

or contribute to, crashes, this proposal would also help to ensure that commercial motor vehicle (CMV) operations are safer.

#### Purpose of the Listening Session

The FMCSA is committed to providing all interested parties an opportunity to discuss their perspectives on the pertinent issues that could affect any potential rulemaking changes. The Agency has received numerous comments in response to its NPRM but believes additional information could be obtained through these listening sessions.

Participants at the listening sessions will be given the opportunity to submit questions that they would like to hear discussed by others in attendance. FMCSA encourages persons who have prepared statements to submit them to the public docket rather than use time at a listening session to read them aloud. Persons who wish to submit written comments or statements should submit the information to the public docket identified in this notice. Those who desire notification of receipt of their comments must include a self-addressed, stamped envelope or postcard. Comments made during the meeting will be transcribed to preserve an accurate record of the discussion.

Issued on: April 10, 2007.

Larry W. Minor,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 07-1865 Filed 4-11-07; 12:48 pm]

BILLING CODE 4910-EX-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 070402074-7074-01; I.D. No. 032207B]

#### Endangered and Threatened Wildlife and Plants: 90-Day Finding for a Petition to List Black Abalone as Threatened or Endangered under the Endangered Species Act

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

**ACTION:** Proposed rule; petition finding; request for information.

**SUMMARY:** We, the NMFS, have received a petition to list the black abalone (*Haliotis cracherodii*) as a threatened or endangered species and to designate

critical habitat under the Endangered Species Act (ESA). We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted. This finding normally initiates a formal status review, but as described below in the Background section (see **SUPPLEMENTARY INFORMATION**), in this case, we had already initiated a formal status review on October 17, 2006. To ensure that the review is comprehensive, we are soliciting information pertaining to this species, any potential critical habitat, and recommendations of qualified individuals to peer review the agency's black abalone status review report.

**DATES:** Information and comments on this action must be received by June 12, 2007.

**ADDRESSES:** You may submit information and/or comments by any of the following methods:

- E-Mail:

*BlackAbalone.Comments@noaa.gov*

- Mail: Submit written comments to Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA, 90802-4213.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

An electronic version of the petition can be obtained via the Internet at: <http://www.nmfs.noaa.gov> or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Melissa Neuman, NMFS, Southwest Region (562) 980-4115 or Lisa Manning, NMFS, Office of Protected Resources (301) 713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

Black abalone was added to NMFS' Candidate Species list on June 23, 1999 (64 FR 33466), transferred to NMFS' Species of Concern list on April 15, 2004 (69 FR 19975), and has since been considered for listing on the List of Endangered and Threatened Species under the ESA. The species is currently listed on the International Union for the Conservation of Nature and Natural Resources (IUCN) Red List of Threatened Species (Smith *et al.* 2003). We initiated an informal ESA status review of black abalone on July 15, 2003, and conducted biological scoping workshops on January 29-30, 2004 and July 31-August 1, 2006. We formally

announced initiation of a black abalone status review on October 17, 2006 (71 FR 61021), and at that time solicited information from the public on the following topics: (1) long-term trends in abundance throughout the species' range; (2) potential factors for the species' decline throughout its range (e.g., overharvesting, natural predation, disease, habitat loss etc.); (3) status of the black abalone fishery in Mexico; (4) implication of low population size for black abalone conservation; (5) factors important for black abalone management; (6) current estimate of population size and available habitat; (7) knowledge of various life history parameters (size/age at maturity, fecundity, length of larval stage, larval dispersal dynamics, etc.); and (8) projections on population growth or decline and risk of extinction. On December 27, 2006, we received a petition from the Center for Biological Diversity (CBD) requesting that we list black abalone as either an endangered or threatened species under the ESA and designate critical habitat for the species concurrently with any listing determination.

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. Our joint NMFS/U.S. Fish and Wildlife Service ESA 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 for a petition to list a species, we consider 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, 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)(B) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species and make a finding as to whether the petitioned action is warranted within 1 year of the receipt of the petition.

## Analysis of Petition

### Natural History

Black abalone is a marine mollusc and a member of the family *Haliotidae* and the genus *Haliotis*. There is some debate regarding the historic range of black abalone. Based on museum specimen records examined by Geiger (1999), black abalone ranged historically from Crescent City (Del Norte County, California) to Cabo San Lucas (Southern Baja California). Most experts agree that the current range of black abalone extends from Point Arena (Mendocino County, California) to Northern Baja California, but are rare north of San Francisco (Morris *et al.*, 1980) and south of Punta Eugenia (P. Raimondi, pers. comm.). Of the seven species of abalone found in California (Geiger, 1999), black abalone is a relatively shallow water species and is most abundant in rocky intertidal habitat (Morris *et al.*, 1980), although they do occur from the high intertidal zone to 6 m depth. Average black abalone shell length is approximately 115 mm (Ault, 1985), however, maximum shell length may exceed 200 mm (Morris *et al.*, 1980). The epipodium (the circular fringe of skin around the foot) and tentacles are black and the underside of the foot is pearly white. The outer surface of the shell is dark blue to black, smooth and has 5–9 open respiratory pores with edges that are flush with the shell surface (Haaker *et al.*, 1986).

The vacillatory nature of rocky intertidal habitat dictates that black abalone tolerate a wide range of environmental conditions (e.g. temperature, salinity, desiccation, and wave action). For example, water temperatures may range between 7–24 °C (45–75 °F) (Howorth, 1978) in rocky intertidal areas throughout their range. In the absence of anthropogenic influences (e.g., harvest and spread of disease (Friedman and Finley, 2003)), a combination of black abalone life history, ecology, and behavior and these widely ranging environmental variables is what controls the species' spatial distribution. Black abalone are often found in a clumped distribution, with smaller abalone (<90 mm) exhibiting cryptic behavior and tending to stay within the protective confines of crevices, under rocks, and in boulder fields (Blecha *et al.*, 1992; Tissot, 1995; Ault, 1985). Individuals larger than 90 mm often occupy more exposed rocks and surge channels in areas where sea otters are absent, but tend to reside in cracks and crevices in areas where sea otters are present (Morris *et al.*, 1980; Lowry and Pearse, 1973; Hines and Pearse, 1982; Blecha *et al.*, 1992).

Black abalone exhibit separate sexes and are thought to reach sexual maturity between 40–50 mm shell length in California. Sperm or eggs are broadcast into the water sometime between late spring and late summer (Webber and Giese, 1969; CDFG, 2005). This type of spawning strategy depends on densely aggregated adults to achieve the high gamete densities needed for successful fertilization (Davis, 1996). The free-swimming larval phase for this species may range from 5 to 14 days depending on water temperature (Ault, 1985). This relatively short dispersive phase combined with hydrodynamic conditions during the time of spawning may limit dispersal distances. Analysis of the genetic structure of black abalone populations on the central California coast indicates that these black abalone populations are composed predominantly of individuals that were spawned locally (Hamm and Burton, 2000). Patterns in recruitment of juveniles to central coastal populations provide additional evidence that black abalone larvae do not tend to travel very far along the coast and, therefore, populations are relatively closed (Raimondi *et al.*, 2002). In Southern California, results of a drift card study at San Nicolas Island suggest that black abalone larvae are locally retained with occasional migrants dispersing over long distances ( $\leq 10$  km; Chambers *et al.*, 2006).

Larval black abalone tend to settle into areas characterized by bare rock and coralline red algae (Dourous, 1985; Miner *et al.*, 2006). Once settled onto rocky substrata, black abalone juveniles consume rock-encrusting coralline algae and diatom and bacterial films (Haaker *et al.*, 1986). Adult black abalone feed primarily on pieces of algae drifting with the surge or current, such as giant kelp, bull kelp, and feather boa kelp (Haaker *et al.*, 1986). Growth rates can vary depending on food availability, water temperature, and other environmental factors (CDFG, 2005). Abalone are long-lived (30+ years) and it takes approximately 20 years for black abalone to reach their maximum length (Blecha *et al.*, 1992). Black abalone are preyed upon by a wide variety of marine predators including sea stars, fishes, octopus, the southern sea otter, and striped shore crab.

### Abundance

Historically, sea otter predation and hunting by Native Americans were two primary sources of mortality for large black abalone. The elimination or relocation of Native American coastal settlements during the 1700s and 1800s and sea otter (a primary predator on

black abalone) hunting by Russian fur traders resulted in high densities (< 40 individuals per m<sup>2</sup>) of black abalone in many places throughout their range (Howorth, 1978; Dourous, 1993; Richards and Davis, 1993). Chinese immigrants began harvesting abalone from dense intertidal beds in central and southern California and Baja California in the mid–1800s and annual harvest reached a peak of 1,814 metric tons (mt) in 1879 (Howorth, 1978; Rogers-Bennett *et al.*, 2002). Commercial harvest was banned in the early 1900s, during which time black abalone populations expanded slightly. However, in 1968 commercial harvest of black abalone resumed. The commercial harvest was greatest around the islands off southern California, particularly San Miguel, San Clemente and San Nicolas Islands (California Department of Fish and Game (CDFG), unpublished data). The average annual harvest declined from 290 mt in the 1970s, with a peak occurring in 1973 (868 mt; Rogers-Bennett *et al.*, 2002), to 175 mt in the 1980s, to 14 mt in the 1990s. By the mid–1980s overharvesting, as evidenced by declining trends in fishery-dependent data and eventual closure of the commercial fishery (B. Tissot, unpublished data), and possibly other factors such as pollution (Miller and Lawrence-Miller, 1993), reduced southern California coastal populations of black abalone considerably. Remnant populations persisted primarily on offshore islands and inaccessible sections of the coast north of Santa Barbara. Commercial harvesting was prohibited again in 1993.

In the mid- and late-1980s, black abalone on the Channel Islands suffered massive local die-offs (generally >90 percent losses) from a disease known as Withering Syndrome (WS) (Haaker *et al.*, 1992; Richards and Davis, 1993; Lafferty and Kuris, 1993). The cause of WS is unknown, but has been attributed to a Rickettsiales-like pathogen (Friedman *et al.*, 2000). The disease is manifested by severe weight loss, loss of appetite, followed by detachment from the substrate and eventual mortality (Tissot, 1991; Haaker *et al.*, 1992; Steinbeck *et al.*, 1992). There is also strong evidence that the intensity of mortality from this disease increases with increasing water temperature (Tissot, 1995; Steinbeck *et al.*, 1992; Alstatt *et al.*, 1996; Raimondi *et al.*, 2002). Prior to 1992, the only mainland site where a WS-related die-off had been observed was in Diablo Cove, the site of the discharge for the Diablo Canyon Power Plant (Steinbeck *et al.*, 1992). However, in 1992 a massive die-off

began at a mainland site, Government Point, near Point Conception (Alstatt *et al.*, 1996). Subsequent monitoring of sites along the central California coast has detected a pattern of mortality suggesting that WS is progressing northward up the coast, but at a variable rate (Alstatt *et al.*, 1996; Raimondi *et al.*, 2002; Miner *et al.*, 2006).

Fishery-independent data obtained from long-term monitoring studies (1975–present) were examined to detect trends in abundance from 32 sampling locations throughout California (B. Tissot, unpublished data). Percent changes in abundance were calculated by comparing mean densities prior to the onset of WS and after the onset of WS at each sampling location. Preliminary results suggest that black abalone have gone locally extinct or declined between 90–99 percent at 50 percent of the sampling locations and have declined between 80–89 percent at another 16 percent of the sampling locations. Thus, significant declines (>80 percent) have occurred at over 50 percent of the locations sampled in California (Brian Tissot, unpublished data).

Although abundance data for black abalone populations in Mexico are scant, existing fishery-dependent data suggest declines similar to those exhibited in California. Based on the data published in Hobday and Tegner (2000), the catch of black abalone declined from a high of 28 mt in 1990, to <1 mt in 1998, an overall decline of >95 percent.

### Summation

The principal cause of black abalone population decline in southern and central California has been attributed to over-harvesting (Karpov *et al.*, 2000) and/or the onset of WS in southern California in the 1980s (Lafferty and Kuris, 1993) and the disease's northward progression. Black abalone populations have declined by over 99 percent (Brian Tissot, unpublished data) in southern California (except for San Nicolas and San Miguel Islands). In many locations recruitment rates are low, and in areas where remnant healthy populations are producing recruits, these recruits are retained locally and are not recolonizing historically populated areas only tens of kilometers away (Miller and Lawrence-Miller, 1993; Raimondi *et al.*, 2002; Miner *et al.*, 2006). Miner *et al.* (2006) hypothesize that the causes of low (or no) recruitment at sites with low adult density include: (1) local adult densities too low for successful fertilization; (2) limited dispersal ability of larval abalone limiting the supply of larvae

from healthy adjacent populations; (3) suitable larval settlement habitat overgrown in the absence of adult abalone; and (4) newly recruited juvenile abalone killed by WS before they can be observed and counted by researchers.

### Petition Finding

Given documented declines in abundance within the range of the species and the potential negative effects of ongoing and future threats posed primarily by the northward spread of WS, as described in the petition and in the information in our files, we have determined that the petition presents substantial information and that listing black abalone under the ESA may be warranted. We have supported efforts to learn more about the factors that have contributed to the decline of this species and encouraged Federal agencies and other appropriate parties to conserve and protect surviving black abalone throughout its range from Fort Bragg, California to southern Baja California. Despite these efforts, including closure of the fishery in southern California in 1993, the species continues to decline along the mainland coast of southern California and the northern Channel Islands. In compliance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination whether the petitioned action is warranted within 12 months from the date the petition was received (December 27, 2006) following completion of an ESA status review.

### Listing Factors and Basis for Determination

Section 4(a)(1) of the ESA requires the Secretary to determine whether any species is a threatened or an endangered species because of any of the following factors: (1) The 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 continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species.

### Information Sought

To ensure that the black abalone status review is complete and is based on the best available scientific and commercial data, we reiterate our previous solicitation for information on

this species. We specifically request the following information: (1) long-term trends in abundance throughout the species' range; (2) potential factors for the species' decline throughout its range (e.g., overharvesting, natural predation, disease, habitat loss etc.); (3) historic and current range, distribution and habitat use of this species; (4) status of the black abalone populations in Baja California, Mexico; (5) historic and current estimates of population size and available habitat; (6) knowledge of various life history parameters (size/age at maturity, fecundity, length of larval stage, larval dispersal dynamics, etc.); (7) projections on population growth or decline and risk of extinction; and (8) efforts being made to protect black abalone throughout their range.

### Critical Habitat

We are also requesting information on areas that may qualify as critical habitat for black abalone, such as identification of areas that include the physical and biological features essential to the conservation of the species. Essential features include, but are not limited to: (1) space for individual and population 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). For areas potentially qualifying as critical habitat, we request information describing: (1) the activities that affect the areas or could be affected by the designation, and (2) the economic or other costs and benefits of additional management measures likely to result from a designation.

### Peer Review

The joint NMFS/U.S. Fish and Wildlife Service peer review policy for review of scientific data was published on July 1, 1994 (59 FR 34270), and on January 14, 2005, the Office of Management and Budget (OMB) published its Final Information Quality Bulletin for Peer Review (70 FR 2664). The purpose of the peer review policy and the OMB Information Quality Bulletin 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 this status review. Independent peer reviewers will be selected from the academic and scientific community, Federal and state

agencies, the private sector, and public interest groups.

**References**

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

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

Dated: April 6, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. E7-6966 Filed 4-12-07; 8:45 am]

**BILLING CODE 3510-22-S**