depicting the closure is available from the Refuge Headquarters.

(ii) Headquarters Lake, adjacent to the Kenai Refuge Headquarters area, is closed to boating.

(11) *Area-specific regulations for the Russian River Special Management Area.* The Russian River Special Management Area includes all refuge lands and waters within ¼ mile of the eastern refuge boundary along the Russian River from the upstream end of the fish ladder at Russian River Falls downstream to the confluence with the Kenai River, and within ¼ mile of the Kenai River from the eastern refuge boundary downstream to the upstream side of the powerline crossing at river mile 73, and areas managed by the refuge under memorandum of understanding or lease agreement at the Sportsman Landing facility. In the Russian River Special Management Area:

(i) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all attractants, and all equipment used to transport attractants (such as backpacks and coolers) at all times. Attractants are any substance, natural or manmade, including but not limited to, items of food, beverage, personal hygiene, or odiferous refuse that may draw, entice, or otherwise cause a bear or other wildlife to approach. Closely attend means to retain on the person or within the person's immediate control and in no case more than 3 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(ii) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all lawfully retained fish at all times. Closely attend means to keep within view of the person and be near enough for the person to quickly retrieve, and in no case more than 12 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(iii) We prohibit overnight camping except in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas. Campers may not spend more than 2 consecutive days at these designated camping facilities.

(iv) You may start or maintain a fire only in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas, and then only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location. You must completely extinguish (put out cold) all campfires before permanently leaving your campsite.

(12) *Area-specific regulations for the Moose Range Meadows Subdivision Non-Development and Public Use Easements.*

(i) Where the refuge administers two variable width, non-development easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, you may not erect any building or structure of any kind; remove or disturb gravel, topsoil, peat, or organic material; remove or disturb any tree, shrub, or plant material of any kind; start a fire; or use a motorized vehicle of any kind (except a wheelchair occupied by a person with a disability), unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

(ii) Where the refuge administers two 25-foot-wide public use easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, we allow public entry subject to applicable Federal regulations and the following provisions:

(A) You may walk upon or along, fish from, or launch or beach a boat upon an area 25 feet upland of ordinary high water, provided that no vehicles (except wheelchairs) are used. We prohibit non-emergency camping, structure construction, and brush or tree cutting within the easements.

(B) From July 1 to August 15, you may not use or access any portion of the 25-foot-wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements. Maps depicting the seasonal closure are available from Refuge Headquarters.

(13) *Area-specific regulations for Alaska Native Claims Settlement Act Section 17(b) Easements.* Where the refuge administers Alaska Native Claims Settlement Act Section 17(b) easements to provide access to refuge lands, no person may block, alter, or destroy any section of the road, trail, or undeveloped easement, unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager. No person may interfere with lawful use of the easement or create a public safety hazard on the easement. Section 17(b) easements are depicted on a map available from Refuge Headquarters.

* * * * *

Dated: May 5, 2015.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–12099 Filed 5–20–15; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Marine Fisheries Service

50 CFR Part 424

[Docket Nos. FWS–HQ–ES–2015–0016; DOC 150506429–5429–01; 4500030113]

RIN 1018–BA53; 0648–BF06

Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions

AGENCY: U.S. Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), Commerce.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, propose changes to the regulations concerning petitions, to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petitions process to support species conservation. Our proposed revisions to the regulations would clarify and enhance the procedures by which the Services will evaluate petitions under section 4(b)(3) of the Endangered Species Act of 1973, as amended. These revisions would also maximize the efficiency with which the Services process petitions, making the best use of available resources.

DATES: We will accept comments that we receive on or before July 20, 2015. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number for this proposed rule, which is FWS–HQ–ES–

2015–0016. Then click on the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct document before submitting your comment.

• *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2015–0016; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703–358–2171; facsimile 703–358–1735; or Angela Somma, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–427–8403. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The primary purpose of the petition process is to empower the public, in effect, to direct the attention of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) to (1) species that may be imperiled and not otherwise known to the Services, (2) changes to a listed species' threats or other circumstances that warrant that species being reclassified (*i.e.,* changed in listing status by ''downlisting'' from endangered to threatened, or by ''uplisting'' from threatened to endangered) or delisted (*i.e.,* removed from the Federal List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants), or (3) necessary revisions to critical habitat designations. The petition process is a central feature of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended, and serves a beneficial public purpose.

Purpose of Proposed Revision of Regulations

The Services are proposing changes to the regulations at 50 CFR 424.14 concerning petitions to improve the content and specificity of petitions and to enhance the efficiency and effectiveness of the petitions process to support species conservation. Our proposed revisions to § 424.14 would clarify and enhance the procedures by which the Services will evaluate petitions under section 4(b)(3) of the Act, 16 U.S.C. 1533(b)(3). We propose to revise the regulations pertaining to the petition process to provide greater clarity to the public on the petition-submission process, which will assist petitioners in providing complete petitions. These revisions would also maximize the efficiency with which the Services process petitions, making the best use of available resources. These changes would improve the quality of petitions through expanded content requirements and guidelines; and, in doing so; better focus the Services' energies on petitions that merit further analysis. The following discussion outlines the proposed changes and explains the benefits of making these changes.

Specific Proposed Changes to Current Regulations at 50 CFR 424.14

General Authority and Requirements for Petitions—Paragraphs (a) and (b)

Proposed paragraph (a) would retain the first sentence of the current section. Proposed new paragraph (b) would incorporate the substance of the second and third sentences of current paragraph (a), which set forth certain minimum content requirements for a request for agency action to qualify as a petition for the purposes of section 4(b)(3) of the Act, 16 U.S.C. 1533(b)(3). The new paragraph would also expand upon the list of requirements for a petition, drawing in part from the provisions in current paragraph (b)(2). Proposed paragraph (b)(2) would, however, newly require that a petition address only one species. Although the Services in the past have accepted multi-species petitions, in practice it has often proven to be difficult to know which supporting materials apply to which species, and has sometimes made it difficult to follow the logic of the petition. This requirement would not place any limitation on the ability of an interested party to petition for section 4 actions, but would require petitioners to organize the information in a way (on a species-by-species basis) that will allow more efficient action by the Services.

The first six requirements (in proposed paragraphs (b)(1) through (b)(6)) would apply to each type of petition recognized under section 4(b)(3) of the Act. The first four requirements (in proposed paragraphs (b)(1) through (b)(4)) are all contained in the current regulations at § 424.14(a) and (b). The fifth and sixth requirements (in proposed paragraphs (b)(5) and (b)(6)) clarify and expand on the current provisions regarding a petition's supporting documentation at § 424.14(b)(2)(iv). The seventh requirement (in proposed paragraph (b)(7)), however, would apply only to petitions to list a species, and would require that information be presented on the face of the request to demonstrate that the entity that is the subject of the request is or may be a ''species'' as defined in the Act (which includes a species, subspecies, or distinct population segment). Section 4(b)(3)(A) of the Act applies only to ''a petition . . . to add a *species* to, or to remove a *species* from, either of the lists [of endangered or threatened wildlife and plants]'' (emphasis added). This provision screens from needless consideration those requests that clearly do not involve a species, subspecies, or distinct population segment. The eighth requirement (in proposed paragraph (b)(8)), would apply only to petitions to list, delist, or reclassify a species, and would require that information be included in the petition describing the current range of the species, including range States or countries, as appropriate.

Although section 4(b)(3)(A) of the Act authorizes interested persons to submit a petition to add a species to, or remove a species from, the Lists of Endangered and Threatened Wildlife and Plants, and section 4(b)(3)(D) of the Act authorizes submission of petitions to revise critical habitat designations, the Act does not specify the required contents of such a petition, but instead leaves with the Secretary the authority to do so. The Services are concerned that the States, which often have considerable experience and information on the species within their boundaries, have opportunity to be involved in providing information as part of the petition process. To further the Act's directive to cooperate to the maximum extent practicable with the States, the Secretary proposes to revise the regulations pertaining to the required contents of such petitions, as well as petitions to revise or designate critical habitat. The goal of this proposed revision is to encourage greater communication and cooperation among would-be petitioners and State conservation agencies prior to the submission of listing or critical habitat petitions to the Secretary.

To that end, we propose a ninth requirement (proposed paragraph (b)(9)) that would apply only to petitions to the U.S. Fish and Wildlife Service to add a

species that occurs within the United States to the List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants, change the status of a listed domestic species, or designate or revise critical habitat for any domestic species under its jurisdiction. This proposed requirement concerns communications between the petitioner(s); the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs; and the U.S. Fish and Wildlife Service. As a general matter, States have jurisdiction and the responsibility for managing and conserving freshwater fish, wildlife, and plant species that are not listed as endangered or threatened species under the Act. In the exercise of their jurisdiction and responsibility, the States have developed substantial experience, expertise, and information relevant to the conservation of such species. The Act recognizes and acknowledges that experience and expertise in a number of ways. For example, section 6 of the Act directs the Secretary to cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act. Consistent with this mandate, section 4(b) of the Act directs the Secretary, when making determinations with respect to the listing of any species, to take into account the efforts being made by any State to protect such species. In addition, although the Secretary is free to adopt regulations pursuant to section 4 that are at odds with the written recommendations of a State conservation agency, when he or she does so, section 4(i) of the Act requires the Secretary to provide the State agency with a written justification for not adopting regulations consistent with State's recommendations. In these and other ways, the Act recognizes and respects the special status of the States with respect to the conservation and management of fish, wildlife, and plants.

Proposed paragraph (b)(9) would require that for any petition submitted to the U.S. Fish and Wildlife Service pertaining to species found within the United States, a petitioner must certify that a copy of the petition was provided to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species occurs at least 30 days prior to submission to the Service. The certification must include the date that the petition was provided to the relevant State agency(ies). If the State agency(ies) provided data or written comments regarding the accuracy or completeness of the petition, those data or comments must be labeled as such, appended to the petition, and submitted with the petition. If the State agency(ies) did not provide any data or written comments regarding the accuracy or completeness of the petition, the petitioner must so certify. We realize that States may not have jurisdiction over or regulate all species, such as insects or plants, and thus may not be able to provide any data for certain species.

Note that if a State provides data or written comments to the petitioner after the petition is filed, section 424.14(b)(9) would not require that the petitioner resubmit the petition with the new State data or written comments (although the petitioner may choose to do so). State data received after the filing of the petition will not reset the clock for the Services' consideration of the petition, but will become part of the data available in our files that we may elect to review under proposed section (g)(1)(ii) if sufficient time remains to do so.

In this proposed rule, we are proposing to include the requirement under (b)(9) only as to petitions filed with the United States Fish and Wildlife Service. We recognize the relatively greater logistical difficulties that would be posed to petitioners if they were required to identify and coordinate with all interested States regarding marine species and wide-ranging anadromous species. However, we seek public comment as to whether this requirement, if adopted, should also apply to petitions filed with the National Marine Fisheries Service.

The Services are also concerned that petitions should include a presentation of all reasonably available, relevant data on the subject species (or, if relevant for the particular petition, its habitat), including information that supports the petition as well as that which may tend to refute it. This is particularly true for information publicly available from affected States, who have special status and concerns with respect to implementation of the Act, as discussed above. Fostering greater inclusion of such data would help ensure that any petition submitted to the Secretary is based on reliable and unbiased information and does not consist simply of unrepresentative, selected data.

To this end, we propose a tenth requirement (proposed paragraph (b)(10)), applicable to all petitions filed with either Service, that would require a petitioner to certify that the petitioner has gathered all relevant information readily available, including from Web sites maintained by the affected States, and has clearly labeled and appended such information to the petition so that it is submitted with the petition. As an alternative to this provision, we are considering limiting the requirement under (b)(10) to extend only to gathering and certifying submission of relevant information publicly available on affected States' Web sites.

The Services would apply § 424.14(b) to identify those requests that contain all the elements of a petition, so that consideration of the request would be an efficient and wise use of agency resources. A request that fails to meet these elements would be screened out from further consideration, as discussed below, because a request cannot meet the statutory standard for demonstrating that the petitioned action may be warranted if it does not contain at least some information on each of the areas relevant to that inquiry.

Types of Information To Be Included in Petitions—Paragraphs (c) and (d)

Proposed § 424.14(c) and (d) describe the types of information that would be relevant to the Secretary's determination as to whether the petition provides substantial information that the petitioned action may be warranted. Petitioners are advised that compliance with paragraph (b) would result in issuance of a 90-day finding, but for that finding to be positive, petitioners should include as much of the types of information listed in paragraphs (c) or (d) (as relevant to the type of petition they are filing) as possible.

Petitions To List, Delist, or Reclassify

The proposed informational elements for listing, delisting, and reclassification petitions in proposed paragraphs (c)(1) through (c)(5) are rooted in the substance of current paragraphs (b)(2)(ii) and (iii). These elements would clarify in the regulations the key considerations that are relevant when the Services are determining whether or not the petition presents ''substantial scientific or commercial information indicating that the petitioned action may be warranted,'' which is the standard for making a positive 90-day finding as described in section 4(b)(3)(A) of the Act, 16 U.S.C. 1533(b)(3)(A).

Proposed paragraph (c)(3) refers to inclusion in a petition of a description of the magnitude and immediacy of threats. This request is included to assist the U.S. Fish and Wildlife Service in assessing the listing priority number of species for which a warranted-but-precluded finding is made under the U.S. Fish and Wildlife Service's (FWS)

September 21, 1983, guidance, which requires assessing, in part, the magnitude and immediacy of threats (48 FR 43098). In addition to being useful for status reviews, this information should be included to assist in determinations on delisting and reclassification requests. While such information will likely also be useful to the National Marine Fisheries Service (NMFS), it should be noted that NMFS has not adopted the 1983 FWS guidance, and so would not apply that guidance to petitions within its jurisdiction.

Proposed paragraph (c)(5) is a revision of the language in current paragraph (b)(2) that describes information a petitioner may include for consideration in designating critical habitat in conjunction with a listing or reclassification. We propose to delete the clause ''and indicates any benefits and/or adverse effects on the species that would result from such designation'' because this information is not relevant to the biological considerations that underlay a listing determination.

Petitions To Revise Critical Habitat

Similarly, proposed new § 424.14(d) sets forth the kinds of information a petitioner should include in a petition to revise critical habitat. The Secretary's determination as to whether the petition provides ''substantial scientific information indicating that the revision may be warranted'' (16 U.S.C. 1533(b)(3)(D)(i)) will depend in part on the degree to which the petition includes this type of information.

The items set out at proposed new paragraph (d) are an expanded and reworded version of the substance of current paragraph (c)(2). Proposed paragraph (d)(1) would confirm that, to justify a revision to critical habitat, it is important to demonstrate that the existing designation includes areas that should not be included or does not include areas that should be included, and to discuss the benefits of designating additional areas, or the reasons to remove areas from an existing designation. Additionally, including maps with enough detail to clearly identify the particular area(s) being recommended for inclusion or exclusion will be useful to the Services in making a petition finding.

Proposed paragraph (d)(2) is drawn from the substance of current paragraphs (c)(2)(i) and (ii), which have been reorganized and clarified. Proposed paragraph (d)(2) would clarify that several distinct pieces of information are needed to analyze whether any area of habitat should be designated, beginning with a description of the ''physical or biological features'' that are essential for the conservation of the species and which may require special management. Proposed paragraphs (d)(3) and (d)(4) would detail the informational needs the Services will have in considering whether to add or remove habitat from the designation comprising specific areas occupied by the species at the time of listing, respectively. Proposed paragraph (d)(5) would highlight the particular informational needs associated with evaluating habitat that was unoccupied at the time of listing—that is, information that fulfills the statutory requirement that any specific areas designated are ''essential to the conservation of the species.'' See section 3(5)(A)(ii) of the Act, 16 U.S.C. 1532(5)(A)(ii).

Proposed paragraph (d)(6) would provide additional direction that a petition should include information demonstrating that the petition provides a complete presentation of the relevant facts, including an explanation of what sources of information the petitioner consulted in drafting the petition, as well as any relevant information known to the petitioner not included in the petition.

Responses to Petitions—Paragraph (e)

Proposed new § 424.14(e) sets out the possible responses the Secretary may make to requests. Proposed paragraph (e)(1) would clarify that a request that fails to satisfy the mandatory elements set forth in proposed paragraph (b) may be returned by the Services without a further determination on the merits of the request. In light of the volume of requests received by the Services, it is critical that we have the option to identify early on those requests that on their faces are incomplete, in order to ensure that agency resources are not diverted from higher priorities. Although this authority is implied in the current regulations, making the point explicit in the revised regulations would provide additional notice to petitioners, and lead to better-quality requests and more efficient and effective (in terms of species conservation) use of agency resources. Proposed § 424.14(e)(2) would confirm that a request that complies with the mandatory requirements will be acknowledged in writing as a petition within 30 days of receipt (as required under current 424.14(a)).

Additional Information Provided Subsequent to Receipt of the Petition—Paragraph (f)

Proposed paragraph (f) would address the situation in which a petitioner supplements a petition with additional information at a later date, requesting that the Secretary take the new information into account. The Services' standard practice in these circumstances has been to notify petitioners of receipt of this information and inform them that, in order to meaningfully consider this information, the Services consider the statutory deadlines to now run from the receipt date of the supplemental information. The proposed provision would clarify our position that the statutory period applicable to making any required finding would be re-set to begin running from the time such additional information is received by the Secretaries. In effect, the supplemental information, together with the original petition, will be considered a new petition that constructively supplants the original petition and re-sets the period for making a 90-day finding under section 4(b)(3)(A) of the Act. This is consistent with 16 U.S.C. 1533(b)(3)(A) and 1533(b)(3)(D)(i), which direct the Services to determine whether ''the petition'' presents substantial information indicating that the petitioned action may be warranted. Supplementing the information supporting a petition is, therefore, constructively the same as submitting a new petition. The Services propose to make this explicit in the regulations to ensure that the Services have adequate time to consider the supplemental information relevant to a petition. Also, by giving clear notice of this process, the Services can encourage petitioners to assemble all the information they believe necessary to support the petition prior to sending it to the Services for consideration, further enhancing the efficiency of the petition process.

Findings on a Petition To List, Delist, or Reclassify—Paragraph (g)

Proposed § 424.14(g) would explain the kinds of findings the Services may make on a petition to list, delist, or reclassify a species and the standards to be applied in that process. Proposed paragraph (g)(1) is drawn largely from current paragraph (b)(1), with some revisions. Most significantly, proposed paragraph (g)(1)(i) would clarify the substantial-information standard by defining it as credible scientific and commercial information that would lead a reasonable person conducting an impartial scientific review to conclude that the action proposed in the petition

may be warranted. Thus, conclusory statements made in a petition without the support of credible scientific or commercial information are not ''substantial information.'' For example, a petition that states only that a species is rare and thus should be listed, without other credible information regarding its status, does not provide substantial information. This interpretation is consistent with the Scott's riffle beetle case (*WildEarth Guardians* v. *Salazar* (D. Colo. Sept. 19, 2011)). In that case, the court rejected the challenge to a negative 90-day finding, because the petition did not present any information of any potential threat currently affecting the species or reasonably likely to do so in the foreseeable future. The court found that information as to the rarity of a species, without more information, is not ''substantial information'' that listing the species may be warranted.

In § 424.14(g)(1)(ii), we propose to add a new sentence to clarify that the Services may consider information that is readily available in the relevant agency's possession at the time it makes a 90-day finding. For purposes of § 424.14(g)(1), the Services recognize that the statute places the obligation squarely on the petitioner to present the requisite level of information to meet the ''substantial information'' test, and that the Services therefore should not seek to supplement petitions. (Please see the Columbian sharp-tailed grouse case (*WildEarth Guardians* v. *U.S. Secretary of the Interior,* 2011 U.S. Dist. Lexis 32470 (D. Idaho Mar. 28, 2011)), which provided, among other things, that the petitioner has the burden of providing substantial information.) However, the Services believe they should evaluate such petitions in context and using the Services' expertise. In order to apply their best professional judgment, Service staff reviewing petitions may need to take into account information readily available in the agency's possession, including both information tending to support the petition and information tending to contradict the information presented therein. Although the Services are mindful that, at the stage of formulating an initial finding, they should not engage in outside research or an effort to comprehensively compile the best available information, they must be able to place the information presented in the petition in context.

The Act contemplates a two-step process in reviewing a petition. The 12-month finding is meant to be the more in-depth determination and follows a status review, while the 90-day finding is meant to be a quicker evaluation of a more limited set of information. However, based on their experience in administering the Act, the Services conclude that evaluating the information presented in the petition in a vacuum can lead to inaccurately supported decisions and misdirection of resources away from higher priorities. It may be difficult for the Services to bring informed expertise to their evaluation of the facts and claims alleged in a petition without considering the petition in the context of other information of the sort that the Services maintain in their possession and would routinely consult in the course of their work. It is reasonable for the Services to be able to examine the veracity of the information included in a petition prior to committing limited Federal resources to the significant expense of a status review.

The Act's legislative history also supports explicitly recognizing the discretion that the Services have to bring their informed expertise and judgment to bear in reviewing petitions. In a discussion of judicial review of the Secretary's 90-day findings on petitions, a House Conference report states that, when courts review such a decision, the ''object of [the judicial] review is to determine whether the Secretary's action was arbitrary or capricious *in light of the scientific and commercial information available* concerning the petitioned action.'' H.R. Conf. Rep. No. 97–835, at 20, reprinted in 1982 U.S.C.C.A.N. 2860, 2862 (emphasis added). By requiring courts to evaluate the Secretary's substantial information findings in light of information ''available,'' this statement suggests that the drafters anticipated that the Secretary could evaluate petitions in the context of scientific and commercial information available to the Services, and not limited arbitrarily to a subset of available information presented in the petitions. In these regulatory amendments, the Services have crafted a balanced approach that will ensure that the Services may take into account the information available to us, without opening the door to the type of wide-ranging survey more appropriate for a status review. The intent is not to solicit new information.

The precise range of information properly considered readily available in the agency's possession will vary with circumstances, but could include the information physically held by any office within the Services (including, for example, the NMFS Science Centers and FWS Field Offices), and may also include information stored electronically in databases routinely consulted by the Services in the ordinary course of their work. For example, it would be appropriate to consult online databases such as the Integrated Taxonomic Information System (*http://www.itis.gov*), a database of scientifically credible nomenclature information maintained in part by the Services.

Proposed paragraph (g)(1)(iii) would explain how the substantial-information standard applies to a petition to list, delist, or reclassify a species that is submitted after the Secretary has already conducted a status review of that species and determined that the petitioned action is not warranted, or made another listing action; such petitions are referred to as ''subsequent petitions.'' Subsequent petitions may follow a 12-month finding or a final determination on a proposed listing, reclassification, or delisting rule. The prior status review and determination are part of the information readily available in the agency's possession for consideration in evaluating the subsequent petition, and they play an important role in setting the context for the 90-day finding. In addition, 5-year reviews completed for listed species would be considered in our evaluation of a petition to delist or reclassify. Although the substantial-information standard applies to all petitions under section 4(b)(3)(A) of the Act, the standard's application depends on the context in which the finding is being made. The context of a finding after a status review and determination is quite different than that before any status review has been completed. Thus, proposed § 424.14(g)(1)(iii) requires that for a subsequent petition to provide substantial information the petition must provide sufficient new information or analysis such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted, despite the previous determination. (Please see the Columbian sharp-tailed grouse case (*WildEarth Guardians* v. *U.S. Secretary of the Interior,* 2011 U.S. Dist. Lexis 32470 (D. Idaho Mar. 28, 2011)), in which the court found the FWS could consider scientific conclusions in previous 12-month finding valid, because that finding was not challenged.)

A reasonable person would not conclude that the petitioned action may be warranted if the petition fails to present any substantial new information or analysis that might alter the conclusions of the Services' prior determination. Following a positive 90-day finding on a petition, the Services gather all available scientific and

commercial information and conduct a status review of the species; the resulting 12-month finding is a result of this review. The Secretary may also initiate and conduct a status review on his or her own and determine if listing, delisting, or reclassifying is warranted. Similarly, a final determination on a proposed rule to list or delist a species requires that we first conduct a status review of the species. If the subsequent petition fails to provide any substantial new information or analysis beyond that already considered in a prior status review or 5-year review that resulted in a finding that listing or reclassification of the species is not warranted, it would not be rational to expect a different outcome.

One corollary of this conclusion is that the Secretary may find that a subsequent petition fails the ''substantial information'' standard, even though a prior petition seeking the same action initially received a positive 90-day finding. Because the prior status review, and resultant 12-month finding, are now a part of the information readily available in the agency's possession, the subsequent petition is on a different footing from the prior petition. Although similar information may have qualified as ''substantial'' when it was initially evaluated, it may not necessarily be considered substantial in the context of the completed status review.

The completion of a status review of a species consumes considerable agency resources. The application of § 424.14(g)(1)(iii) is intended to assist the Services in making judicious use of those resources, by eliminating unnecessary duplication of effort in responding to a petition when the Services have already evaluated the species in question and no substantial new information or analysis is available. This would allow the Services to instead concentrate on petitions for actions that will best make use of limited agency resources and potentially result in greater conservation value for a species that may be in need of the protections of the Act.

Proposed § 424.14(g)(2) is substantially the same as current paragraph (b)(3). Among other changes, we propose new language clarifying the standard for making expeditious-progress determinations in warranted-but-precluded findings, including (in paragraph (g)(2)(iii)(B)) a clear acknowledgement that such determinations are to be made in light of resources available after complying with nondiscretionary duties, court orders, and court-approved settlement agreements to take actions under section 4 of the Act. Current paragraph (b)(4) would be redesignated as paragraph (g)(3), although we propose to remove the reference in the current language that ''no further finding of substantial information will be required,'' as it merely repeats statutory language.

Findings on a Petition To Revise Critical Habitat—Paragraph (h)

Proposed § 424.14(h) would explain the kinds of findings that the Services may make on a petition to revise critical habitat. Proposed paragraph (h)(1) is essentially the same as current paragraph (c)(1) and describes the standard applicable to the Secretary's finding at the 90-day stage. Please refer to the discussion of the ''substantial information'' test discussed in the description of § 424.14(g)(1), above. Proposed paragraph (h)(2) would specifically acknowledge, consistent with the statute, that such finding may, but need not, take a form similar to one of the findings called for at the 12-month stage in the review of a petition to list, delist, or reclassify species. Section 4(a)(3)(A) of the Act establishes a mandatory duty to designate critical habitat for listed species to the maximum extent prudent and determinable at the time of listing (in subsection (A)(i)), but respecting subsequent revision of such habitat provides only that the Services ''*may,* from time-to-time thereafter as appropriate, revise such designation'' (in subsection (A)(ii) (emphasis added)).

That the Services have broad discretion to decide when it is appropriate to revise critical habitat is also evident in the differences between the Act's provisions discussing petitions to revise critical habitat, on the one hand, and the far more prescriptive provisions regarding the possible findings that can be made at the 12-month stage on petitions to list, delist, or reclassify species, on the other. Section 4(b)(3)(B) includes three detailed and exclusive options for 12-month findings on petitions to list, delist, or reclassify species. In contrast, section 4(b)(3)(D)(ii) requires only that the Secretary (acting through the Services) ''determine how he intends to proceed with the requested revision'' and promptly publish notice of such intention in the **Federal Register** within 12 months of receipt of a petition to revise critical habitat that has been found to present substantial information that the petitioned revision may be warranted. The differences in these subsections indicates that the listing petition procedures are not required to be followed in determining how to proceed with petitions to revise critical habitat. See *Sierra Club* v. *U.S. Fish and Wildlife Service,* 2013 U.S. Dist. LEXIS 37349 (D.D.C. Mar. 19, 2013) (12-month determinations on petitions to revise are committed to the agency's discretion by law, and thus unreviewable under the Administrative Procedure Act); *Morrill* v. *Lujan,* 802 F. Supp. 424 (S.D. Ala. 1992) (revisions to critical habitat are discretionary); see also *Barnhart* v. *Sigman Coal Co., Inc.,* 122 S. Ct. 941, 951 (2002) (''it is a general principle of statutory construction that when 'Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion' '') (citing *Russello* v. *United States,* 464 U.S. 16, 23 (1983)); *Federal Election Commission* v. *National Rifle Ass'n of America,* 254 F.3d 173, 194 (D.C. Cir. 2001) (same).

Further, the legislative history for the 1982 amendments that added the petition provisions to the Act confirms that Congress intended to grant discretion to the Services in determining how to respond to petitions to revise critical habitat. After discussing at length the detailed listing petition provisions and their intended meaning, Congress said of the critical habitat petition requirements, ''Petitions to revise critical habitat designations may be treated differently.'' H.R. Rep. No. 97–835, at 22 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2860, 2862.

The Services may find in particular situations that terminology similar to that set out in the listing-petition provisions is useful for explaining their intended response at the 12-month stage on a petition to revise critical habitat. For example, the Services have, at times, used the term ''warranted'' to indicate that requested revisions of critical habitat would satisfy the definition of critical habitat in section 3 of the Act. However, use of the listing-petition terms in a finding on a petition to revise critical habitat would not mean that the associated listing-petition procedures and timelines apply or are required to be followed with respect to the petition. For example, if the Services find that a petitioned revision of critical habitat is, in effect, ''warranted,'' in that the areas would meet the definition of ''critical habitat,'' that finding would not require the Services to publish a proposed rule to implement the revision in any particular timeframe. Similarly, a finding on a petition to revise critical habitat that uses the phrase ''warranted but precluded,'' or a functionally similar phrase, to describe the Secretary's intention would not trigger the

requirements of section 4(b)(3)(B)(iii) or (C) (establishing requirements to make particular findings, to implement a monitoring system, etc.).

Though the Services have discretion to determine how to proceed with a petition to revise critical habitat, the Services believe that certain factors respecting conservation and recovery of the relevant species are likely to be relevant and potentially important to most such determinations. Such factors may include, but are not limited to: The status of the existing critical habitat for which revisions are sought (*e.g.,* when it was designated, the extent of the species' range included in the designation); the effectiveness or potential of the existing critical habitat to contribute to the conservation of the relevant listed species; the potential conservation benefit of the petitioned revision to the listed species relative to the existing designation; whether there are other, higher-priority conservation actions that need to be completed under the Act, particularly for the species that is the subject of the petitioned revision; the availability of personnel, funding, and contractual or other resources required to complete the requested revision; and the precedent that accepting the petition might set for subsequent requested revisions.

Petitions To Initially Designate Critical Habitat and Petitions for Special Rules—Paragraph (i)

Proposed § 424.14(i) would be substantially the same as current paragraph (d), regarding petitions to initially designate critical habitat or for adoption of special rules under section 4(d) of the Act.

Withdrawn Petitions—Paragraph (j)

Proposed § 424.14(j) would describe the process for a petitioner to withdraw a petition, and the Services' discretion to discontinue action on the withdrawn petition. Although the Services may discontinue work on a 90-day or 12-month finding for a petition that is withdrawn, in the case of a petition to list a species, the Services may use their own process to evaluate whether the species may warrant listing and whether it should become a candidate for listing. In the case of the withdrawal of a petition to delist, uplist or downlist a species, the Services may use the 5-year review process to further evaluate the status of the species, or elect to consider the issue at any time.

Request for Information

Any final rule based on this proposal will consider information and recommendations timely submitted from all interested parties. We solicit comments, information, and recommendations from governmental agencies, Native American tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties on this proposed rule. All comments and materials received by the date listed in **DATES**, above, will be considered prior to the approval of a final rule.

We request comments and information evaluating each of several alternatives for insuring greater inclusion of relevant data supporting petitions, including information available from State conservation agencies within the range of the species. We specifically seek comment on proposed paragraph (b)(9), requiring petitioner coordination with States prior to submission of a petition to the Fish and Wildlife Service, and paragraph (b)(10), requiring certification that all reasonably available information, including relevant information publicly available from affected States' Web sites, has been gathered and appended to a petition filed with either Service. We note that either of these two provisions could stand alone, or both could be included in a final rule, as shown in the proposed regulatory text. We also suggested an alternative to (b)(10) that would require a certification only that relevant information from affected States' Web sites has been gathered and appended to a petition filed with either Service. We seek information on which alternatives, alone or in combination, would be most consistent with law and best achieve our goals of fostering better-informed petitions and greater cooperation with States. We also seek comments and information regarding any other alternative the public may suggest to achieve the goals of greater coordination with States and better-supported petitions. Finally, we seek comment on the criteria in paragraph (d), including comments on the utility of the criteria, the adequacy of the criteria, and the effect of the criteria on the workload on the petitioner.

You may submit your information concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we receive in response to this proposed rule will be available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Conservation and Classification (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This proposed rule is consistent with Executive Order 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.''

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility

analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The proposed rule would revise and clarify the regulations governing documentation needed by the Services in order to effectively and efficiently evaluate petitions under the Act. While some of the changes may require petitioners to expend some time (such as coordination with State(s)) and effort (providing complete petitions), we do not expect this will prove to be a hardship, economically or otherwise. Further, we expect the effect on any external entities, large or small, would likely be positive, as they will lead to improved quality of petitions through expanded content requirements and guidelines.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the *Regulatory Flexibility Act* section above, this proposed rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, this proposed rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of endangered and threatened species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant Federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to the petition process under the Endangered Species Act, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify the petition process under the Endangered Species Act.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

National Environmental Policy Act

We are analyzing this proposed regulation in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), the Department of the Interior Manual (516 DM 1–6 and 8), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6. We invite the public to comment on the extent to which this proposed regulation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this regulation.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule, if made final, is not expected to affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule or policy we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 424

Administrative practice and procedure, Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 424, subchapter A of chapter IV, title 50 of the Code of Federal Regulations, as set forth below:

PART 424—LISTING ENDANGERED AND THREATENED SPECIES AND DESIGNATING CRITICAL HABITAT

■ 1. The authority citation for part 424 continues to read as follows:

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

■ 2. Revise § 424.14 to read as follows:

§ 424.14 Petitions.

(a) *Ability to petition.* Any interested person may submit a written petition to the Secretary requesting that one of the actions described in § 424.10 be taken for a species.

(b) *Requirements for petitions.* A petition must clearly identify itself as such, be dated, and contain the following information:

(1) The name, signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner;

(2) The scientific and any common name of the species that is the subject of the petition. One and only one species may be the subject of a petition;

(3) A clear indication of the administrative action the petitioner seeks (*e.g.,* listing of a species or revision of critical habitat);

(4) A detailed narrative justification for the recommended administrative action that contains an analysis of the information presented;

(5) Literature citations that are specific enough for the Secretary to locate the information cited in the petition, including page numbers or chapters as applicable;

(6) Electronic or hard copies of any supporting materials (*e.g.,* publications, maps, reports, letters from authorities) cited in the petition, or valid links to public Web sites where the supporting materials can be accessed; and

(7) For a petition to list a species, information to establish whether the subject entity is a ''species'' as defined in the Act.

(8) For a petition to list a species, delist a species, or change the status of a listed species, information on the current geographic range of the species, including range States or countries.

(9) For any petition submitted to the U.S. Fish and Wildlife Service pertaining to species found within the United States, a certification:

(i) That a copy of the petition was provided to the State agency(ies) responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species occurs at least 30 days prior to submission to the Service; and

(ii) That the State agency(ies) either:

(A) Provided to the petitioner data or written comments regarding the accuracy or completeness of the petition, and all those data or comments have been clearly labeled as such and appended to the petition; or

(B) Did not provide to the petitioner in response any data or written comments regarding the accuracy or completeness of the petition.

(10) Certification that the petitioner has gathered all relevant information (including information that may support a negative 90-day finding) that is reasonably available, such as that available on Web sites maintained by the affected States, and has clearly labeled this information and appended it to the petition.

(c) *Types of information to be included in petitions to add or remove species from the lists, or change the listed status of a species.* The Secretary's determination as to whether the petition provides substantial information that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information; failure to include adequate information on any one or more of the following (except paragraph (5)) may result in the Secretary finding that the petition does not present substantial information:

(1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;

(2) Identification of the factors under section 4(a)(1) of the Act that may affect the species and where these factors are acting upon the species;

(3) Whether any or all of the factors alone or in combination identified in section 4(a)(1) of the Act may cause the species to be an endangered species or threatened species (*i.e.,* place the species in danger of extinction now or in the foreseeable future), and, if so, how, including a description of the magnitude and imminence of the threats;

(4) Information on adequacy of regulatory protections and conservation activities initiated or currently in place that may protect the species or its habitat; and

(5) Except for petitions to delist, information that is useful in determining whether a critical habitat designation for the species is prudent and determinable (see § 424.12), including information on recommended boundaries and physical features and the habitat requirements of the species; such information, however, will not be a basis for determining whether the petition has presented substantial information that the petitioned action may be warranted.

(d) *Additional information to include in petitions to revise critical habitat.* The Secretary's determination as to whether the petition provides substantial information that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information; failure to include adequate information on any one or more of the following may result in the Secretary finding that the petition does not present substantial information:

(1) A description and map(s) of areas that the current designation does not include that should be included, or includes that should no longer be included, and the benefits of designating or not designating these specific areas as critical habitat. Petitioners should include available data layers if feasible;

(2) A description of the physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

(3) For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at time it was listed, information indicating that the specific areas contain the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection. The petitioner should also indicate which specific areas contain which features;

(4) For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain features (including features that allow the area to support the species periodically, over time) that are essential to the conservation of the species, or that these features do not require special management consideration or protections;

(5) For any areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species; and

(6) Information demonstrating that the petition includes a complete presentation of the relevant facts, including an explanation of what sources of information the petitioner consulted in drafting the petition, as well as any relevant information known

to the petitioner not included in the petition.

(e) *Response to requests.* (1) If a request does not meet the requirements set forth at paragraph (b) of this section, the Secretary will reject the request without making a finding, and will notify the sender and provide an explanation of the rejection.

(2) If a request does meet the requirements set forth at paragraph (b) of this section, the Secretary will acknowledge, in writing, the receipt of a petition, within 30 days of receipt.

(f) *Supplemental information.* If the petitioner provides supplemental information before the initial finding is made and asks that it be considered in making a finding, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received.

(g) *Findings on petitions to add or remove a species from the lists, or change the listed status of a species.* (1) To the maximum extent practicable, within 90 days of receiving a petition to add a species to the lists, remove a species from the lists, or change the listed status of a species, the Secretary will make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The Secretary will promptly publish such finding in the **Federal Register** and so notify the petitioner.

(i) For the purposes of this section, ''substantial scientific or commercial information'' refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered ''substantial information.''

(ii) The Secretary will consider the information referenced at paragraphs (b), (c), and (f) of this section. The Secretary may also consider information readily available in the agency's possession at the time the determination is made in reaching his or her initial finding on the petition. The Secretary will not consider any supporting materials cited by the petitioner that are not provided to us by the petitioner in the format required at paragraph (b)(6) of this section or otherwise readily available in our possession.

(iii) The ''substantial scientific or commercial information'' standard must be applied in light of any prior determinations made by the Secretary for the species that is the subject of the petition. Where the Secretary has already conducted a status review of that species (whether in response to a petition or on the Secretary's own initiative) and made a final listing determination, any petition seeking to list, reclassify, or delist that species will be considered a ''subsequent petition'' for purposes of this section. A subsequent petition provides ''substantial scientific or commercial information'' only if it provides sufficient new information or analysis not considered in the previous determination (or previous 5-year review, if applicable) such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous determination.

(2) If a positive 90-day finding is made, the Secretary will commence a review of the status of the species concerned. Within 12 months of receipt of the petition, the Secretary will make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the **Federal Register** and so notify the petitioner.

(ii) The petitioned action is warranted, in which case the Secretary will promptly publish in the **Federal Register** a proposed regulation to implement the action pursuant to § 424.16; or

(iii) The petitioned action is warranted, but:

(A) The immediate proposal and timely promulgation of a regulation to implement the petitioned action is precluded because of other pending proposals to list, delist, or change the listed status of species; and

(B) Expeditious progress is being made to list, delist, or change the listed status of qualified species, in which case such finding will be promptly published in the **Federal Register** together with a description and evaluation of the reasons and data on which the finding is based. The Secretary will make a determination of expeditious progress in relation to the amount of funds available after complying with nondiscretionary duties under section 4 of the Act and court orders and court-approved settlement agreements to take actions pursuant to section 4 of the Act.

(3) If a finding is made under paragraph (g)(2)(iii) of this section with regard to any petition, the Secretary will, within 12 months of such finding, again make one of the findings described in paragraph (g)(2) of this section with regard to such petition.

(h) *Findings on petitions to revise critical habitat.* (1) To the maximum extent practicable, within 90 days of receiving a petition to revise a critical habitat designation, the Secretary will make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary will promptly publish such finding in the **Federal Register** and so notify the petitioner.

(i) For the purposes of this section, ''substantial scientific information'' refers to credible scientific information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the revision proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific information will not be considered ''substantial information.''

(ii) The Secretary will consider the information referenced at paragraphs (b), (d), and (f) of this section. The Secretary may also consider other information readily available in the agency's possession at the time the determination is made in reaching its initial finding on the petition. The Secretary will not consider any supporting materials cited by the petitioner that are not provided to us by the petitioner in the format required by paragraph (b)(6) of this section or otherwise readily available in our possession.

(2) Within 12 months after receiving a petition found to present substantial information indicating that revision of a critical habitat designation may be warranted, the Secretary will determine how to proceed with the requested revision, and will promptly publish notice of such intention in the **Federal Register**. Such finding may, but need not, take a form similar to one of the findings described under paragraph (g)(2) of this section.

(i) *Petitions to designate critical habitat or adopt special rules.* Upon receiving a petition to designate critical habitat or to adopt a special rule to provide for the conservation of a species, the Secretary will promptly conduct a review in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and take appropriate action.

(j) *Withdrawal of petition.* A petitioner may withdraw the petition at any time during the petition process by submitting such request in writing. This request must include the name,

signature, address, telephone number, if any, and the association, institution, or business affiliation, if any, of the petitioner. If a petition is withdrawn, the Secretary may, at his or her discretion, discontinue action on the petition finding, even if the Secretary has already made a positive 90-day finding.

Dated: May 15, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Dated: May 13, 2015.

Samuel D. Rauch III,

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

[FR Doc. 2015–12316 Filed 5–20–15; 8:45 am]

BILLING CODE 4310–55–P; 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150428405–5405–01]

RIN 0648–XD927

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual management measures and harvest specifications to establish the allowable catch levels (*i.e.* annual catch limit (ACL)/harvest guideline (HG)) for the northern subpopulation of Pacific sardine (hereafter, simply Pacific sardine), in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2015, through June 30, 2016. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed would include a prohibition on directed non-tribal Pacific sardine commercial fishing for Pacific sardine off the coasts of Washington, Oregon and California, which is required because the estimated 2015 biomass of Pacific sardine has dropped below the cutoff threshold in the HG control rule. Under the proposed action Pacific sardine may still be harvested as part of either the live bait or tribal fishery or incidental to other fisheries; the incidental harvest of Pacific sardine would initially be limited to 40-percent by weight of all fish per trip when caught with other CPS or up to 2 metric tons (mt) when caught with non-CPS. The proposed annual catch limit (ACL) for 2015–2016 Pacific sardine fishing year is 7,000 mt. This proposed rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by June 5, 2015.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2015–0064 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0064,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the report ''Assessment of Pacific Sardine Resource in 2015 for U.S.A. Management in 2015–2016'' may be obtained from the West Coast Regional Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), and HG, along with recommendations and comments from the Team, Subpanel, and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. NMFS manages the Pacific sardine fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual specifications published in the **Federal Register** establish the allowable harvest levels (*i.e.* OFL/ACL/HG) for each Pacific sardine fishing year. The purpose of this proposed rule is to implement these annual catch reference points for 2015–2016, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principle commercial fishery is determined using the FMP-specified harvest guideline (HG) formula. The HG formula in the CPS FMP is HG = [(Biomass − CUTOFF) * FRACTION * DISTRIBUTION] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above. For the 2015–2016 management season this is 96,688 mt.

2. *CUTOFF.* This is the biomass level below which no HG is set. The FMP established this level at 150,000 mt.

3. *DISTRIBUTION.* The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.

4. *FRACTION.* The temperature-varying harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

As described above, the Pacific sardine HG control rule, the primary mechanism for setting the annual directed commercial fishery quota, includes a CUTOFF parameter which has been set as a biomass amount of 150,000 mt. This amount is subtracted from the annual biomass estimate before calculating the applicable HG for the fishing year. Therefore, because this year's biomass estimate is below that