sand bottoms (Collette and Klein-MacPhee, 2002). The Petitioners provide information indicating that Atlantic wolffish subpopulations in the United States are distinguishable from other Atlantic wolffish subpopulations due to differences in life history characteristics

such as age at maturity, possible adaptation to higher ambient water temperatures, fidelity to specific spawning grounds, and lack of migration. Coloration differences between Atlantic wolffish in the western Gulf of Maine and from Georges Bank have been noted, and it is believed that Atlantic wolffish subpopulations in the United States have adapted to the highest recorded water temperatures for the species throughout its range in the North Atlantic (Bigelow and Schroeder, 1953). As noted above, the Petitioners contend that, based on the U.S. Fish and Wildlife Service and NMFS joint DPS policy (61 FR 4722; February 7, 1996), the United States/Canadian border constitutes a delimiting international boundary, as Canadian management practices for Atlantic wolffish under the Species at Risk Act (SARA) are less protective than those afforded by the ESA. According to the Petitioners, there are differences in conservation status, exploitation, management of habitat and harvest regulation in Canada, and thus, Atlantic wolffish in the United States should be provided with independent protection.

According to the Petitioners, the United States population of Atlantic wolffish and the various subpopulations also satisfy the second and fourth significance factors from the DPS policy. They state that the U.S. DPS is significant because the loss of this population would result in a significant gap in the range of the taxon and in the loss of a subpopulation that exhibits unique characteristics indicative of genetic differences. They contend that the range of Atlantic wolffish in the Northwest Atlantic has contracted over the last 4 decades, and consequently, the range within the United States represents the southernmost extent of their historic range. As such, the loss of the U.S. DPS would represent a significant gap in the range of Atlantic wolffish. The Petitioners also note that the U.S. DPS and the subpopulations exhibit certain behavioral and physiological differences (noted above) that suggest there are underlying genetic differences.

The petition asserts that the U.S. DPS or the three potential smaller DPSs in the United States warrant listing based on at least three of the five factors specified in the ESA, 16 USC 1533(a)(1). The primary threats to Atlantic wolffish identified in the petition are overutilization directly and indirectly in commercial and recreational fisheries and habitat destruction and modification by bottom trawling and dredging. The Petitioners cite information that indicates that bottom

trawling and dredging operations are harmful to the hard bottom habitat occupied by Atlantic wolffish for nesting, spawning, and hatching young. The petition states that existing laws and regulations do not protect Atlantic wolffish populations in the United States or in Canada and that they are inadequate to halt the likely extinction of the species in a significant portion of its range. The Petitioners also contend that the threats to Atlantic wolffish in the United States have been exacerbated by additional environmental factors such as warming ocean temperatures, ecosystem shifts due to the general freshening of continental shelf waters, and a general loss of biodiversity in the marine environment.

According to the Petitioners, catch rates in scientific surveys in Newfoundland waters have declined by 91 percent since 1978 and by 87 percent in all Canadian waters. The 2002 Stock Status Report for Atlantic wolffish produced by the Canadian Department of Fisheries and Oceans (DFO) for the Scotian Shelf, Georges Bank, and in the Bay of Fundy indicated a similar declining trend in the research trawl survey series which began in 1970. Not only have the numbers declined in the surveys, but the number of locations in which the species occurs has declined and the range where the species is abundant appears to have been reduced. The percentage of all Canadian survey stations in which wolffish were landed in the DFO trawl survey declined from close to 35 percent in 1978 to approximately 10 percent in 1994. In Newfoundland, Atlantic wolffish were historically captured at 88 percent of the survey stations until 1985; however, this declined to 33 percent by 1993.

The Petitioners estimate that in the United States, between 1983 and 2004, the rate of decline of Atlantic wolffish was approximately 95 percent. The Northeast Fishery Science Center (NEFSC) bottom trawl survey biomass index has shown a significant decline that began in the mid- to late 1980s and has continued to present. The NEFSC's spring biomass index for U.S. waters reached a high of 1.44 kg/tow in 1986, declined to a low of 0.00 in 2005 and 2006, and rose slightly to 0.009 in 2007. The fall biomass index for U.S. waters reached a high of 1.14 kg/tow in 1981 and declined to 0.00 in 2007. Bottom trawls are most likely not the most effective method for determining abundance of Atlantic wolffish as they do not efficiently sample the rocky bottom habitat inhabited by wolffish. However, a pronounced decline in the relative abundance trend over an

extended time period is still evident from the available data.

The current distribution of Atlantic wolffish in the Northwest Atlantic is contracted when compared to the historic distribution. Historically, the Northwest Atlantic population was distributed throughout the entire Gulf of Maine and on Georges Bank south to New Jersey (Collette and Klein-MacPhee, 2002). The highest recorded abundance was from Jeffreys Ledge to the Great South Channel, and other reported areas of abundance included the Gulf of Maine region in Canadian waters on the northeast peak of Georges Bank and Browns Bank. Wolffish were frequently caught in inshore Maine waters and along the coast of Massachusetts. State trawl surveys from Maine to Massachusetts have documented very few wolffish in state waters over the last several decades. NEFSC bottom trawl surveys have also documented this range contraction, indicating that there are a few isolated areas in which Atlantic wolffish are concentrated, including the northeast peak of Georges Bank and the Jeffreys Ledge and Stellwagen Bank regions.

#### Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned actions concerning Atlantic wolffish may be warranted. The Petitioners also provided information to support listing the entire species as threatened or endangered. As such, the biological review team (BRT) that will be formed to assess the status of Atlantic wolffish will begin their review by considering the information available regarding population structure of Atlantic wolffish throughout their range in the Northwest Atlantic. The review will include consideration of whether there is a single U.S. DPS or smaller DPSs within the species' range in the United States as indicated by the Petitioners. The status of the species, as defined by the BRT and after consulting with NMFS, will then be assessed to provide information to us to make a determination as to whether the species is in danger of extinction throughout all or a significant portion of its range or likely to become so in the foreseeable future.

Under section 4(b)(3)(A) of the ESA, this finding requires NMFS to commence a status review of the species. We are now initiating this review, and thus, the Atlantic wolffish is now considered to be a candidate species (69 FR 19976; April 15, 2004).

Within 12 months of the receipt of the petition (October 1, 2009), a finding will be made as to whether listing Atlantic wolffish or DPSs of Atlantic wolffish in the United States as endangered or threatened is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

#### Information Solicited

To ensure the status review is based on the best available scientific and commercial data, we are soliciting information on whether Atlantic wolffish are endangered or threatened. Specifically, we are soliciting information in the following areas: (1) historical and current distribution and abundance of this species throughout its range; (2) historic and current condition; (3) population status and trends; (4) information on any current or planned activities that may adversely impact the species, especially as related to the five factors specified in section 4(a)(1) of the ESA and listed above; (5) ongoing efforts to protect and restore the species and its habitat; (6) information indicating the existence of DPSs of Atlantic wolffish based upon genetic data or other information; and (7) information on whether any particular portions of the range of the Atlantic wolffish constitute significant portions of the range of the species or of any potential DPSs that may exist. We request that all information be accompanied by: (1) supporting documentation such as 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.

#### Peer Review

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

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

Dated: December 29, 2008.

**John Oliver,**

*Deputy Assistant Administrator for  
Management and Administration, National  
Marine Fisheries Service.*

[FR Doc. E8-31362 Filed 1-2-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 0812171612-81615-01]

RIN 0648-XM21

#### Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2009, through December 31, 2009. This HG is proposed according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast. The proposed initial HG for the 2009 fishing year is 65,732 mt and is proposed to be divided across the seasonal allocation periods in the following way: January 1–June 30, 22,006 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,293 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,933 mt would be allocated for directed harvest with an incidental set-aside of 4,500 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed.

**DATES:** Comments must be received by February 4, 2009.

**ADDRESSES:** You may submit comments on the Initial Regulatory Flexibility Analysis (IRFA) prepared for this rule or on this proposed rule identified by 0648-XM21 by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- **Mail:** Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

- **Fax:** (562)980-4047

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 (enter N/A in the required fields if you prefer to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the IRFA or the report “Assessment of Pacific Sardine Stock for U.S. Management in 2009” may be obtained from the Southwest Regional Office (see the Mailing address above).

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

**SUPPLEMENTARY INFORMATION:** The CPS FMP, which was implemented by publication of the final rule in the *Federal Register* on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council’s (Council) Coastal Pelagic Species Management Team (Team) and the Council’s Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS.

In November 2008, the Council held a public meeting in San Diego, California (73 FR 60680), and recommended an acceptable biological catch (ABC) or maximum harvest guideline (HG) of 66,932 mt for the 2009 Pacific sardine fishing year. This ABC is the result of applying a biomass estimate of 662,886 mt to the harvest control rule established in the CPS FMP. This ABC/HG is 25 percent less than the ABC/HG adopted by the Council for the 2008 fishing season. The Council recommended that 1,200 mt of this available ABC/HG be initially subtracted from the ABC and reserved for a potential industry-based research project. NMFS would need to issue an Exempted Fishing Permit (EFP) for such an activity to occur. A decision on whether to issue an EFP will be made prior to the start of the second seasonal period (July 1, 2009). If it is determined that an EFP cannot be issued then the 1,200 mt will be added to the third period’s directed harvest allocation prior to the start of that period.

The Council recommended that the remaining 65,732 mt be used as the initial overall HG and be allocated across the seasonal periods established by Amendment 11 (71 FR 36999). The Council also recommended an incidental catch set-aside of 6,500 mt. Subtracting this set-aside from the initial overall HG establishes an initial directed harvest fishery of 59,232 mt and an incidental fishery of 6,500 mt. The purpose of the incidental fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, if and when a seasonal directed fishery is closed. The larger set aside in the third and final period is intended to adequately account for incidental harvest by the winter market squid fishery and to also help ensure that sardine harvests do not exceed the ABC.

The directed harvest levels and incidental set-aside would be initially allocated across the three seasonal allocation periods in the following way: January 1–June 30, 22,006 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; July 1–September 14, 25,293 mt would be allocated for directed harvest with an incidental set-aside of 1,000 mt; September 15–December 31, 11,933 mt would be allocated for directed harvest with an incidental set-aside of 4,500 mt. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the