

would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*) would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed listing rule and critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where the 3 mollusks

are present, Federal agencies will also be required to consult with us under section 7 of the Act, due to the endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the same consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*). Based on that analysis, impacts on small entities due to this rule are expected to be modest because the incremental costs of the rule are estimated to be administrative in nature. The only incremental impacts associated with this rulemaking are administrative costs of consultation under section 7 of the Act. The administrative costs described in Appendix B of the DEA are predominantly associated with water management, water quality, National Forest, and construction. The following percentages are estimated annualized incremental impacts by activities discounted at 7 percent: 42 percent transportation construction, 33 percent water quality, 18 percent national forest activities, and 7 percent water management. Tribal lands are not expected to be affected by the designation. Incremental costs to all parties are not expected to exceed \$43,600 annualized (discounted at seven percent). Third parties (some of which may be small entities) would bear significantly less than this total—approximately \$5,060 annualized, or less than 1 percent impact for all sectors. These potential impacts may result from consultations on changes in water management, actions that affect water quality, dredging activities, or other activities in the region. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial

regulatory flexibility analysis is not required.

Author

The primary author of this document is the staff of the Mississippi Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 25, 2010

Thomas L. Strickland

Assistant Secretary for Fish and Wildlife and Parks

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 0911231415-0052-01]

RIN 0648-XT12

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition to List 83 Species of Corals as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: 90-day petition finding; request for information.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list 83 species of corals as threatened or endangered under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted for 82 species; we find that the petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted for *Oculina varicosa*. Therefore, we initiate status reviews of 82 species of corals to determine if listing under the ESA is warranted. To ensure these status reviews are comprehensive, we solicit scientific and commercial information regarding these coral species.

DATES: Information and comments must be submitted to NMFS by April 12, 2010.

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN),

0648-XT12, by any of the following methods:

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

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814 (for species occurring in the Pacific Ocean); or Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701 (for species occurring in the Atlantic Ocean).

Facsimile (fax): (907) 586-7012 (for species occurring in the Pacific Ocean); (727) 824-5309 (for species occurring in the Atlantic Ocean).

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 (e.g., 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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain a copy of this coral petition from the above addresses or online from the NMFS HQ website: <http://www.nmfs.noaa.gov/pr/species/invertebrates/>.

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS Pacific Islands Region, (808) 944-2258; Jennifer Moore, NMFS Southeast Region, (727) 824-5312; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2009, we received a petition from the Center for Biological Diversity to list 83 species of coral as threatened or endangered under the ESA. The petitioner also requested that critical habitat be designated for these corals concurrent with listing under the ESA. The petition asserts that synergistic threats of ocean warming, ocean acidification, and other impacts affect these species, stating that immediate action is needed to reduce greenhouse gas concentrations to levels that do not jeopardize these species. The petition also asserts that the species are being affected by dredging, coastal

development, coastal point source pollution, agricultural and land use practices, disease, predation, reef fishing, aquarium trade, physical damage from boats and anchors, marine debris, and aquatic invasive species. The petition briefly summarizes the description, taxonomy, natural history, distribution, and status for each petitioned species, and discusses the status of each oceanic basin's coral reefs. It also describes current and future threats that the petitioners assert are affecting or will affect these species.

The 83 species included in the petition are: *Acanthastrea brevis*, *Acanthastrea hemprichii*, *Acanthastrea ishigakiensis*, *Acanthastrea regularis*, *Acropora aculeus*, *Acropora acuminata*, *Acropora aspera*, *Acropora dendrum*, *Acropora donei*, *Acropora globiceps*, *Acropora horrida*, *Acropora jacquelinae*, *Acropora listeri*, *Acropora lokani*, *Acropora microclados*, *Acropora palmerae*, *Acropora paniculata*, *Acropora pharaonis*, *Acropora polystoma*, *Acropora retusa*, *Acropora rudis*, *Acropora speciosa*, *Acropora striata*, *Acropora tenella*, *Acropora vughani*, *Acropora verweyi*, *Agaricia lamarcki*, *Alveopora allingi*, *Alveopora fenestrata*, *Alveopora verrilliana*, *Anacropora puertogalerae*, *Anacropora spinosa*, *Astreopora cucullata*, *Barabattoia laddi*, *Caulastrea echinulata*, *Cyphastrea agassizi*, *Cyphastrea ocellina*, *Dendrogyra cylindrus*, *Dichocoenia stokesii*, *Euphyllia cristata*, *Euphyllia paraancora*, *Euphyllia paradivisa*, *Galaxea astreata*, *Heliopora coerulea*, *Isopora crateriformis*, *Isopora cuneata*, *Leptoseris incrustans*, *Leptoseris yabei*, *Millepora foveolata*, *Millepora tuberosa*, *Montastraea annularis*, *Montastraea faveolata*, *Montastraea franksi*, *Montipora angulata*, *Montipora australiensis*, *Montipora calcarea*, *Montipora caliculata*, *Montipora dilatata*, *Montipora flabellata*, *Montipora lobulata*, *Montipora patula*, *Mycetophyllia ferox*, *Oculina varicosa*, *Pachyseris rugosa*, *Pavona bipartite*, *Pavona cactus*, *Pavona decussate*, *Pavona diffluens*, *Pavona venosa*, *Pectinia alcornis*, *Physogyra lichtensteini*, *Pocillopora danae*, *Pocillopora elegans*, *Porites horizontalata*, *Porites napopora*, *Porites nigrescens*, *Porites pukoensis*, *Psammocora stellata*, *Seriatopora aculeata*, *Turbinaria mesenterina*, *Turbinaria peltata*, *Turbinaria reniformis*, and *Turbinaria stellula*. Eight of the petitioned species are in the Caribbean and belong to the following families: Agaricidae (1); Faviidae (3); Meandrinidae (2); Mussidae (1);

Oculinidae (1). Seventy-five of the petitioned species are in the Indo-Pacific region, represented by five families (nine species) in Hawaii: Acroporidae (4); Agaricidae (1); Poritidae (1); Faviidae (2); Siderastreidae (1); and 11 families and one order in the rest of the Indo-Pacific region: Acroporidae (31); Agaricidae (7); Poritidae (6); Faviidae (2); Dendrophylliidae (4); Euphyllidae (4); Oculinidae (1); Pectiniidae (1); Mussidae (4); Pocilloporidae (3); Milleporidae (2); Order Helioporacea (1). All 83 species can be found in the United States, its territories (Puerto Rico, U.S. Virgin Islands, Navassa, Northern Mariana Islands, Guam, American Samoa, Pacific Remote Island Areas), or its freely associated states (Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau), though many occur more frequently in other countries.

The petition states that all of these species are classified as vulnerable (76 species), endangered (six species: *Acropora rudis*, *Anacropora spinosa*, *Montipora dilatata*, *Montastraea annularis*, *M. faveolata*, *Millepora tuberosa*), or critically endangered (one species: *Porites pukoensis*) by the World Conservation Union (IUCN). *Montipora dilatata* and *Oculina varicosa* are also on our Species of Concern list.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (16 U.S.C. 1533(b)(3)(A)). Joint ESA-implementing regulations issued by NMFS and the U.S. Fish and Wildlife Service (FWS) (50 CFR 424.14(b)) define "substantial information" in this context as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved

and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information indicating that the petitioned action may be warranted is presented in the petition, we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, within 1 year of receipt of the petition, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, a distinct population segment which interbreeds when mature (DPS) (16 U.S.C. 1532(16)). Because corals are invertebrate species, we are limited to assessing the status of species or subspecies of corals. A species or subspecies is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)).

Biology of Coral Species

Stony corals (Class Anthozoa, Order Scleractinia) are marine invertebrates that secrete a calcium carbonate skeleton. Stony corals can be hermatypic (significant contributors to the reef-building process) or ahermatypic, and may or may not contain endosymbiotic algae (zooxanthellae) (Schumacher and Zibrowius, 1985). The largest colonial members of the Scleractinia help produce the carbonate structures known as coral reefs in shallow tropical and

subtropical seas around the world. The rapid calcification rates of these organisms have been linked to the mutualistic association with single-celled dinoflagellate algae, zooxanthellae, found in the coral tissues (Goreau *et al.*, 1979). Massive and branching stony corals are the major framework builders of shallow tropical reefs. Some stony corals occur in deep water and are azooxanthellate, but typically do not form extensive reefs, with few exceptions (e.g., *Oculina varicosa*; Reed, 1981). Corals provide substrate for colonization by benthic organisms, construct complex protective habitats for myriad other species, including commercially important invertebrates and fishes, and serve as food resources for a variety of animals.

Analysis of Petition

Of the 83 petitioned species, eight species occur in the U.S. waters of the Caribbean, and 75 occur in the U.S. waters of the Indo-Pacific. The petition includes species accounts (i.e., description of the species' morphology, life history, habitat, distribution, and loss estimates over 30 years (20 years into the past and 10 years into the future)) of each of the 83 species, threats facing each species, and descriptions of the status of coral reef ecosystems of the wider Caribbean and Indo-Pacific areas. The petition asserts that all of the petitioned species have suffered population reductions of at least 30 percent over a 30-year period, relying on information from the IUCN.

