Permit 16318

Hagar Environmental Science is requesting a 5-year scientific research permit to take juvenile CCC steelhead, juvenile S–CCC steelhead, and juvenile CCC coho salmon associated with a research project in selected watersheds in Santa Cruz, Monterey, and San Luis Obispo counties, California. In the study described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

The proposed research includes three studies consisting of lagoon surveys and stream surveys in Santa Cruz, Monterey, and San Luis Obispo counties. The purpose of the lagoon surveys is to provide estimates of abundance of juvenile steelhead rearing in the lagoons during the summer rearing period through mark-recapture protocol using PIT tag technology. A secondary goal of the lagoon research is to investigate the relationship between population abundance estimates and catch per unit effort that has been used in past surveys. The purpose of the stream surveys is to enumerate rearing juvenile steelhead and other fish species. The data from lagoon and stream surveys will be used to track salmonid spawning and rearing conditions, prioritize restoration and conservation efforts, and inform land and water use decisions.

In study 1, juvenile salmonid distribution and population abundance and habitat assessment will be determined in the San Lorenzo River, Liddell Creek, Laguna Creek, and Majors Creek. Sampling will occur at multiple survey sites twice annually in lagoons from April through November and once annually in streams from August through November. Juvenile CCC coho salmon and juvenile CCC steelhead may be captured by backpack electrofishing or seine. Captured fish will be anesthetized, handled (identified, measured and weighed), and released. Juveniles captured in lagoons will be PIT tagged and some will have scales removed for analysis.

Study 2 will take place in the Salinas River, Arroyo Seco, Nacimento River, San Antonio River in Monterey and San Luis Obispo counties, California. Sampling will occur at multiple survey sites three times annually in lagoons from April through November and once annually in streams from August through November. Juvenile S–CCC steelhead will be captured (by backpack electrofishing or seine), anesthetized (optional), handled (identified, measured, weighed), and released. A subsample of captured S–CCC steelhead will be sampled for scales.

Study 3 is a juvenile salmonid distribution, population abundance, and habitat assessment study in the lower watershed and lagoon of Arroyo Grande including Tar Spring Creek and Los Berros Creek in San Luis Obispo County, California. Sampling will occur at multiple survey sites twice annually in lagoons from April through November and once annually in streams from August through November. Juvenile S–CCC steelhead will be captured (by backpack electrofishing or seine), anesthetized, handled (identified, measured, weighed) and released. A subset of captured fish will be sampled for scales.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final actions in the **Federal Register**.

Dated: May 25, 2011.

Therese Conant,

Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–13550 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110516284–1286–01]

RIN 0648–XA097

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition To List Goliath Grouper as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list goliath grouper (*Epinephelus itajara*) as threatened or endangered under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Accordingly, we will not initiate a status review of the species at this time.

ADDRESSES: Copies of the petition and related materials are available upon request from the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, NMFS Southeast Region, 727–551–5794, or Lisa Manning, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2010, we received a petition from the WildEarth Guardians to list goliath grouper (*Epinephelus itajara*), Nassau grouper (*Epinephelus striatus*), and speckled hind (*Epinephelus drummondhayi*) as threatened or endangered under the ESA and to designate critical habitat for these species. Copies of this petition are available from us (see **ADDRESSES,** above). Due to the scope of the WildEarth Guardians' petition, as well as the breadth and extent of the required evaluation and response, we are providing species-specific findings on this petition. This finding addresses WildEarth Guardians' petition to list goliath grouper.

On June 11, 1991, we identified goliath grouper (previously known as jewfish) as a candidate species under the ESA (56 FR 26797). On April 15, 2004, we announced the establishment of a species of concern list, a description of the factors that it will consider when identifying species of concern, and revision of the ESA candidate species list (69 FR 19976). We transferred 25 candidate species, including goliath grouper, to this species of concern list.

In January 2006, we completed a status report for goliath grouper in the continental U.S. (North Carolina to the Gulf of Mexico), which we determined met the criteria for designation as a distinct population segment (DPS) under the ESA (NOAA, 2006). The purpose of the 2006 status report was to investigate the status of goliath grouper in the United States relative to the criteria for including a species on the species of concern list and in light of updated information about the status of and threats to the continental U.S. DPS of the goliath grouper. After evaluating the most current data, we concluded that the continental U.S. DPS of goliath grouper had undergone significant increases in abundance since its identification in 1991 as a candidate species under the ESA and had become re-established throughout its historical

range. Due to management actions implemented via the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), extraction of goliath grouper by commercial and recreational fisheries was deemed to not be a current threat to the species. While the report noted concern about the rate of habitat loss and modification, in particular the loss of mangrove habitat, we determined that the current habitat loss was not a factor affecting the species' status within the continental United States at that time. Therefore, we concluded goliath grouper no longer met the definition of a species of concern (NOAA, 2006). As a result, goliath grouper (*i.e.,* the continental U.S. DPS) was removed from the NMFS' species of concern list in 2006 (71 FR 61022).

ESA Statutory and Regulatory Provisions and Evaluation Framework

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 make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), 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, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. 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 prejudge 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, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA-U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS 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)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered as a result of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name 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 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)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative

impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society (AFS), or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other federal or state statutes may be informative, but such classifications alone may not provide the sole rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Goliath Grouper Species Description

The goliath grouper constitutes a "species" eligible for listing under the ESA. The goliath grouper is a large member of the sea bass or serranid family found in both the Atlantic and Pacific Oceans. In the western Atlantic, the species is distributed from Bermuda and the Carolinas, south into the Gulf of Mexico and Caribbean Sea through the coast of Brazil (NOAA, 2006). In the eastern Atlantic Ocean, goliath grouper is found rarely from Senegal to Congo and the Canary Islands. They have also been found off the coast of Mexico in the eastern Pacific, including the Gulf of California to Peru (Smith, 1971; Heemstra and Randall, 1993).

Mangrove habitat is thought to be the primary habitat for juvenile goliath grouper (up to 1 m total length (TL)). Secondary and tertiary juvenile goliath grouper habitat areas include seagrass beds and oyster reefs. Adult goliath grouper occur either as solitary individuals or in groups of up to 100 fish. Resident goliath grouper are often found in significant numbers on high-relief hardbottom habitat (*e.g.,* sinkholes), artificial reefs, overhangs, bridges, piers, and shipwrecks (Heemstra and Randall, 1993). Adult goliath grouper may be found on low-relief coral reef and hardbottom habitat; however, they typically are not found there in great numbers (Heemstra and Randall, 1993).

Goliath grouper are a shallow-water species, typically found in less than 50 m of water (Heemstra and Randall, 1993); however, solitary specimens have been observed as deep as 80 m in the Gulf of Mexico and in the Atlantic Ocean off Florida (NOAA, 2006). Juveniles appear to prefer shallow estuarine waters 0 to 3 m in depth (Bullock and Smith, 1991). Larvae are pelagic, but their exact depth distribution is unknown.

The goliath grouper is a long-lived and late-maturing species that grows to an unusually large size. Bullock and Smith (1991) determined goliath grouper longevity of more than 35 years, and Smith (1971) determined their maximum weight could exceed 318 kg. Reproductive maturity is reached late (~5–6 years) and at a large size (~1 m TL; Bullock *et al.,* 1992). Goliath grouper are thought to spawn between June and October; however, spawning likely varies with geographic location. Goliath grouper are opportunistic, slow-moving predators with general diets.

Analysis of the Petition

First we evaluated whether the petition presented the information required by 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; 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; provides information regarding the status of the species over all or a significant portion of its range; and 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.

The petition asserts that the goliath grouper warrants listing throughout its range, and as an alternative, that the continental U.S. population warrants listing under the ESA. The petitioner asserts that the continental U.S. population, ranging from North Carolina to the Gulf of Mexico, is most at risk of extinction as a result of threats described in the petition.

The petition states that the goliath grouper is becoming increasingly rare and imperiled, and that overfishing has taken a devastating toll on the species. The petition asserts that the species' biological constraints increase its susceptibility to adverse impacts from fishing, and that current regulations are not safeguarding the species from extinction. Additionally, the petition states the 2010 Deepwater Horizon oil spill event had, and continues to have, a detrimental effect on the habitat and range of the species. Thus, the petition states that at least four of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the goliath grouper: Present and threatened destruction, modification, and curtailment of habitat or range; overutilization for commercial and recreational purposes; inadequacy of existing regulatory mechanisms; and other natural or manmade factors, particularly the biological constraints of the species' life history.

Information on Extinction Risk and Species Status

The petition cites classifications made by the IUCN, AFS, and NatureServe to support its assertion that the goliath grouper is imperiled. The IUCN classified goliath grouper as critically endangered in 2006, a status assigned to species facing an extremely high risk of extinction in the wild, based on: "An observed, estimated, inferred or suspected population size reduction of ≥80% over the last 10 years or three generations, whichever is the longer, where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on actual or potential levels of exploitation," and "a population size reduction of ≥80%, projected or suspected to be met within the next 10 years or three generations, whichever is the longer (up to a maximum of 100 years), based on actual or potential levels of exploitation" (*http://www.iucnredlist.org/apps/redlist/details/7857/0*). The background to the IUCN assessment includes fisheries-independent and fisheries-dependent

data; however, the assessment concluded that information on the overall stock status and recovery was insufficient to downgrade the previously-assigned classification of "critically endangered." The 2006 assessment notes that, "Although the IUCN survey is for the whole range of the species, in the Gulf of Mexico it looks like the population is recovering nicely. The species is still at risk in the Gulf, however, from fishing (poaching during the moratorium) and juvenile habitat loss. But in the southeastern U.S. they are not Critically Endangered" (IUCN, 2006). This conclusion about the U.S. stock is consistent with other recent evaluations conducted on the species (*e.g.,* NOAA, 2006).

In 2000, the AFS identified the goliath grouper as being "conservation dependent," which is a category for species considered to be "reduced but stabilized or recovering under a continuing conservation plan" (Musick *et al.,* 2000). The information upon which this classification is based contains a list of generalized risk factors but lacks specific information on goliath grouper's population size or trends.

The 1998 NatureServe status review for goliath grouper concluded that the species was "imperiled" (NatureServe, 1998). NatureServe's imperiled classification is given to species that are "at high risk of extinction or elimination due to very restricted range, very few populations, steep declines, or other factors." The NatureServe classification provides estimates of goliath grouper's global abundance and global short-term trend, but these estimates are outdated and/or unsubstantiated. Further, this classification does not use currently available data on population status indicating the species has been steadily recovering over the past 20 years in the United States due largely to a prohibition on goliath grouper harvest (*e.g.,* NOAA, 2006).

In summary, the source information that the cited classifications are based upon either does not include specific information or does not include current information on the extinction risk or population trends for goliath grouper throughout all or a significant portion of its range to indicate that the petitioned actions may be warranted. Additionally, in contrast to the petitioner's assertion that the U.S. population is most at risk, the IUCN assessment indicates that the goliath grouper population in the United States is recovering.

Information on Threats to the Species

We next evaluated the information in the petition and information in our files concerning the extent and severity of threats corresponding to the factors listed in section 4(a)(1) of the ESA.

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition cites declines in coral reef ecosystems; increasing water pollution from coastal development and tourism; and effects from energy development, specifically, the 2010 Deepwater Horizon oil spill event, as threats to the species. However, the petition does not provide any supporting information to indicate these generalized concerns are actually negatively affecting goliath grouper. Nor does the petition provide any information on threats to goliath grouper habitat that is located outside the range of the continental U.S. population.

The modification and destruction of goliath grouper habitat, notably the elimination of juvenile mangrove habitat, may currently have some impact on the species' abundance. Mangroves are essential fish habitat for post-larval and juvenile goliath grouper (GMFMC, 2004). Over the past 100 years, there has been a reduction in the amount of mangrove habitat acreage in Florida. In some areas, in particular southeast Florida and the Florida Keys, coastal development has dramatically reduced the amount of available mangrove habitat. The reduction of mangrove habitat, coupled with degraded water quality, may potentially have a negative impact on goliath grouper. Mangroves are abundant near the current center of abundance (Ten Thousand Islands, Florida), but have significantly declined in other areas. The destruction or modification of mangrove habitat in these areas may limit the rate at which goliath grouper become reestablished throughout their historical range, because it offers less suitable habitat for juveniles to reside. Areas outside the center of abundance (*e.g.,* southeast Florida; northwest Florida) are therefore likely dependent on adults emigrating from southwest Florida.

Of the estimated 693,360 acres of mangroves in the United States, 96 percent occur in Florida (Mendelssohn and McKee, 2000). A recent study by Ueland (2005) determined there were an estimated 512,842 acres of mangrove in the 14 southernmost coastal counties of Florida in 2000. In one of the few studies that investigated long-term changes in mangrove systems, Ueland (2005) determined that the 2000 estimate represented a 9.0 percent total loss in mangrove habitat from his 1987 estimate of 563,388 acres. In terms of total acres amongst the 14 counties encompassed within the study, Monroe County lost the largest amount of mangrove area (37,031 acres; 12.2 percent decline), while Charlotte County showed an increase of 1,229 acres (5.9 percent increase) during the 13-year period.

Though natural events such as hurricanes can result in mangrove loss, over the past six decades, habitat modification and coastal development in Florida have been the primary forces behind dramatic reductions in mangrove habitat. The Everglades has lost approximately 22 percent of mangrove/marsh habitat since 1927, primarily due to habitat modification for agricultural purposes (Foster and Smith, 2001). On Florida's east coast, the Indian River Lagoon system from St. Lucie Inlet north to Satellite Beach has less than 8,000 acres of mangroves, but only 1,900 are available as fisheries habitat because of mosquito impoundments; a total of 86 percent of the mangrove areas have been lost to fisheries since the 1940s (FL DEP, 2003). Lake Worth Lagoon near West Palm Beach has experienced an 87 percent decrease of its mangrove acreage over the past 40 years (FL DEP, 2003). Mangroves appear to have been replaced by the Australian pine and/or urbanization (FL DEP, 2003).

While habitat destruction and modification may have some impact on the abundance of the goliath grouper, it is unlikely that it presents a significant impact that would threaten or endanger the species, unless extensive juvenile habitat loss occurs near the population's center of abundance. Despite extensive habitat modification in Florida, the species has been increasing in number over the past 20 years (NOAA, 2006). The construction of artificial reefs in both the Atlantic Ocean and Gulf of Mexico during the past 25 years may have had a beneficial impact on the species by presenting additional shelter and forage opportunities for adult goliath grouper. In summary, the petition and information in our files does not constitute substantial information indicating the present or threatened destruction, modification, or curtailment of habitat or range is an extinction risk of concern for goliath grouper either throughout its range or in a significant portion of its range.

Overutilization for Commercial and Recreational Purposes

The petition states that "the primary threat to these grouper species is overfishing, both commercially and recreationally." Further, it states "these species * * * are considered overfished

in the southeastern Atlantic, Caribbean, and Gulf of Mexico." Under the MSFCMA, an "overfished" species is one where the current biomass falls short of an identified stock threshold; thus, this classification reflects the history of exploitation, not necessarily current harvest rates. A species experiencing "overfishing" is one where the current fishing mortality exceeds an identified management target; thus, this classification is a current property of the fishery. Overfishing can lead to a stock becoming overfished. The most recent Report to Congress on the Status of U.S. Fisheries (NMFS, 2009) lists goliath grouper as being overfished, but not undergoing overfishing in the Caribbean. The report also states the species is not undergoing overfishing in the South Atlantic and Gulf of Mexico, but its overfished status in those regions is unknown.

Threatened or endangered status under the ESA and overfished status under MSFCMA are based on different criteria and, thus, do not necessarily coincide. In our 2007 status review for the Atlantic white marlin (73 FR 843, January 4, 2008; *http://sero.nmfs.noaa.gov/pr/endangered%20species/pdf/2007_Atlantic_white_marlin_status_%20review.pdf*), we developed a set of species-specific population dynamics criteria to evaluate extinction risk posed by exploitation of the species in commercial and recreational fisheries. In that status review we stated that overfished and overfishing classifications do not necessarily indicate that a species may warrant listing as a threatened or endangered species because they do not necessarily have any relationship to a species' extinction risk. To present extinction risk to a species, overutilization would typically mean that a species has been or is being harvested to population levels that cannot equilibrate in response to the harvest pressure. As the harvest of goliath grouper was prohibited in the early 1990s in both the Gulf of Mexico and South Atlantic EEZ, as well as Florida, and the species has demonstrated a significant increase in abundance since that time within the continental United States, we believe overutilization does not currently present an extinction risk to the continental U.S. population.

As noted above, goliath grouper is not listed as undergoing overfishing in the South Atlantic, Gulf of Mexico, or Caribbean. Additional information indicates that the species continues to rebound within the continental United States following population declines in the 1980s and into the 1990s (NOAA, 2006). Long-term visual survey indices document increased goliath grouper abundance throughout Florida starting in the late 1990s, following implementation of harvest and possession moratoriums (SEDAR, 2010).

Model results from Porch *et al.* (2003, 2006) further support the conclusion that the goliath grouper population in the southeastern United States is recovering following the prohibition of the species' harvest. Porch *et al.* (2003, 2006) utilized a catch-free assessment model to evaluate the status of goliath grouper in U.S. waters. This model is an age-structured production model and uses known biological information regarding a species, incorporates indices of abundance and effort (if known, or a proxy), and other auxiliary information from meta-analyses of stocks with similar life history characteristics allowing for informative priors on parameters such as fishing mortality and natural mortality rates, growth curve parameters, and vulnerabilities. The catch-free model has a flexible model structure, and provides management benchmarks relative to pre-exploitation levels and projections for future years. There is no dependence upon harvest estimates as inputs for the model. The results and benchmarks are derived from a reconstruction of a population based upon biological parameters and abundance indices and the results are relative to a population assumed to be at "near virgin" levels.

The 2003 assessment estimated there was a 50 percent chance of exceeding the current MSFCMA management benchmark for this species in the southeastern United States as early as 2006, and that there was a 95 percent chance that the population might recover by 2012 (Porch *et al.,* 2003). Under more conservative assumptions on the effectiveness of the moratorium on harvest that were incorporated into the 2006 assessment, recovery would not occur by 2017 (Porch *et al.,* 2006). Or, under more optimistic assumptions on the effects of fishing pressure on younger age classes of goliath grouper, the model indicated a 70–80 percent chance of recovery by 2017 (Porch *et al.,* 2006). These upward trends in the population indicate that overutilization for commercial or recreational purposes does not currently pose an extinction risk for the species in the southeastern United States.

The petition also expresses concern over potential bycatch mortality, and states "there is a high probability that they will suffer from barotrauma (*e.g.,* the bends and hemorrhaging) and perish." However, the petition does not provide any supporting information to indicate these generalized concerns are actually negatively affecting goliath grouper. The MSFCMA defines bycatch to mean fish harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards; it does not include fish released alive under a recreational catch and release fishery management program. While barotrauma and bycatch mortality may be a cause for concern for various deep-water species, goliath grouper are a shallow-water species, and it is unlikely that barotrauma is an extinction risk of concern for goliath grouper. In fact, tagging studies have noted specific goliath grouper have been repeatedly caught and released, demonstrating a low bycatch mortality rate for this species (Eklund and Schull, 2001).

In summary, the petition and information in our files do not present substantial information indicating that overutilization is resulting in an extinction risk of concern for goliath grouper either throughout or in a significant portion of its range.

Inadequacy of Existing Regulatory Mechanisms

The petition states that existing regulatory mechanisms are inadequate to prevent endangerment or extinction of goliath grouper. While the petition notes the two decade-long harvest ban on goliath grouper, it cites studies recommending further data be collected before lifting the fishing ban.

The goliath grouper fishery expanded quickly and dramatically through the 1980s, which required the introduction of conservation and management measures for the species. The South Atlantic Fishery Management Council (SAFMC) prohibited the spearing of goliath grouper in March 1983 (SAFMC, 1983). In 1985, the state of Florida implemented an 18-inch minimum size limit for goliath grouper to help prevent the harvest of juvenile fish. However, the rapid increase in fishing effort for goliath grouper followed by a subsequent decline in catches also led to regulatory measures by the Gulf of Mexico Fishery Management Council (GMFMC) for federal waters in the Gulf of Mexico. In 1989, the GMFMC implemented a 50-inch (1,270-mm) total length minimum size limit for goliath grouper (GMFMC, 1989). This measure was originally considered conservative enough to restore the stock. However, additional information revealed that the stock was more depleted than previously thought, so in March 1990, the GMFMC prohibited all harvest and possession of goliath grouper in federal waters of the Gulf of Mexico (GMFMC, 1990). Likewise, the SAFMC prohibited

the harvest and possession of goliath grouper from federal waters off North Carolina southward through Florida in November 1990 (SAFMC, 1990).

The state of Florida followed suit and prohibited the harvest and possession of goliath grouper from state waters in 1990. Eventually, all other coastal states from North Carolina to Texas implemented regulations to prohibit the harvest or possession of goliath grouper.

The petition states the IUCN defines the species as critically endangered throughout its entire range. The IUCN, however, qualifies its assessment by stating, "Information is needed from other locations within its range, including the eastern Atlantic and eastern Pacific" (IUCN, 2006). The IUCN also notes that "Global or regional abundance of adults is unknown" (Ibid).

The petition fails to provide substantial information indicating existing regulatory mechanisms are inadequate to prevent, or are contributing to, extinction risk for goliath grouper throughout its range, in a significant portion of the range, or in the continental United States. To the contrary, the petition notes the various harvest restrictions have "yielded some signs of recovery" in the Gulf of Mexico. Available information documents that there has been a history of effective regulatory action to conserve and protect goliath grouper, which has resulted in the species' ongoing recovery and rebuilding within the continental United States (NOAA, 2006). While Brazil implemented a harvest prohibition in 2002, IUCN (2006) details that "nothing is known yet about the response to management in Brazil and data are missing on the species from many other places in its range." The petition provides no information supporting the statements of generalized threats posed by the alleged inadequacy of global regulatory measures, and we have no information in our files suggesting that this is an extinction risk of concern.

Other Natural or Manmade Factors

The petition states that goliath grouper is more susceptible to extinction due to a number of biological constraints, including a "slow rate of maturation and growth, large size, and aggregation at specific times and sites for spawning, combined with their high commercial value and value as a trophy fish, make them particularly susceptible to depletion from fishers." However, neither the petition nor information in our files suggests that current fishing pressure (*i.e.,* directed catch-and-release or incidental bycatch), including fishing or diving pressure that may potentially disrupt spawning aggregations, poses an extinction risk of concern for this species throughout its range, in a significant portion of the range, or in the continental United States. In fact, available information indicates the U.S. population has increased over the past 20 years and become re-established throughout its historical range (NOAA, 2006).

The petition also lists potential small population size of adult goliath grouper and human population growth as other natural or manmade factors contributing to goliath grouper's vulnerability, but does not provide any supporting information to indicate these generalized concerns are actually negatively affecting goliath grouper.

Therefore, we conclude that the petition and information in our files do not present substantial information to suggest that other natural or manmade factors may be causing extinction risk of concern for goliath grouper either throughout or in a significant portion of its range. We further conclude the petition and information in our files do not present substantial information to suggest that any combination of the 4(a)(1) factors discussed above may pose an extinction risk for goliath grouper that is cause for concern.

Petition Finding

Goliath grouper are found in the western Atlantic Ocean from Bermuda southward through the Gulf of Mexico and Caribbean Sea to Brazil, in the eastern Atlantic off the African coast, and in the eastern Pacific Ocean from the Gulf of California south to Peru. As noted by the petitioners, the goliath grouper is widely ranging but is most likely to occur in U.S. waters (Chuen and Huntsman, 2006). The petitioner requests the species be listed throughout its range, or alternatively that the continental U.S. population be listed. The information presented in the petition focuses on the status of the species in the U.S. waters where the petitioner asserts "* * * it is most threatened by the risk of extinction * * *." However, evidence in the petition and in our files supports the conclusion that the species is recovering in U.S. waters. The petition also fails to either present specific information on how the cited threats are affecting goliath grouper or does not incorporate current data regarding the improved status of the species. After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition fails to present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

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

Dated: May 25, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–13549 Filed 5–31–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA452

Endangered Species; File No. 15614

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Tom Savoy, Connecticut Department of Environmental Protection, Marine Fisheries, PO Box 719, Old Lyme, CT 06731, has been issued a permit to take shortnose sturgeon for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Malcolm Mohead, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On December 17, 2010, notice was published in the **Federal Register** (75 FR 78974) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations