Commission is likely to have an insignificant and mixed impact overall on the economic opportunities for small entities. We seek comment from small entities on this issue.

21. One of the sanctions that the Commission proposing using is the issuance of a notice of apparent liability for forfeiture to stations that do not comply with their DTV construction obligation. We seek comment on any small entity concerns that might affect the Commission's enforcement decisions. We note that we already take small entity status, including potential inability to pay, into account when assessing the need for, and amount of, monetary forfeitures.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

23. *Paperwork Reduction Act.* This *NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due August 5, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX.

Title: Remedial Steps for Failure to Comply with Digital Television Construction Schedule.

Form No.: n/a.

Type of Review: New collection.

Respondents: business or other for-profit; not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours (0.5 hours licensee; 1.5 hours contract attorney).

Frequency of Response: reporting, on occasion.

Total Annual Burden: 50 hours.

Total Annual Costs: $30,000.

Needs and Uses: The Commission is seeking comment on proposed remedial steps for failure to comply with its DTV construction schedule. These steps include proposed reporting requirements. The remedial steps are intended to prevent undue delay in the required build out of DTV facilities.

24. *Authority.* This *NPRM* is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and Section 202(h) of the Telecommunications Act of 1996.

Ordering Clauses

25. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

26. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–13908 Filed 6–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.020523130–2130–01; I.D. No. 040102D]

RIN 0648–AP94

Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90-day Finding for a Petition to Reclassify the Northern and Florida Panhandle Subpopulations of the Loggerhead as Distinct Population Segments with Endangered Status and to Designate Critical Habitat

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

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, announces the 90-day finding for a petition to reclassify the Northern and Florida Panhandle subpopulations of the loggerhead turtle (*Caretta caretta*), now listed as threatened throughout their range, as distinct population segments with endangered status and designate critical habitat under the Endangered Species Act of 1973, as amended (ESA). We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

We are initiating a review of the status of the species to determine whether the petitioned action is warranted. To ensure a comprehensive review, we are soliciting information and comments pertaining to this species from any interested party.

DATES: Written comments and information related to this petition finding must be received [see **ADDRESSES**] by August 5, 2002.

ADDRESSES: Written comments and information should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet. The petition is available for public inspection, by appointment, during normal business hours at the above address. The petition may also be found at the following website: *http://www.nmfs.noaa.gov/prot__res/PR3/Turtles/turtles.html.*

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail barbara.schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires us to make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Our implementing regulations (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 determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, 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, we are also required to conduct a status review of the species. The determination of whether or not the petition is warranted must be made within one year of the receipt of the petition.

Analysis of Petition

On January 14, 2002, we received a petition from the Earthjustice Legal Defense Fund, on behalf of the Turtle Island Restoration Network and the Center for Biological Diversity, requesting that the Northern and Florida Panhandle subpopulations of the loggerhead be reclassified as distinct population segments (see *Petition Finding* for discussion on distinct population segments) with endangered status throughout their range and that critical habitat be designated. In addition, the petition requested an emergency rule be issued for the same.

The petition contains a detailed description of the species legal status, life history parameters, geographic range, population status and trends, and factors contributing to the decline in several subpopulations. The petition cites key documents recognizing the identification of genetically different loggerhead subpopulations (Turtle Expert Working Group (TEWG) 1998, 2000; NMFS Southeast Fisheries Science Center (SEFSC) 2001). At least five different subpopulations in the Western North Atlantic and Gulf of Mexico have been identified (NMFS SEFSC 2001). The subpopulations are divided geographically as follows: (1) A Northern nesting subpopulation, occurring from North Carolina to northeast Florida at about 29° N (approximately 7,500 nests in 1998); (2) a South Florida nesting subpopulation, occurring from 29° N on the east coast to Sarasota on the west coast (approximately 83,400 nests in 1998); (3) a Florida Panhandle nesting subpopulation, occurring at Eglin Air Force Base and the beaches near Panama City, FL (approximately 1,200 nests in 1998); (4) a Yucatán nesting subpopulation, occurring on the eastern Yucatán Peninsula, Mexico (Márquez 1990) (approximately 1,000 nests in 1998) (TEWG 2000); and (5) a Dry Tortugas nesting subpopulation, occurring in the islands of the Dry Tortugas, near Key West, FL (approximately 200 nests per year) (NMFS SEFSC 2001). Recent fine-scale mitochondrial deoxyribonucleic acid (mtDNA) analysis from Florida rookeries indicate that population separations begin to appear between nesting beaches separated by more than 100 kilometers (62 miles) of coastline that do not host nesting (Francisco *et al.*, 2000). Tagging studies of nesting females corroborate these findings (Ehrhart 1979, LeBuff 1990) and affirm loggerhead nest site fidelity, with rare exceptions.

The petition maintains that the Northern subpopulation has declined dramatically over the past 20 years. The petition refers to nesting trends at Cape Island, SC, and Little Cumberland Island, Georgia –nesting beaches that have been consistently surveyed since the early 1970s. From 1973 to 1995, nesting at Cape Island declined on average 3.2 percent per year, and from 1964 to 1995, Little Cumberland nesting activity declined at 2.6 percent per year. Regarding the Florida Panhandle subpopulation, the petition asserts that the population's small size (less than 1,000 annual nesters) would not withstand catastrophic events and warrants rigorous management.

The petition asserts that the Northern and Florida Panhandle subpopulations are endangered because they are in imminent danger of extirpation from their ranges and identifies several threats including commercial fishing, coastal development, and pollution. The petition discusses the significance of the Northern and Florida Panhandle subpopulations and states that if either were extirpated, re-establishment is unlikely and the loss of genetic contribution to the species would be permanent. The petition also states that the Northern subpopulation produces a higher percentage of male hatchlings and the extirpation of this nesting assemblage would seriously hamper male-mediated gene flow.

Petition Finding

Based on the above information and criteria specified in 50 CFR 424.14(b)(2), we find the petitioner presents substantial scientific and commercial information indicating that a reclassification of the Northern and Florida Panhandle loggerhead subpopulations as distinct population segments with endangered status may be warranted. The ESA defines 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.'' NMFS and the U.S. Fish and Wildlife Service published a joint policy defining the phrase ''distinct population segment'' on February 7, 1996 (61 FR 4722). Three elements are considered in a decision regarding the listing, delisting, or reclassification of a distinct population segment as endangered or threatened under the ESA: discreteness of the population segment in relation to the remainder of the species, significance of the population segment to the species, and conservation status. Under section 4(b)(3) of the ESA, an affirmative 90–day finding requires that we commence a status review on the loggerhead turtle. We are initiating this review and, once it has been completed, a finding will be made as to whether reclassification of the Northern and Florida Panhandle loggerhead subpopulations as distinct population segments with endangered status is warranted, warranted but precluded by higher priority listing actions, or not warranted, as required by section 4(b)(3) of the ESA.

Designation of critical habitat is not subject to the ESA's petition provision; however, the ESA requires us to make a critical habitat determination concurrent with listing determinations. The ESA defines ''critical habitat'' as ''...the specific areas within the geographical area occupied by the species, at the time it is listed... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and... specific areas outside the geographical area occupied by the species at the time it is listed... upon a determination... that such areas are essential for the conservation of the species.''

Species are considered for emergency listing when the immediacy of the threat is so great to a significant proportion of the total population that the routine listing process is not sufficient to prevent large losses that may result in extinction. Expected losses during the normal listing process that would risk the continued existence of the entire species are grounds for an emergency rule. The purpose of the emergency rule provision of the ESA is to prevent species from becoming extinct by affording them immediate protection while the normal rulemaking procedures are being followed. Taking this into consideration, we find that emergency reclassification is not warranted because the species is already afforded protection under the ESA, protection under sections 7 and 9 would remain the same, recovery implementation would not be any different, and we have recently applied cautious management to ensure that irreversible impacts from fisheries interactions do not occur (NMFS 2001). Therefore, we conclude there will be no

significant risk to the species as a whole during the normal listing process.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(c), a species can be reclassified, based on the best scientific and commercial data available after conducting a review of the species' status, for any one or a combination of the following: (1) 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) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

Information Solicited

To ensure that the status review is completed and based on the best available data, we are soliciting information and comments on whether the Northern and Florida Panhandle loggerhead subpopulations qualify as distinct population segments and, if so, whether they should be reclassified from threatened to endangered based on the above listing factors. Specifically, we are soliciting information in the following areas: (1) Historical and current abundance for these nesting assemblages; (2) current distribution and movement; (3) population status and trends; (4) genetic stock identification; (5) current or planned activities that may adversely impact these subpopulations; and (6) ongoing efforts to protect the Northern and Florida Panhandle subpopulations and their habitat. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

All submissions must contain the submitter's name, address, and any association, institution, or business that the person represents. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

Critical Habitat

We are also requesting information on areas that may qualify as critical habitat for the loggerhead particularly related to the Northern and Florida Panhandle subpopulations. Areas that include the physical and biological features essential to the conservation of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the conservation of the species. Essential features include, but are not limited to: (1) Space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical and ecological distributions of the species (50 CFR 424.12).

Peer Review

For listings, delistings, and reclassifications under the ESA, NMFS and the U.S. Fish and Wildlife Service have a joint policy for peer review of the scientific data (59 FR 34270, July 1, 1994). The intent of the peer review policy is to ensure that 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 the loggerhead status review. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

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

Dated: May 30, 2002.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–13959 Filed 6–3–02; 8:45 am]

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