The majority of coral species included in this petition belongs to either the wider Caribbean or Indo-Pacific areas and occur in similar habitats and face the same threats. Eight of the petitioned species occur in the Caribbean, and 75 in the Indo-Pacific.

The Caribbean, according to the petitioner, has the largest proportion of corals classified as being in one of the high extinction risk categories by the IUCN. The petitioner asserts that the region suffered massive losses of corals in response to climate-related events of 2005, including a record-breaking series of 26 tropical storms and elevated ocean water temperatures. Further, the petitioner asserts that the U.S. Virgin Islands lost 51.5 percent of live coral cover, and that Florida, Puerto Rico, the Cayman Islands, St. Maarten, Saba, St. Eustatius, Guadeloupe, Martinique, St. Barthelemy, Barbados, Jamaica, and Cuba suffered bleaching of over 50 percent of coral colonies, citing Carpenter *et al.* (2008). The petitioner cites Gardner *et al.* (2003) in asserting that, over the three decades prior to the 2005 events, Caribbean reefs had

already suffered an 80 percent decline in hard coral cover, from an average of 50 percent to an average of 10 percent throughout the region.

The abundance and trend information presented by the petitioner for each species is limited to an estimate of the percentage loss of its habitat and/or population over a 30-year period (including 20 years into the past and 10 years into the future), as assessed by the IUCN. However, the petition also asserts that these corals face significant threats. To support this assertion, the petitioner cites Alvarez-Filip *et al.* (2009) in noting the dramatic decline of the three-dimensional complexity of Caribbean reefs over the past 40 years, resulting in a phase shift from a coral-dominated ecosystem to fleshy macroalgal overgrowth in reef systems across the Caribbean. The petitioner notes that, in our 2008 critical habitat designation for elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals, we identified chronic overfishing of herbivorous species and the die-off of 95 percent of the regions' long-spined sea urchins (*Diadema antillarum*) in the early 1980s as primary factors in this ecological shift (73 FR 72210; November 26, 2008). The petitioner cites the same source in concluding that, in the absence of grazing pressure from herbivorous fish and urchins, fast-growing algae, macroalgae, and other epibenthic organisms easily out-compete coral larvae by preempting available space, producing toxic metabolites that inhibit larval settlement, and trapping excess sediment in algal turfs. The petitioner cites Gledhill *et al.* (2008) in asserting that ocean acidification led to a decrease in mean sea surface aragonite saturation state in the Greater Caribbean Region between 1996 and 2006. The petitioner states that Hoegh-Guldberg *et al.* (2007) found marked reductions in resilience accompanied by increased grazing requirements to facilitate reef recovery after modeling the impacts of a 20 percent decline in coral growth rate in response to ocean acidification on a Caribbean foreereef.

Seventy-five percent of the world's coral reefs can be found in the Indo-Pacific, which stretches from the Indonesian island of Sumatra in the west to French Polynesia in the east (Bruno and Selig (2007), as cited by the petitioner). As recently as 1,000 to 100 years ago, this region averaged about 50 percent coral cover, but 20–50 percent of that total has been lost, according to the petitioner. The petitioner cites Bruno and Selig (2007), stating that regional total coral cover averaged 42.5 percent during the early 1980s, 36.1

percent in 1995, and 22.1 percent in 2003. The petitioner asserts, citing Bruno and Selig (2007), that this reduced coral cover was relatively consistent across 10 subregions of the Indo-Pacific in 2002–2003. Although these corals have recovered in the past (Colgan, 1987, as cited by the petitioner), anthropogenic stressors are increasing the frequency and intensity of mortality events and interfering with the natural ability of coral communities to recover (McClanahan *et al.*, 2004; Pandolfi *et al.*, 2003, as cited by the petitioner). The future of Indian Ocean reefs is a particular concern to the petitioner because over 90 percent of corals on many shallow water reefs died in 1998 in response to elevated sea surface temperatures, and average temperatures in the Indian Ocean are expected to rise above 1998 levels within a few decades (Sheppard, 2003, as cited by the petitioner). As elevated sea surface temperatures and associated climate-induced mass mortality events occur more frequently, it becomes less likely that there will be enough time between events for Indian Ocean reefs to recover (Sheppard, 2003, as cited by the petitioner).

The ESA requires us to determine whether species are threatened or endangered because of any of the following section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1)). The petition describes factors which it asserts have led to the current status of these corals, as well as threats which it asserts the species currently face, categorizing them under the section 4(a)(1) factors. The petition focuses on habitat threats, asserting that the habitat of the petitioned coral species, and indeed all reef-building coral species, is under threat from several processes linked to anthropogenic greenhouse gas emissions, including increasing seawater temperatures, increasing ocean acidification, increasing storm intensities, changes in precipitation, and sea-level rise. The petition also asserts that these global habitat threats are exacerbated by local habitat threats posed by ship traffic, dredging, coastal development, pollution, and agricultural and land use practices that increase sedimentation and nutrient-loading. The petition asserts that this combination of habitat threats has

already impacted coral reef ecosystems on a global scale, and that these threats are currently accelerating in severity such that the quantity and quality of coral reef ecosystems are likely to be greatly reduced in the next few decades.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on that literature and information, we find that the petition meets the aforementioned requirements of the ESA regulations under 50 CFR 424.14(b)(2) for most of the species which are the subject of the petition. Specifically, we determine that the petition presents substantial information indicating that the requested listing actions may be warranted for 82 of the 83 subject species. As required by 50 CFR 424.14(b)(2), for the 82 species, the petition:

- (1) clearly indicates the administrative measure recommended (listing as threatened or endangered) and gives the scientific and any common names of the species involved;
- (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;
- (3) provides information regarding the status of the species over all or a significant portion of its range; and
- (4) is accompanied by the appropriate supporting documentation for 82 of the 83 species in the form of bibliographic references and maps.

Further, it is reasonable to conclude, after reviewing the information presented in this petition, that these species may be threatened or endangered. A population decline of at least 30 percent throughout the Caribbean and Indo-Pacific regions, combined with large-scale threats of increased abundance of macroalgae (which compete for available space, produce toxins that inhibit larval settlement, and trap excess sediment), ocean acidification, decreased resilience of corals, and elevated sea surface temperatures (which cause mass mortalities of corals), could cause coral populations to collapse and make it difficult for them to recover.

However, we have determined that the petition does not present substantial scientific or commercial information that the petitioned action may be warranted as to *Oculina varicosa*. The petition cited only three references in the section addressing *O. varicosa*. The petition relied on the Species Account

from the IUCN Redlist of Threatened Species for information on the population status and threats regarding this species. Read as a whole, however, the IUCN Species Account presents conflicting information and does not ultimately support the petition, as is discussed further below. The other two references included a general corals text describing morphology and habitat and a NMFS' Species of Concern fact sheet for *O. varicosa*, dated November 2007, which is also discussed further below.

The IUCN Species Account presents conflicting information on the threats affecting *O. varicosa* and ultimately does not support the petition. The Species Account states that deep-water populations off the coast of Florida to North Carolina (Oculina Banks) have undergone declines exceeding 50 percent since the 1970s due to destructive fishing practices, but also recognizes that there is no evidence of extensive declines beyond those areas or throughout the species' entire range, which includes shallow-water populations and deeper populations in the Gulf of Mexico in addition to the populations where declines have been observed (Aronson *et al.*, 2008). The IUCN Species Account also states that the species is "relatively common" throughout its range, but also states that there is "no species specific population information available" (Aronson *et al.*, 2008). Also, while many of the IUCN Species Accounts for species of corals that are found in other shallow tropical waters infer population information from habitat decline (a practice that is reasonable for species that actually occur within the declining habitat), the *O. varicosa* Species Account attempts to draw inappropriate inferences on this point. In particular, the Species Account infers that the shallow-water populations of *O. varicosa* have undergone population declines as a result of the threats that are affecting those other shallow-water coral reefs, even though the species does not occur in the same habitats as those other shallow-water tropical coral species. Similarly, while the IUCN Species Account states clearly that *O. varicosa* is not affected by disease and bleaching, it also appears to rely on the fact that the main threat to reefs is global climate change (in particular, temperature extremes leading to bleaching and increased susceptibility to disease). However, the only threat identified in the Species Account to actually affect *O. varicosa* is destructive fishing practices. NMFS identified *O. varicosa* as a Species of Concern in 1991 based on the documented declines of the species in

the deep-water *Oculina* Banks, off the Southeast United States (NMFS, 2007). A Species of Concern is defined as “species about which [NMFS] has some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA” (71 FR 61022; October 17, 2006). We maintain a fact sheet on our website for each Species of Concern, and these sheets are updated periodically. The *O. varicosa* fact sheet was updated, most recently on November 1, 2007 (http://www.nmfs.noaa.gov/pr/pdfs/species/ivorytreecoral_detailed.pdf).

The petition presents no new information to indicate that *O. varicosa* meets the definition of endangered or threatened or that better information has become available since we last updated the fact sheet. While we acknowledge that the largest known population of *O. varicosa*, in the *Oculina* Banks, has undergone extensive decline compared to 1970's levels (as the IUCN Species Account notes), we also note that this area has been protected as the *Oculina* Habitat Area of Particular Concern since 1984, prohibiting trawling, dredging, bottom longlines, and anchoring (NMFS, 2007). These are the only documented threats to *O. varicosa*; there are no known threats to the shallow-water populations. *Id.* While destructive fishing practices have resulted in a 50% decline in the deep-water populations, this threat has not been shown to affect the shallow-water populations throughout the species' range. Therefore, it is inappropriate to extrapolate the decline in the deep-water populations to a 30% decline throughout the species' range.

Viewing all the information cited by the petitioner in its entirety, we conclude that the petition fails to present substantial scientific or commercial information to suggest that the petitioned action may be warranted for *O. varicosa*. In particular, we note the species' wide distribution, the lack of rangewide declines, and the existing protections for the deep-water populations, alleviating our concerns stemming from the declines that occurred following the 1970s.

Information Solicited

Information on Status of the Species

As a result of this finding, we are commencing status reviews on all of the petitioned species (except *O. varicosa*) to determine whether listing any of these coral species under the ESA is in fact warranted. We intend that any final action resulting from these reviews be as accurate and as effective as possible,

and consider the best available scientific and commercial information. Therefore, we open a 60-day public comment period to solicit information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of these 82 coral species throughout their range, including:

- (1) Historical and current distribution and abundance of these species throughout their ranges (U.S. and foreign waters);
- (2) historic and current condition of these species and their habitat;
- (3) population density and trends;
- (4) the effects of climate change on the distribution and condition of these coral species and other organisms in coral reef ecosystems over the short- and long-term;
- (5) the effects of other threats including dredging, coastal development, coastal point source pollution, agricultural and land use practices, disease, predation, reef fishing, aquarium trade, physical damage from boats and anchors, marine debris, and aquatic invasive species on the distribution and abundance of these coral species over the short- and long-term; and
- (6) management programs for conservation of these coral species, including mitigation measures related to any of the threats listed under (5) above.

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

Information Regarding Protective Efforts

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 conducting a review of the status of a species and after taking into account efforts being made to protect the species (16 U.S.C. 1533(b)(1)(A)). Therefore, in making its listing determinations, we first assess the status of the species and identify factors that have led to its current status. We then assess conservation measures to determine whether they ameliorate a species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, we consider the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation of the species; and the presence of monitoring provisions to determine effectiveness of recovery

efforts and that permit adaptive management (Policy on the Evaluation of Conservation Efforts; 68 FR 15100; March 28, 2003). In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provision of adequate monitoring and funding for conservation efforts is essential to ensure that the intended conservation benefits will be realized. We encourage all parties to submit information on ongoing efforts to protect and conserve any of these 82 coral species, as well as information on recently implemented or planned activities and their likely impact(s).

Information Regarding Potential Critical Habitat

Critical habitat is defined in section 3(5) of the ESA as: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) 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 (16 U.S.C. 1532(5)). Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

Section 4(a)(3)(A)(i) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 1533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). In advance of any determination to propose listing any of the petitioned coral species as threatened or endangered under the ESA, we solicit information that would assist us in developing a critical habitat proposal.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat (50 CFR 424.12(b)) state that the agency

“shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.” Pursuant to the regulations, such requirements include, but are not limited to the following: (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 breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. *Id.*

Section 4(b)(2) of the ESA requires the Secretary to consider the “economic impact, impact on national security, and any other relevant impact” of designating a particular area as critical habitat (16 U.S.C. 1533(b)(2)). Section 4(b)(2) further authorizes the Secretary to exclude any area from a critical habitat designation if the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. *Id.* We seek information regarding the benefits of designating specific areas geographically throughout the range of these coral species as critical habitat.

We also seek information on the economic impact of designating particular areas as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

In accordance with our regulations (50 CFR 424.13) we will consult, as appropriate, with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties.

Peer Review

On July 1, 1994, NMFS, jointly with the FWS, 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. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all “influential scientific information” and “highly influential scientific information” disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered “influential scientific information,” we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see ADDRESSES). 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: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 4, 2010.

Samuel D. Rauch III,
Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.
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