proposed rule until April 25, 2016. We believe that an additional 60-day period allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues. The period for comments regarding information collection issues under the Paperwork Reduction Act of 1995 remains unchanged, where comments were to be submitted until February 22, 2016 (see 81 FR 3751, January 22, 2016).

Dated: February 18, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–03716 Filed 2–22–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129067–15]

RIN 1545–BM99

Definition of Political Subdivision

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the definition of political subdivision for purposes of tax-exempt bonds. The proposed regulations are necessary to specify the elements of a political subdivision. The proposed regulations will affect State and local governments that issue tax-exempt bonds and users of property financed with tax-exempt bonds. Under certain transition rules, however, the proposed definition of political subdivision will not apply for determining whether outstanding bonds are obligations of a political subdivision and will not apply to existing entities for a transition period. This document also provides a notice of a public hearing for these proposed regulations.

DATES: Written or electronic comments must be received by May 23, 2016. Request to speak and outlines of topics to be discussed at the public hearing scheduled for June 6, 2016, at 10:00 a.m., must be received by May 23, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–129067–15), Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–129067–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (REG–129067–15). The public hearing will be held at the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Spence Hanemann at (202) 317–6980; concerning submissions of comments and the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 103 of the Internal Revenue Code (Code). Section 103 generally provides that, with certain exceptions, gross income does not include interest on any obligation of a State or political subdivision thereof. Section 1.103–1 of the Income Tax Regulations (the Existing Regulations) defines political subdivision as ''any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.''

On a few occasions, Federal courts have ruled on whether an entity qualifies as a political subdivision. *E.g., Philadelphia Nat'l Bank* v. *United States,* 666 F.2d 834 (3d Cir. 1981); *Comm'r of Internal Revenue* v. *White's Estate,* 144 F.2d 1019 (2d Cir. 1944). The IRS has also addressed this issue in revenue rulings, most recently in 1983. *E.g.,* Rev. Rul. 83–131 (1983–2 CB 184); Rev. Rul. 78–138 (1978–1 CB 314). Because the results in these revenue rulings generally turn on the unique facts and circumstances of the individual cases, numerous entities have sought and received letter rulings on whether they are political subdivisions. Letter rulings, however, are limited to their particular facts, may not be relied upon by taxpayers other than the taxpayer that received the ruling, and are not a substitute for published guidance. *See* 26 U.S.C. 6110(k)(3) (2015) (providing generally that a ruling, determination letter, or technical advice memorandum may not be used or cited as precedent).

Commenters have requested additional published guidance, to be applied prospectively, on which facts and circumstances are germane to an entity's status as a political subdivision. The Treasury Department and IRS recognize the need to clarify the definition of political subdivision to provide greater certainty to prospective issuers and to promote greater consistency in how the definition is applied across a wide range of factual situations. These proposed regulations (the Proposed Regulations) would provide a new definition of political subdivision for purposes of tax-exempt bonds and would update and streamline other portions of the Existing Regulations. The definition of political subdivision in the Proposed Regulations does not apply in determining whether an entity is treated as a political subdivision of a State for purposes of section 414(d) of the Code.

Explanation of Provisions

1. Definition of Political Subdivision

The Proposed Regulations clarify and further develop the eligibility requirements for a political subdivision. To qualify as a political subdivision under the Proposed Regulations, an entity must meet three requirements, taking into account all of the facts and circumstances: sovereign powers, governmental purpose, and governmental control. The Proposed Regulations also authorize the Commissioner to set forth in future guidance to be published in the Internal Revenue Bulletin additional circumstances in which an entity qualifies as a political subdivision.

A. Sovereign Powers

The Proposed Regulations continue, without substantive change, the longstanding requirement that a political subdivision be empowered to exercise at least one of the generally recognized sovereign powers. The three sovereign powers recognized for this purpose are eminent domain, police power, and taxing power. *See Comm'r of Internal Revenue* v. *Shamberg's Estate,* 144 F.2d 998 (2d Cir. 1944). The entity must be able to exercise a substantial amount of at least one of these powers. *See, e.g.,* Rev. Rul. 77–164 (1977–1 CB 20); Rev. Rul. 77–165 (1977–1 CB 21).

B. Governmental Purpose

In determining whether an entity is a political subdivision, the case law and administrative guidance interpreting the definition of political subdivision in the Existing Regulations commonly consider whether the entity serves a public purpose. Historically, the determination of whether an entity serves a public purpose has focused on the purpose for which the entity was

created, usually as set forth in the legislation authorizing creation of the entity, rather than on the entity's conduct after its creation. *See, e.g., Shamberg's Estate,* 144 F.2d at 1004. The Proposed Regulations require that a political subdivision serve a governmental purpose. A governmental purpose requires, among other things, that the purpose for which the entity was created, as set out in its enabling legislation, be a public purpose and that the entity actually serve that purpose. It also requires that the entity operate in a manner that provides a significant public benefit with no more than incidental benefit to private persons. *Cf.,* Rev. Rul. 90–74 (1990–2 CB 34) (applying an ''incidental private benefit'' standard for purposes of determining whether income is included in gross income under section 115(1)).

C. Governmental Control

The Proposed Regulations provide that a political subdivision must be governmentally controlled. The Proposed Regulations provide rules for determining both what constitutes control and which parties must possess that control.

i. Definition of Control

The Proposed Regulations define control to mean ongoing rights or powers to direct significant actions of the entity. Rights or powers to direct the entity's actions only at a particular point in time are not ongoing and, therefore, do not constitute control. For example, the right to approve an entity's plan of operation as a condition of the entity's formation is not an ongoing right. To constitute control, a collection of rights and powers must enable its holder to direct the significant actions of the entity.

The Proposed Regulations provide three non-exclusive benchmarks of rights or powers that constitute control: (1) The right or power both to approve and to remove a majority of an entity's governing body; (2) the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or (3) the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Aside from these three arrangements, the determination of whether a collection of rights and powers constitutes control will depend on the facts and circumstances. Neither the right to dissolve an entity nor procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are control. *Cf.,* Rev. Rul. 69–453 (1969–2 CB 182) (addressing procedures that do not constitute control in the context of instrumentalities).

ii. Control Vested in a State or Local Governmental Unit or an Electorate

Control by a small faction of private individuals, business corporations, trusts, partnerships, or other persons is fundamentally not governmental control. Therefore, the Proposed Regulations generally require that control be vested in either a general purpose State or local governmental unit or in an electorate established under an applicable State or local law of general application. If, however, a small faction of private persons controls an electorate, that electorate's control of the entity does not constitute governmental control of the entity. Accordingly, the Proposed Regulations provide that an entity controlled by an electorate is not governmentally controlled when the outcome of the exercise of control is determined solely by the votes of an unreasonably small number of private persons.

The determination of whether the number of private persons controlling an electorate is unreasonably small generally depends on all of the facts and circumstances. To provide certainty, the Proposed Regulations limit application of this facts and circumstances test to situations that fall between two quantitative measures of concentration in voting power. The number of private persons controlling an electorate is always unreasonably small if the combined votes of the three voters with the largest shares of votes in the electorate will determine the outcome of the relevant election, regardless of how the other voters vote. The number of private persons controlling an electorate is never unreasonably small if determining the outcome of the relevant election requires the combined votes of more voters than the 10 voters with the largest shares of votes in the electorate. For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in the relevant election without giving rise to a private faction. For purposes of applying these measures of concentration in voting power, related parties are treated as a single voter and the votes of the related parties are aggregated.

iii. Possible Relief for Development Districts

Some observers have suggested that, despite private control, development districts should be political subdivisions during an initial development period in which one or two private developers elect the district's governing body and no other governmental control exists. The Treasury Department and IRS recognize that the governmental control requirement may present challenges for such development districts. In these circumstances, the Treasury Department and IRS are concerned about the potential for excessive private control by individual developers, the attendant impact of excessive issuance of tax-exempt bonds, and inappropriate private benefits from this Federal subsidy. The Treasury Department and IRS seek public comment on whether it is necessary or appropriate to permit such districts to be political subdivisions during an initial development period; how such relief might be structured; what specific safeguards might be included in the recommended relief to protect against potential abuse; and whether the proposed prospective effective dates and transition periods in § 1.103–1(d) of the Proposed Regulations provide sufficient relief.

2. Streamlining Amendments

In addition to amending the definition of political subdivision, paragraphs (a) and (b) of the Proposed Regulations update the references in the general provisions of the Existing Regulations to reflect changes to the Code made in the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, and other laws and regulations since the promulgation of the longstanding Existing Regulations. The Proposed Regulations also streamline these provisions. In general, the Treasury Department and the IRS intend that these proposed amendments not change the meaning of the Existing Regulations. The last sentence of § 1.103–1(a) of the Proposed Regulations, however, clarifies that the continued tax-exemption of an issue of bonds depends on its issuer's continued status as a qualifying issuer of tax-exempt bonds. The Treasury Department and IRS seek comments on the need for remedial action provisions in the event the entity ceases to qualify as a political subdivision and on the substance of any such provisions.

3. Applicability Dates and Reliance on Proposed Regulations

Subject to certain transition rules, the Proposed Regulations generally would apply to all entities for all purposes of the tax-exempt bond provisions of sections 103 and 141 to 150 beginning 90 days after the Proposed Regulations are finalized. In order to ease hardship that may arise from the new definition

of political subdivision, under proposed transition rules, that definition would not apply for purposes of determining whether outstanding bonds and refunding bonds in which the weighted average maturity is not extended continue to be obligations of a political subdivision. While these transition rules for outstanding bonds and refunding bonds would apply for the purpose of determining whether these bonds continue to be obligations of a political subdivision, the new proposed definition of political subdivision would apply for other purposes under sections 103 and 141 to 150, such as whether a new entity that subsequently became a user of a project financed with such bonds qualified as a State or local governmental unit for purposes of section 141. Furthermore, under another proposed transition rule that would apply to entities in existence prior to 30 days after the Proposed Regulations are published, the proposed definition of political subdivision would not apply for any purpose until three years and ninety days after the Proposed Regulations are finalized. This three-year transition period provides existing entities an opportunity to restructure as necessary to satisfy the new definition of political subdivision and allows existing entities to continue to issue new bonds during the transition period. To enhance certainty, an issuer also may choose to apply the definition of political subdivision in § 1.103–1(c) in the final regulations in circumstances in which that definition otherwise would not apply under the transition rules.

In addition, prior to the applicability date of the final regulations, issuers may elect to apply the definition of political subdivision in § 1.103–1(c) of the Proposed Regulations in whole, but not in part, for any purpose of sections 103 and 141 through 150, provided such use is applied consistently for all purposes of sections 103 and 141 through 150 to any given entity.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Public Hearing

Before these Proposed Regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for June 6, 2016, at 10:00 a.m., in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by May 23, 2016. Submit a signed paper or electronic copy of the outline as prescribed in this preamble under the ''Addresses'' heading. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Spence Hanemann and Timothy Jones, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

Availability of IRS Documents

IRS revenue rulings cited in this notice of proposed rulemaking are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.103–1 is revised to read as follows:

§ 1.103–1 Interest on State or local bonds.

(a) *Interest on State or local bonds.* Under section 103(a), except as otherwise provided in section 103(b), gross income does not include interest on any State or local bond. Under section 103(c), the term *State or local bond* means any obligation (as defined in § 1.150–1(b)) of a State (including for this purpose the District of Columbia or any possession of the United States) or a political subdivision thereof (a State or local governmental unit). Obligations issued by or on behalf of any State or local governmental unit by a constituted authority empowered to issue such obligations are the obligations of such a unit. An obligation qualifies as a State or local bond so long as the issuer of that obligation remains a State or local governmental unit or a constituted authority.

(b) *Certain limitations on interest exclusion.* Under section 103(b), the interest exclusion in section 103(a) is inapplicable to a private activity bond under section 141(a) (unless the bond is a qualified bond under section 141(e)), an arbitrage bond under section 148, or a bond which does not meet the applicable requirements of section 149.

(c) *Definition of political subdivision*—(1) *In general.* The term *political subdivision* means an entity that meets each of the requirements of paragraphs (c)(2) (sovereign powers), (c)(3) (governmental purpose), and (c)(4) (governmental control) of this section, taking into account all of the facts and circumstances, or that is described in published guidance issued pursuant to paragraph (c)(5) of this section. Entities that may qualify as political subdivisions include, among others, general purpose governmental entities, such as cities and counties (whether or not incorporated as municipal corporations), and special purpose governmental entities, such as special assessment districts that provide for

roads, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvements, and other governmental purposes for a State or local governmental unit.

(2) *Sovereign powers.* Pursuant to a State or local law of general application, the entity has a delegated right to exercise a substantial amount of at least one of the following recognized sovereign powers of a State or local governmental unit: The power of taxation, the power of eminent domain, and police power.

(3) *Governmental purpose.* The entity serves a governmental purpose. The determination of whether an entity serves a governmental purpose is based on, among other things, whether the entity carries out the public purposes that are set forth in the entity's enabling legislation and whether the entity operates in a manner that provides a significant public benefit with no more than incidental private benefit.

(4) *Governmental control.* A State or local governmental unit exercises control over the entity. For this purpose, control is defined in paragraph (c)(4)(i) of this section and a State or local governmental unit exercises such control only if the control is vested in persons described in paragraph (c)(4)(ii) of this section.

(i) *Definition of control. Control* means an ongoing right or power to direct significant actions of the entity. Rights or powers may establish control either individually or in the aggregate. Among rights or powers that may establish control, an ongoing ability to exercise one or more of the following significant rights or powers, on a discretionary and non-ministerial basis, constitutes control: the right or power both to approve and to remove a majority of the governing body of the entity; the right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; or the right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use. Procedures designed to ensure the integrity of the entity but not to direct significant actions of the entity are insufficient to constitute control of an entity. Examples of such procedures include requirements for submission of audited financial statements of the entity to a higher level State or local governmental unit, open meeting requirements, and conflicts of interest limitations.

(ii) *Control vested in a State or local governmental unit or an electorate.* Control is vested in persons described in paragraphs (c)(4)(ii)(A) or (c)(4)(ii)(B) of this section or a combination thereof:

(A) A State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities; or

(B) An electorate established under applicable State or local law of general application, provided the electorate is not a private faction (as defined in paragraph (c)(4)(iii) of this section).

(iii) *Definition of private faction*—(A) *In general.* A *private faction* is any electorate if the outcome of the exercise of control described in paragraph (c)(4)(i) of this section is determined solely by the votes of an unreasonably small number of private persons. The determination of whether a number of such private persons is unreasonably small depends on all of the facts and circumstances, including, without limitation, the entity's governmental purpose, the number of members in the electorate, the relationships of the members of the electorate to one another, the manner of apportionment of votes within the electorate, and the extent to which the members of the electorate adequately represent the interests of persons reasonably affected by the entity's actions. For purposes of this definition, the special rules in paragraphs (c)(4)(iii)(B) through (D) of this section apply.

(B) *Treatment of certain limited electorates as private factions.* An electorate is a private faction if any three private persons that are members of the electorate possess, in the aggregate, a majority of the votes necessary to determine the outcome of the relevant exercise of control.

(C) *Safe harbor—voting power dispersed among more than 10 persons.* An electorate is not a private faction if the smallest number of private persons who can combine votes to establish a majority of the votes necessary to determine the outcome of the relevant exercise of control is greater than 10 persons. For example, if an electorate consists of 20 private persons with equal, five-percent shares of the total votes, that electorate is not a private faction because a minimum of 11 members of that electorate is necessary to have a majority of the votes. By contrast, for example, if an electorate consists of 20 private persons with unequal voting shares in which some combination of 10 or fewer members has a majority of the votes, then that electorate does not qualify for the safe harbor from treatment as a private faction under this paragraph (c)(4)(iii)(C).

(D) *Operating rules.* The following rules apply for purposes of determining numbers of voters and voting control in paragraphs (c)(4)(iii)(B) and (C) of this section:

(*1*) Related parties (as defined in § 1.150–1(b)) are treated as a single person; and

(*2*) In computing the number of votes necessary to determine the outcome of the relevant exercise of control, all voters entitled to vote in an election are assumed to cast all votes to which they are entitled.

(5) *Authority of the Commissioner.* In guidance published in the Internal Revenue Bulletin, the Commissioner may set forth additional circumstances in which an entity qualifies as a political subdivision of a State or local governmental unit. See § 601.601(d)(2)(ii) of this chapter.

(d) *Applicability dates*—(1) *In general.* Except as otherwise provided in paragraphs (d)(2) through (4) of this section, this section applies to all entities for all purposes of sections 103 and 141 through 150 beginning on the date 90 days after the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

(2) *Applicability date of the definition of political subdivision for outstanding bonds.* For purposes of determining whether outstanding bonds of an entity are obligations of a political subdivision under section 103, the definition of political subdivision in paragraph (c) of this section does not apply to that entity with respect to its outstanding bonds that are issued before the general applicability date under paragraph (d)(1) of this section.

(3) *Applicability date of the definition of political subdivision for refunding bonds.* For purposes of determining whether refunding bonds of an entity are obligations of a political subdivision under section 103, the definition of political subdivision in paragraph (c) of this section does not apply to that entity with respect to its refunding bonds that are issued on or after the general applicability date under paragraph (d)(1) of this section to refund bonds with respect to which paragraph (c) of this section otherwise does not apply, provided that the weighted average maturity of the refunding bonds is no longer than the remaining weighted average maturity of the refunded bonds.

(4) *Applicability date of the definition of political subdivision for existing entities.* For existing entities that are created or organized before March 24, 2016, the definition of political subdivision in paragraph (c) of this section does not apply for any purpose of sections 103 and 141 to 150 during the three-year period beginning on the

general applicability date under paragraph (d)(1) of this section.

(5) *Elective application of definition of political subdivision.* An issuer may choose to apply the definition of political subdivision in paragraph (c) of this section to an issue of bonds in circumstances in which that section otherwise would not apply to that issue under paragraph (d)(2) or (3) of this section, provided that choice is applied consistently to the issue. An entity may choose to apply the definition of political subdivision in paragraph (c) of this section to an entity in circumstances in which that section otherwise would not apply to that entity under paragraph (d)(4) of this section, provided that choice is applied consistently to the entity.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–03790 Filed 2–22–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 160105011–6011–01]

RIN 0648–XE390

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List Three Manta Rays 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: 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list three manta rays, identified as the giant manta ray (*Manta birostris*), reef manta ray (*M. alfredi*), and Caribbean manta ray (*M. c.f. birostris*), range-wide or, in the alternative, any identified distinct population segments (DPSs), as threatened or endangered under the Endangered Species Act (ESA), and to designate critical habitat concurrently with the listing. We find that the petition and information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted for the giant manta ray and the reef manta ray. We will conduct a status review of these species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to these two species from any interested party. We also find that the petition and information in our files does not present substantial scientific or commercial information indicating that the Caribbean manta ray is a taxonomically valid species or subspecies for listing, and, therefore, it does not warrant listing at this time.

DATES: Information and comments on the subject action must be received by April 25, 2016.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA–NMFS–2016–0014, by either any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0014.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Maggie Miller, NMFS Office of Protected Resources (F/PR3), 1315 East-West Highway, Silver Spring, MD 20910, USA.

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 petition and related materials are available on our Web site at *http://www.fisheries.noaa.gov/pr/species/fish/manta-ray.html.*

FOR FURTHER INFORMATION CONTACT: Maggie Miller, Office of Protected Resources, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2015, we received a petition from Defenders of Wildlife to list the giant manta ray (*M. birostris*), reef manta ray (*M. alfredi*) and Caribbean manta ray (*M. c.f. birostris*) as threatened or endangered under the ESA throughout their respective ranges, or, as an alternative, to list any identified DPSs as threatened or endangered. The petition also states that if the Caribbean manta ray is determined to be a subspecies of the giant manta ray and not a distinct species, then we should consider listing the subspecies under the ESA. However, if we determine that the Caribbean manta ray is neither a species nor a subspecies, then the petition requests that we list the giant manta ray, including all specimens in the Caribbean, Gulf of Mexico and southeastern United States, under the ESA. The petition requests that critical habitat be designated concurrently with listing under the ESA. Copies of the petition are available upon request (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 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 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 DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS-U.S. Fish and Wildlife Service (USFWS) (jointly, ''the Services'') policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing,