

this program were equal to or higher than the interest rates charged on comparable commercial loans.

*2. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)*

SGF Rexfor, Inc. (Rexfor) is a corporation all of whose shares are owned by the Societe Generale de Financement du Quebec (SGF). SGF is an industrial and financial holding company that finances economic development projects in cooperation with industrial partners. Rexfor is SGF's vehicle for investment in the forest products industry.

Rexfor receives and analyzes investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures. Debentures are used as an investment vehicle when Rexfor determines that a project is worthwhile, but is not large enough to necessitate more complex equity arrangements. Consistent with our approach in the underlying investigation, we have not analyzed equity investments by Rexfor because (1) there was no allegation that Rexfor's equity investments were inconsistent with the usual investment practice of private investors, and (2) there is no evidence on the record indicating that Rexfor's equity investments conferred a benefit.

Also, consistent with our approach in the underlying investigation, we examined whether Rexfor's participative subordinated debentures, *i.e.*, loans, conferred a subsidy. Because assistance from Rexfor is limited to companies in the forest products industry, we have preliminarily determined that this program is specific under section 771(5A)(D)(i) of the Act. The long-term loans provided by Rexfor qualify as a financial contribution under section 771(5)(D)(i) of the Act. To determine whether the single loan outstanding to a softwood lumber producer during the POR provided a benefit, we compared the interest rates on the loan from Rexfor to the benchmark interest rates as described in "Benchmarks for Loans and Discount Rates." See 771(5)(E)(ii) of the Act. Using this methodology, we have preliminarily determined that no benefit was provided by this loan because the interest rates charged under this program were higher than the interest rates charged on comparable commercial loans.

On this basis, we have preliminarily found that the debt forgiveness by Rexfor did not confer a benefit in the

POR and, thus, provides no countervailable subsidy.

**Preliminary Results of Review**

In accordance with 777A(e)(2)(B) of the Act, we have calculated a single country-wide subsidy rate to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from this order. This rate is summarized in the table below:

Producer/Exporter	Net Subsidy Rate
All Producers/Exporters	8.18 percent ad valorem

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP to assess countervailing duties as indicated above. The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties of 8.18 percent of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

**Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than seven days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Please note that an interested party may still submit case and/or rebuttal briefs even though the party is not going to participate in the hearing.

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. Any requested

hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2005.

**Susan Kubbach,**

*Acting Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[Docket No. 040511147-5142-02; I.D. 042804B]

**Listing Endangered and Threatened Species and Designating Critical Habitat: 12-Month Finding on Petition to List the Cherry Point Stock of Pacific Herring as an Endangered or Threatened Species**

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

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We (NMFS) have completed an updated Endangered Species Act (ESA) status review of Pacific herring (*Clupea pallasii*), inclusive of the Cherry Point herring stock (Strait of Georgia, Washington). We initiated this status review update in response to a petition received on May 14, 2004, to list the Cherry Point stock of Pacific herring as a threatened or endangered species. We have determined that the Cherry Point herring stock does not qualify as a "species" for consideration under the ESA. Based on the best available

scientific and commercial information, we conclude that the petitioned action to list the Cherry Point Pacific herring stock as a threatened or endangered species is not warranted. We find that the Cherry Point stock is part of the previously defined Georgia Basin distinct population segment (DPS) composed of inshore Pacific herring stocks from Puget Sound (Washington) and the Strait of Georgia (Washington and British Columbia). We have determined that the Georgia Basin DPS of Pacific herring is not in danger of extinction or likely to become endangered in the foreseeable future throughout all or a significant portion of its range, and therefore does not warrant ESA listing at this time.

**DATES:** The finding announced in this notice was made on June 1, 2005.

**ADDRESSES:** The status review update for Pacific herring and the list of references cited in this notice are available upon request from Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Avenue, Suite 1100, Portland, OR, 97232. These materials are also available on the Internet at: <http://www.nwr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice contact Garth Griffin, NMFS, Northwest Region, (503) 231-2005, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

ESA Statutory Provisions and Policy Considerations

Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). On February 7, 1996, the U.S. Fish and Wildlife Service and NMFS adopted a policy to clarify the agencies' interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" (ESA section 3(15)) for the purposes of listing, delisting, and reclassifying a species under the ESA (51 FR 4722). The joint DPS policy identified two elements that must be considered when making DPS determinations: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of

its range," and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The statute lists factors that may cause a species to be threatened or endangered (ESA section 4(a)(1)): (a) the present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence.

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. In making listing determinations under the ESA we first determine whether a population or group of populations constitutes a DPS (i.e., whether the population(s) should be considered a "species" within the meaning of the ESA), and if so we assess the level of extinction risk faced by the DPS and any factors that have led to its decline. If it is determined that the DPS' survival is at risk throughout all or a significant portion of its range, we then assess efforts being made to protect the species, determining if these efforts are adequate to mitigate threats to the species. Based on the foregoing information and the factors identified in ESA section 4(a)(1), we then make a listing determination of whether the species is threatened, the species is endangered, or listing is not warranted.

*Life History of Pacific Herring*

Pacific herring in the Eastern Pacific Ocean range from northern Baja California north to at least the Mackenzie Delta in the Beaufort Sea. They are also found in the Russian Arctic from the Chukchi Sea in the east to the White Sea in the west, although the boundary between Atlantic and Pacific herring is unclear in this region (Hay *et al.*, 2001b). In the Northwestern Pacific they are found throughout the Western Bering Sea, the east coast of Kamchatka, and the Sea of Okhotsk; on the east and west coasts of Hokkaido, Japan; and south and west to the Yellow Sea off the Korean Peninsula (Haegele and Schweigert, 1985; Hay *et al.*, 2001b).

Adult herring in the Eastern Pacific move inshore during winter and early spring and reside in holding areas before moving to adjacent spawning

grounds (Hay, 1985). Spawning grounds are typically in sheltered inlets, sounds, bays, and estuaries (Haegele and Schweigert, 1985). Pacific herring usually spawn intertidally or in shallow subtidal zones, depositing adhesive eggs over algae, vegetation, or other substrates (Hay, 1985). The location and timing of spawning for individual stocks are generally consistent and predictable from year to year (Hay *et al.*, 1989; O'Toole *et al.*, 2000).

Pacific herring spawn timing varies with latitude, with earlier spawning (i.e., early-winter) occurring in the more southern latitudes of the species' range, and later spawning (i.e., mid-summer) occurring toward the northern limit of the species' range (Hay, 1985). In Puget Sound, spawning generally occurs from January to April, with peak spawning activity in February and March; however, Pacific herring at Cherry Point spawn from late-March to mid-June (Bargmann, 1998).

Pacific herring larvae drift in ocean currents after hatching and are abundant in shallow nearshore waters (Lassuy, 1989; Hay and McCarter, 1997). After 2 to 3 months, larvae metamorphose into juveniles that form large schools and remain primarily in nearshore shallow-water areas during the first summer. After their first summer, juveniles may disperse to deeper offshore waters to mature or reside year-round in nearshore waters (Hay, 1985). For example, some herring are nonmigratory or resident and spend their entire life within Puget Sound and the Strait of Georgia, while other more migratory herring spend their summers in the offshore waters of Washington and southern British Columbia (Hay *et al.*, 2001a; Trumble, 1983).

Pacific herring age at first maturity ranges from age-2 to age-5 (Hay, 1985). Along the west coast of North America, populations of Pacific herring exhibit a latitudinal cline in age at first maturity, such that herring in southern locations (i.e., California) mature at an earlier age and herring in the north (i.e., Bering Sea) mature at later ages (Hay, 1985). In Puget Sound, Pacific herring reach sexual maturity at age-2 to age-4 (Bargmann, 1998). Pacific herring in the Strait of Georgia and other major assessment areas in British Columbia reach sexual maturity at age-3 (Hay and McCarter, 1999). In general, populations of Pacific herring also exhibit a latitudinal cline in mean size-at-age, such that herring in southern locations (i.e., California) exhibit small size and herring in the north (i.e., Bering Sea) attain a far larger size at a similar age. Herring may spawn annually for several years (Hay, 1985), with overall

fecundity increasing as body size increases (Ware, 1985; Hay, 1985).

In the state of Washington there are 21 documented spawning stocks: 19 stocks in Puget Sound (including the Cherry Point stock and the recently re-discovered Wollochet Bay stock), and two on the Washington Coast (Bargmann, 1998; Stout *et al.*, 2001). The Cherry Point Pacific herring stock historically spawned along the Washington coastline from Hale Passage (between the north end of Bellingham Bay and the east coast of Lummi Island), north to Cherry Point, Birch Point, Point Roberts, and the border with Canada (Lemberg *et al.*, 1997). Since 1996, spawning of the Cherry Point stock has only occurred in the vicinity of Birch Point and along the Cherry Point Reach. Spawning at Cherry Point can begin as early as late-March and end as late as mid-June, although peak spawning activity occurs around May 10th (O'Toole *et al.*, 2000). Spawning at all other Pacific herring locations in Puget Sound, Hood Canal, and the Strait of Juan de Fuca normally occurs from late-January through late-April (Trumble, 1983; Lemberg *et al.*, 1997; O'Toole *et al.*, 2000) with peak spawning starting the last week of February or the first week of March (O'Toole *et al.*, 2000).

Since record keeping began in 1928, British Columbia Pacific herring have been observed to spawn at over 1,300 locations along the approximately 5,200 km of coastline that is classified as herring spawning habitat (Hay and McCarter, 2004). In any given year, between 450 and 600 km of the British Columbia coast receives herring spawn. The Canada Department of Fisheries and Oceans has identified six stock assessment regions and 101 sub-areas or "Herring Sections" characterized by consistent Pacific herring spawning activity. In general, Pacific herring spawn from January to May in southern British Columbia and from mid-January to June in northern British Columbia (Taylor, 1964; Hourston, 1980). As at Cherry Point, Pacific herring in several Herring Sections in British Columbia exhibit notably late spawn timing for their local region (e.g., Skidegate Inlet [Section 022] and Masset Inlet [Section 011] in the Queen Charlotte Islands Region and Burke Channel [Section 084] in the Central Coast Region) (Hay *et al.*, 1989).

#### *Previous Federal Actions Relating to Pacific Herring*

We completed a status review of Pacific Herring in 2001 (Stout *et al.*, 2001). This earlier review was initiated in response to a petition received in February 1999 to list 18 species of

marine fishes in Puget Sound, including Pacific herring. We concluded that the Pacific herring stocks in Puget Sound do not constitute a DPS (and therefore do not qualify as a "species" under the ESA). We determined that these Puget Sound herring stocks, including the Cherry Point stock, belonged to a larger Georgia Basin Pacific herring DPS consisting of over 40 inshore stocks from Puget Sound and the Strait of Georgia in the United States and Canada (64 FR 17659; April 3, 2001). We concluded that the Georgia Basin DPS is not threatened or endangered throughout all or a significant portion of its range (64 FR 17659; April 3, 2001); however, we did note concern regarding two herring stocks within the Georgia Basin DPS (the Cherry Point and Discovery Bay stocks) that have shown marked declines in range and abundance. Although we recognized that these two declining stocks may be vulnerable to extirpation, we concluded that they represent a relatively small portion of the more than 40 stocks and assessment areas composing the DPS and do not confer significant risk to the DPS throughout all or a significant portion of its range.

#### *Summary of Petitions Received*

On January 22, 2004, NMFS received a petition from the Northwest Ecosystem Alliance, the Center for Biological Diversity, Ocean Advocates, People for Puget Sound, Public Employees for Environmental Responsibility, Sam Wright, and the Friends of the San Juans to find that the Cherry Point (Washington) stock of Pacific herring qualifies as a DPS and warrants listing as a threatened or endangered species under the ESA. Subsequently, on May 14, 2004, the same petitioners submitted additional information including new genetic information on the stock structure of Pacific herring in Puget Sound and the Strait of Georgia (Washington) that had become available since the initial petition was received on January 22, 2004. We considered the petitioners' supplemental submission (in conjunction with the January 22, 2004, submission) as a distinct petition received by the agency on May 14, 2004. On August 10, 2004, we issued our finding that the petition received on January 22, 2004, fails to present substantial scientific and commercial information indicating that the petitioned action may be warranted, but that the petition received on May 14, 2004, does present substantial scientific and commercial information indicating that the petitioned action may be warranted (69 FR 48455).

For a summary of the specific information presented in the two petitions, the reader is referred to the above mentioned **Federal Register** notice describing the petition findings. Most significantly, the petition received on May 14, 2004, presented new genetic information (Small *et al.*, 2004) indicating that the Cherry Point herring stock may be "discrete" and "significant" with respect to the species, and may thereby qualify as a DPS for listing consideration under the ESA. The majority of the information provided by the petitioners regarding the viability of the Cherry Point herring stock was evaluated in our earlier 2001 status review. The Cherry Point herring stock has declined dramatically over the last three decades, with the spawning biomass in 2000 representing a 94 percent decline from historical observations. The 2001 status review noted that there was a 50 percent chance that the Cherry Point stock would decline to 1 ton or less in 100 years (Stout *et al.*, 2001). The petitioners also provided additional biomass information from 2001–2004 for the period since the 2001 status review.

#### **Updated Status Review of Pacific Herring**

The ESA requires that, as a consequence of accepting the above petition, NMFS promptly commence a review of the species' status and make a finding within 12 months after receiving the petition, whether the petitioned action is warranted (ESA Section 4(b)(3)). To ensure that our review was based on the best available and most recent scientific information, we solicited information during a 60-day public comment period regarding the DPS structure and extinction risk of, and efforts being made to protect, the species (69 FR 48455; August 10, 2004).

We convened a Biological Review Team (BRT) (an expert panel of scientists from NMFS' Northwest and Alaska Fisheries Science Centers, and NOAA's National Ocean Service) to review the available information and determine: (1) the DPS structure of Pacific herring, specifically whether the Cherry Point herring stock qualifies as a "species" for consideration under the ESA; and (2) whether the identified DPS(s) are in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The BRT's findings are presented in a January 24, 2005, memorandum "Summary of Scientific Conclusions of the Status of Cherry Point Pacific Herring (*Clupea pallasii*) and Update of the Status of the Georgia

Basin Pacific Herring DPS,” and are summarized briefly below.

#### *Determination of “Species”*

Under the joint DPS policy (51 FR 4722; February 7, 1996) 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. Under the joint DPS policy, 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.

The BRT considered several types of information in evaluating the DPS structure of Pacific herring, including whether the Cherry Point herring stock qualifies for listing consideration as an independent DPS. Information considered in evaluating the discreteness of stocks include: (1) geographic variability in life-history characteristics and morphology; (2) tagging and recapture studies indicating the level of migration among stocks; and (3) genetic differentiation among stocks reflective of marked reproductive isolation.

#### *Relationship of Stock and DPS Concepts*

Pacific herring in the vicinity of Cherry Point (Washington) are considered to be a stock for management purposes in the state of Washington (Bargmann, 1998). There is no definition of the term “stock” that is generally accepted by fisheries biologists (Stout *et al.*, 2001). The term stock has been used to refer to: (1) fish spawning in a particular place or time, separated to a substantial degree from fish spawning in a different place or time (Ricker, 1972);

(2) a population sharing a common environment that is sufficiently discrete to warrant consideration as a self-perpetuating system that can be managed separately (Larkin, 1972); (3) a species group or population of fish that maintains and sustains itself over time in a definable area (Booke, 1981); and (4) an intraspecific group of randomly mating individuals with temporal or spatial integrity (Ihssen *et al.*, 1981). None of these definitions imply that a fish stock is ecologically, biologically, or physiologically significant in relation to the biological species as a whole. Hence, information establishing a group of fish as a stock, such as the Cherry Point stock of Pacific herring, does not necessarily qualify it as a DPS. A DPS may be composed of a group of related stocks, or in some cases (if the evidence warrants) a single stock, that form(s) a discrete population and are (is) significant to the biological species as a whole.

#### *Pacific Herring as a Metapopulation*

A “metapopulation” is an aggregation of subpopulations linked by migration, and subject to periodic extinction and recolonization events (Levins, 1968, 1970). Observations of herring population structure in the Atlantic and Pacific are consistent with this metapopulation concept (McQuinn, 1997; Ware *et al.*, 2000; Ware and Schweigert, 2001, 2002; Ware and Tovey, 2004): (1) local herring stocks are distributed across spatially fragmented spawning habitat; (2) local stocks exhibit partially independent demographics and dynamics; (3) there is appreciable straying and gene flow among local populations; and (4) there is evidence of disappearance and recolonization events. Consistent with the consideration of Pacific herring as a metapopulation, local spawning stocks of herring may demonstrate distinctive demographic patterns and reproductive isolation over relatively short temporal scales, yet over longer time periods regularly exchange low levels of individuals or experience periodic waves of dispersal during years of abundant recruitment.

#### *DPS Determination for the Cherry Point Stock of Pacific Herring*

The BRT concluded that the Cherry Point stock of Pacific herring was “discrete” under the DPS policy (NMFS, 2005). The BRT determined that the Cherry Point stock is markedly separated from other Pacific herring populations as a consequence of physical, physiological, ecological, or behavioral factors due to: (1) its locally unique late spawn timing; (2) the locally

unusual location of its spawning habitat on an exposed section of coastline; (3) its consistently large size-at-age and continued growth after maturation relative to other local herring stocks; and (4) its differential accumulation of toxic compounds relative to other local herring stocks, indicative of different rearing or migratory conditions for Cherry Point herring.

Although the BRT determined that the Cherry Point stock represents a discrete population, the BRT concluded that the stock is not “significant” to the taxon, and hence does not constitute a DPS (NMFS, 2005). The BRT noted that: (1) over the broad geographic range of Pacific herring, the local distinctiveness of the Cherry Point stock is not unusual; (2) the late spawn timing of the Cherry Point stock is not exceptional for Pacific herring, as there are other Pacific herring stocks with similarly exceptionally late (as well as early) spawn timing for their local region; (3) other Pacific herring stocks have spawning habitats located on exposed coastlines subject to high-energy wave action; and (4), given the level of genetic variability observed within and between herring stocks, the level of genetic differentiation exhibited by the Cherry Point stock was unlikely to indicate a marked or evolutionarily significant level of differentiation. Based on this information, the BRT concluded that the Cherry Point stock does not satisfy the applicable DPS criteria for significance: Cherry Point does not represent a unique or unusual ecological setting for Pacific herring; the loss of the Cherry Point herring stock would not result in a significant gap in the extensive range of Pacific herring; and the Cherry Point stock does not exhibit marked genetic differentiation relative to other Pacific herring populations.

#### *Petition Finding*

As summarized above, the May 14, 2004, petition submitted by the Northwest Ecosystem Alliance and co-petitioners sought a finding that the Cherry Point (Washington) stock of Pacific herring qualifies as a DPS and warrants listing as a threatened or endangered species under the ESA. In a **Federal Register** notice published on August 10, 2004 (69 FR 48455), we published the finding that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted. As described in the preceding section, we have determined that the Cherry Point stock of Pacific herring is “discrete,” but is not “significant” under the joint NMFS/U.S. Fish and Wildlife Service DPS policy. Thus, the

Cherry Point herring stock does not qualify as a DPS for listing consideration under the ESA. Accordingly, we find that the action sought by the May 14, 2004, Northwest Ecosystem Alliance et al. petition is not warranted.

#### *DPS Determination for Pacific Herring in the Georgia Basin*

The BRT considered a number of alternative DPS configurations for Pacific herring incorporating the Cherry Point herring stock, ranging from the previously identified Georgia Basin DPS to a DPS encompassing Pacific herring from San Diego (California) to Sitka (Alaska). Evidence suggesting a DPS configuration larger than the Georgia Basin includes: (1) tagging studies indicating that straying among herring stocks occurs at spatial scales exceeding that of the Georgia Basin; (2) information indicating relative genetic homogeneity of Pacific herring stocks in the Pacific Northwest, Strait of Georgia, and British Columbia; and (3) evidence supporting the concept that local herring stocks are part of a larger Pacific herring metapopulation. Notwithstanding this information, the majority of the BRT favored the previous delineation of a Georgia Basin DPS of Pacific herring, finding that the available information is insufficient to warrant modification of the previous DPS delineation (NMFS, 2005). A variety of evidence supports the finding that Georgia Basin Pacific herring satisfy the criteria for discreteness and significance under the joint DPS policy, including: the similarity in age composition of herring stocks in the Strait of Georgia and Puget Sound supporting the discreteness of Georgia Basin Pacific herring, and the ecological uniqueness of the inshore waters of Puget Sound and the Strait of Georgia supporting the significance of the Pacific herring in the Georgia Basin to the taxon as-a-whole. (For a more detailed discussion of the information supporting the delineation of the Georgia Basin DPS of Pacific herring, the reader is referred to the Stout *et al.*, 2001, status review). The BRT delineated the Georgia Basin DPS as encompassing spawning stocks of Pacific herring in the marine waters of Puget Sound, the Strait of Georgia, and eastern Strait of Juan de Fuca in the United States and Canada.

#### *Review of the Species' Status*

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become

an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account those efforts, if any, being made to protect such species.

The BRT considered the best available biological information to assess the level of extinction risk for the Georgia Basin DPS of Pacific herring. The BRT evaluated the DPS's extinction risk based on risks to its abundance, productivity, spatial structure (including spatial distribution and connectivity), and diversity. These four "Viable Salmonid Population" (VSP; McElhany *et al.*, 2000) criteria were developed to provide a consistent and logical framework for assessing risks to populations and DPSs of West Coast salmon and steelhead. Although initially developed for application to salmonid metapopulations, the VSP criteria are well founded in the conservation biology literature. Threats to a species' long-term persistence are manifested demographically as risks to its abundance, productivity, spatial structure, and diversity. These demographic risks thus provide the most direct and robust biological indicators of extinction risk. The BRT's assessment of extinction risk did not include an evaluation of the likely or potential contribution of efforts being made to protect the species, but was based solely on the available biological information assuming that present conditions will continue, and recognizing that natural demographic and environmental variability is an inherent feature of present conditions. Below we summarize the BRT's assessment of demographic risks to the Georgia Basin DPS's abundance, productivity, spatial structure, and diversity, as well as the BRT's extinction risk assessment for the DPS based on these risks.

#### *Evaluation of Demographic Risks to the DPS*

The majority opinion of the BRT was that there is very low risk to the abundance of the Georgia Basin DPS, concluding that it is unlikely that the current trends and levels of abundance contribute significantly to the risk of extinction for the DPS, either by themselves or in combination with other factors. The BRT noted that the overall abundance of the DPS is at historically high levels since monitoring began in the 1930s, in terms of the estimated biomass (the recent abundance is well

over 100,000 metric tons) and numbers of herring (estimated at more than half a billion mature herring). However, the BRT was concerned about the observed decline in the number of the Cherry Point herring spawners from an estimated 24 million fish in 2003 to 14 million fish in 2004.

The majority opinion of the BRT was that there is low risk to the productivity of the DPS, concluding that it is unlikely to contribute significantly to the risk of extinction for the DPS by itself, but that there may be concern in combination with other factors. The BRT noted that the DPS as a whole is highly productive with the overall population trend and growth rate being highly positive. The BRT observed that the overall DPS appeared to be in steep decline in the 1960s. However, some stocks have exhibited high levels of productivity conferring resiliency to the DPS and reflecting an apparent ability to rebound from past declines. The recent short-term trend for the overall DPS is also very positive and recruitment levels remain high, despite an apparent increase in adult mortality, possibly due to predation by seals, disease factors, and other risk factors.

The BRT's appraisal of risk to the spatial structure of the DPS ranged from very low risk to increasing risk. The majority opinion of the BRT was that the DPS faces low risk to its spatial structure, concluding that it is unlikely that spatial distribution and connectivity contribute significantly to the risk of extinction by themselves, and that there is some concern that they may in combination with other factors. The BRT noted that the DPS remains well distributed, with no gaps in the geographic range of spawning within the DPS. All, or nearly all, of the historically occupied areas continue to support spawning, and moderate migration rates based on tagging information indicate little loss of connectivity among stocks within the DPS. The BRT noted that increasing trends in the DPS are not uniformly distributed among stocks or spawning areas, with the Central and Northeastern portions of the DPS exhibiting declines. The BRT was concerned that the bulk of the spawning distribution and abundance and productivity in the DPS has become spatially compacted, particularly in the northern half of the DPS. However, the BRT felt that declining trends in some parts of the DPS are not a major concern in the context of a herring metapopulation, particularly in light of observations of high connectivity among stocks, and evidence of disappearance and subsequent recolonization events in the

British Columbia portion of the DPS. The BRT also felt that the spatial compaction of the most abundant and productive spawning stocks may be a natural phenomenon.

The majority opinion of the BRT was that there is low risk to the diversity of the DPS, concluding that it is unlikely that diversity contributes significantly to the risk of extinction for the DPS, but that it may in combination with other factors. The BRT noted that the DPS continues to exhibit diversity in spawn timing and migratory behavior both within and among spawning stocks. Although there is limited long-term data regarding the genetic diversity of the DPS, the BRT concluded that there has been no apparent genetic loss as compared to other marine species. The BRT noted concern that the life-history diversity of the DPS has apparently declined with the compression of population age structure (a much smaller proportion of older age classes), the decline of late-spawning herring (principally the Cherry Point herring stock), and an apparent decline in nonmigratory inlet herring stocks on the eastern side of the Strait of Georgia. The BRT was uncertain whether the migratory/nonmigratory life-history types are specific to certain populations, or are present to some degree in most or all spawning stocks in the Strait of Georgia and Puget Sound.

#### *Assessment of the Risk of Extinction*

Informed by its assessment of demographic risks to the DPS, and a consideration of the interactions among demographic risks, the BRT concluded that the Georgia Basin DPS of Pacific herring is not at risk of extinction in all or a significant portion of its range, nor likely to become so in the foreseeable future. The BRT noted that the overall abundance of the DPS is at historically high levels, and that the linear extent of coastline used for spawning has been increasing. The BRT concluded that the available information suggests that spawning stocks in the Georgia Basin DPS operate as a "mixed structure" metapopulation (Harrison and Taylor, 1997) in which all subpopulations are connected by migration, but some are relatively discrete with weaker demographic linkages to other subpopulations in the DPS. It is expected in a viable metapopulation that some local subpopulations will be in decline, other subpopulations will be increasing, and some suitable habitat patches may be unoccupied. Accordingly, the observation that some local stocks are declining (principally the Cherry Point stock, and the nonmigratory inlet stocks in the eastern

Strait of Georgia) is not by itself cause for concern about the long-term viability of the DPS. Additionally, given the metapopulation structure of the DPS, the BRT did not feel that the low demographic risks (described in the previous section) collectively represent a risk to the long-term viability of the DPS. The few declining stocks represent a small proportion of the more than 40 stocks and assessment areas that compose the Georgia Basin DPS. Evidence of significant migration among stocks, high levels of gene flow, and disappearance and subsequent recolonization events for Georgia Basin Pacific herring suggest that local extirpations or stock declines confer little risk to the overall DPS. The specific stocks exhibiting decline, however, appear to exhibit greater demographic independence on generational time scales relative to other stocks within the DPS. It is possible, given their weaker connectivity with other spawning stocks in the DPS, that if these declining stocks were lost, recolonization might take longer than it might for a classical metapopulation in which subpopulations are connected by higher rates of exchange. Nonetheless, the BRT did not feel that the current risks to these declining stocks posed risks to the DPS as a whole, or to any significant portion of the DPS.

The BRT considered whether recent factors have disrupted the function of the metapopulation such that its long-term viability is compromised. The BRT concluded that the patterns of abundance and distribution within the Georgia Basin DPS appear to be typical of what is seen in other herring metapopulations throughout northwestern North America, including metapopulations in relatively pristine areas in southeastern Alaska and British Columbia. The BRT noted, however, that if habitat areas were lost or permanently degraded to the point that they lacked the potential to support a spawning subpopulation, this could seriously impair the function of the entire metapopulation. The BRT concluded that the declining Cherry Point and eastern Strait of Georgia inlet stocks do not appear to be limited by habitat factors. The BRT concluded that the available evidence does not suggest unusual levels of risk to the DPS as a whole, nor to any significant portion of the DPS.

#### *Consideration of "Significant Portion of its Range"*

The ESA defines endangered and threatened species in terms of the level of extinction risk "throughout all or a significant portion of its range"

(sections 3(6) and 3(20)). If it is determined that the defined species is not in danger of extinction or likely to become so throughout all of its range, but there are major geographic areas where the species is no longer viable, the statute directs that we must address whether such areas represent a significant portion of the species' range. As mentioned above, the BRT expressed concern regarding declines in the Cherry Point stock and the non-migratory inlet stocks in the eastern Strait of Georgia, but concluded that these stocks do not represent a significant portion of the Georgia Basin DPS's range. The BRT recognized that the Cherry Point stock is characterized by late spawn timing, but noted that this timing represents the tail of the distribution of run timing for the DPS as a whole and overlaps with the range of spawn timing exhibited by other stocks in the DPS. The BRT noted that the Cherry Point stock represents only one of about 40 recognized herring stocks and management areas within the DPS. Although at peak abundance (in the early 1970s) the Cherry Point stock possibly represented about 11 percent of the DPS's total biomass, other historically large stocks were severely depressed at the time due to over-harvesting and poor recruitment conditions. Thus, it is speculative to conclude that the Cherry Point stock historically represented a substantial portion of the ESU's biomass. With respect to the declining inlet stocks in the eastern Strait of Georgia, the BRT concluded that it is unclear whether their nonmigratory life history represents a biologically significant portion of the DPS. Pentilla (1986) suggested that some proportion of adult herring in Puget Sound are nonmigratory as well. The BRT observed that it is unclear whether the nonmigratory life-history type is specific to certain stocks or is present to some degree in all herring stocks. Based on the above information, the BRT concluded that the declining Cherry Point and eastern Strait of Georgia inlet herring stocks individually and collectively do not represent a significant portion of the Georgia Basin DPS's range.

#### *Efforts Being Made to Protect the Species*

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species (emphasis added). Therefore, in making listing determinations we first assess the

defined species' level of extinction risk, and identify factors that have led to its decline. If it is determined that the species' survival is at risk, we then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the species. As described above, the BRT concluded that the defined species' (the Georgia Basin DPS of Pacific herring) survival is not at risk. It is not necessary to assess whether protective efforts reduce risks to a DPS that has been determined to be viable.

#### Listing Determination

Informed by NMFS' findings that: (1) the spawning stocks of Pacific herring in the Georgia Basin (including the marine waters of Puget Sound, the Strait of Georgia, and eastern Juan de Fuca Strait in the United States and Canada) constitute a DPS; and (2) the DPS is not in danger of extinction or likely to become endangered in the foreseeable future throughout all or a significant portion of its range, we conclude that the Georgia Basin DPS of Pacific herring does not warrant listing as threatened or endangered under the ESA.

#### References

Copies of the BRT's Status Review Update report, the petition, and related materials are available on the Internet at <http://www.nwr.noaa.gov>, or upon request (see ADDRESSES section above).

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

Dated: June 1, 2005.

**Rebecca Lent,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 031005B]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

**ACTION:** Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments and information.

**SUMMARY:** NMFS has received a request from Eglin Air Force Base (EAFB) for the take of small numbers of marine mammals, by harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations at EAFB, Florida. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the Air Force to take, by harassment, small numbers of two species of cetaceans at EAFB beginning in July 7, 2005.

**DATES:** Comments and information must be received no later than July 7, 2005.

**ADDRESSES:** Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing e-mail comments on this action is [PR1.031005B@noaa.gov](mailto:PR1.031005B@noaa.gov). NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. Comments may also be submitted via facsimile to (301) 427-2521. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (SEE FOR FURTHER INFORMATION CONTACT) or online at: [http://www.nmfs.noaa.gov/prot\\_res/PR1/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR1/Small_Take/smalltake_info.htm#applications). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or

stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (Public Law 108-136) amended the definition of "harassment" in section 18(A) of the MMPA as it applies to a "military readiness activity" to read as follows:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On March 11, 2004, NMFS received an application from EAFB, under section 101(a)(5)(D) of the MMPA, requesting authorization for the harassment of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations at EAFB, Florida, in the northern Gulf of Mexico (GOM). Each of up to six missions per year would include up to 5 live detonations of approximately 5-pound (2.3-kg) net explosive weight charges to occur in approximately 60-ft (18.3-m) deep water from one to three nm (1.9 to 5.6 km) off shore. Because this activity will be a multi-year activity, NMFS also plans to develop proposed regulations for NEODS training operations at EAFB.