the Office (whether by signing, filing, submitting, or later advocating) of this form, whether by a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this chapter that the existing text and any certification statements on this form have not been altered.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–14668 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226

[Docket No. 220706–0150]

RTID 0648–XR123

Listing Endangered or Threatened Species; 90-Day Finding on a Petition To Revise the Critical Habitat Designation for the North Pacific Right Whale

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 revise the critical habitat designation for the North Pacific right whale (*Eubalaena japonica*) under the Endangered Species Act (ESA). In April 2008, we issued a final rule designating approximately 3,050 square kilometers (~1,175 square miles) and approximately 91,850 square kilometers (~35,460 square miles) of critical habitat for North Pacific right whales in the Gulf of Alaska and the Southeast Bering Sea, respectively. The petition requests we revise this critical habitat.

We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We are hereby initiating a review of the currently designated critical habitat to determine whether revision is warranted. To ensure a comprehensive review, we are soliciting scientific and commercial information pertaining to this action.

DATES: Scientific and commercial information pertinent to the petitioned action must be received by September 12, 2022.

ADDRESSES: You may submit comments, information, or data on this document identified by docket number NOAA–NMFS–2022–0050, by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov.* In the Search box, enter the above docket number for this notice. Then, click on the Search icon. On the resulting web page, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written information to Jon Kurland, Regional Administrator for Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments or other information if sent by any other method, to any other address or individual, or received after the comment period ends. All comments and information received are a part of the public record and NMFS will post the comments 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 is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the petition prepared for this action are available from *http://www.regulations.gov* or from the NMFS website (see *https://www.fisheries.noaa.gov/species/north-pacific-right-whale#conservation-management*).

FOR FURTHER INFORMATION CONTACT: Jenna Malek, NMFS Alaska Region, *jenna.malek@noaa.gov,* (907) 271–1332.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2022, we received a petition from the Center for Biological Diversity and Save the North Pacific Right Whale requesting revision to the critical habitat designation for the North Pacific right whale. Currently, North Pacific right whale critical habitat consists of two areas of approximately 3,050 square kilometers (~1,175 square miles) and approximately 91,850 square kilometers (~35,460 square miles) in the Gulf of Alaska and the Southeast Bering Sea, respectively (73 FR 19000, April 8, 2008). The petition requests we revise this critical habitat to connect the two existing critical habitat areas by extending the Southeast Bering Sea boundary west and south to the Fox Islands, through Unimak Pass to the edge of the continental slope, and east to the Gulf of Alaska critical habitat area off the coast of Kodiak Island.

The Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) defines critical habitat as: (i) The specific areas within the geographical area currently occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed . . . upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Joint NMFS-Fish and Wildlife Service (FWS) regulations for designating critical habitat at 50 CFR 424.12(b)(1)(ii) state that the agencies will identify physical and biological features essential to the conservation of the species at an appropriate level of specificity using the best available scientific data. A physical and biological feature may be a single habitat characteristic or a more complex combination of characteristics, may include characteristics that support ephemeral or dynamic habitat conditions, and may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02). ''Special management considerations or protection'' means any method or procedure useful in protecting physical and biological features essential to the conservation of the species (50 CFR 424.02).

Section 4(b)(2) of the ESA requires us to designate, and make revisions to, critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary of Commerce may exclude any particular area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Section 4(b)(3)(D)(i) of the ESA requires, to the maximum extent practicable, that within 90 days of receipt of a petition to revise a critical habitat designation, the Secretary of Commerce make a finding on whether

that petition presents substantial scientific information indicating that the petitioned revision may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(i)).

The ESA implementing regulations issued jointly by NMFS and FWS (50 CFR 424.14(i)(1)(i)) state that ''substantial scientific or commercial information'' refers to credible scientific information that would lead a reasonable person conducting an impartial scientific review to conclude that the revision proposed in the petition may be warranted. In evaluating whether substantial scientific information is provided in a petition to revise critical habitat, the Secretary must consider whether the petition contains: (1) a description and map(s) of the areas that the current designation does not include that should be included, or includes that should no longer be included, and a description of the benefits of designating or not designating these specific areas of critical habitat; (2) a description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protections; (3) information indicating that the specific areas petitioned to be added to critical habitat contain one or more of the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection; or (4) information indicating that areas designated as critical habitat do not contain the physical and biological features essential to the conservation of the species involved or do not require special management considerations or protection (50 CFR 424.14(e)(1–4)).

At the 90-day stage, we evaluate the petitioner's request based upon the information in the petition, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us evaluate the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. If we find that a petition presents substantial information indicating that the revision may be warranted (a ''positive 90-day finding''), within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested critical habitat revision and promptly publish notice of such intention in the **Federal Register** (16 U.S.C. 1533(b)(3)(D)(ii)). 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 at the 90-day stage, a ''positive 90-day finding'' does not prejudge the outcome of our review.

Current Critical Habitat Designation

Prior to the mid-2000s, right whales in the North Pacific and North Atlantic were considered the same species. Critical habitat for right whales was initially designated in 1994 for the North Atlantic population (59 FR 28793, June 3, 1994, and revised in 2006 to include habitat for the North Pacific population (71 FR 38277, July 6, 2006). Genetic analyses conducted in the early 2000s indicated that the North Atlantic and North Pacific populations were two distinct species of right whales (Rosenbaum et al. 2000, Gaines et al. 2005, Kaliszewska et al. 2005), leading to their separate listing under the ESA in 2008 (73 FR 12024, March 6, 2008). Following this listing, the two critical habitat areas originally designated in 2006 for the North Pacific population were finalized as critical habitat for North Pacific right whales (73 FR 19000, April 8, 2008). In the Gulf of Alaska, critical habitat was identified as a polygon delineated by a series of lines connecting the following coordinates in order: 57°03′ N/153°00′ W, 57°18′ N/151°30′ W, 57°00′ N/151°30′ W, 56°45′ N/153°00′ W, and returning to 57°03′ N/153°00′ W. In the Bering Sea, critical habitat was also identified by a polygon, delineated by a series of straight lines connecting the following coordinates in order: 58°00′ N/168°00′ W, 58°00′ N/163°00′ W, 56°30′ N/161°45′ W, 55°00′ N/166°00′ W, 56°00′ N/168°00′ W and returning to 58°00′ N/168°00′ W.

The designation of critical habitat for North Pacific right whales uses the term primary constituent element (PCE). The critical habitat implementing regulations in 50 CFR 424 were revised in 2016 (81 FR 7414; February 11, 2016), and as part of these revisions the term ''PCE'' was removed and replaced with ''physical or biological features'' (PBFs). The shift in terminology was intended to simplify and clarify the designation process, and did not change the approach used by NMFS in determining what areas qualify as critical habitat under the ESA. Thus, this change in terminology will not alter our review and analysis of North Pacific right whale critical habitat.

At the time of designation, there were significant gaps in the knowledge of North Pacific right whale biology and ecology; little was known about the PBFs that might be essential for their conservation. However, several species of large copepods and other zooplankton are known to constitute the primary prey of North Pacific right whales, based on examination of harvested whales and limited plankton tows conducted near feeding whales. As such, PBFs identified were the copepods *Calanus marshallae, Neocalanus cristatus,* and *N. plumchrus,* and the euphausiid *Thysanoessa raschii,* in areas where right whales are known or thought to feed (73 FR 19000, April 8, 2008). In addition to the occurrence of large zooplankton, NMFS concluded that it is likely that certain physical forcing mechanisms are present in these areas, which act to concentrate the identified prey species in densities which allow for efficient foraging by right whales (73 FR 19000, April 8, 2008).

Analysis of Petition

The petition lists recent sources of information on North Pacific right whale presence and habitat use in and around currently designated critical habitat in the Gulf of Alaska and the Southeast Bering Sea. The Center for Biological Diversity and Save the North Pacific Right Whale propose that the critical habitat be revised to connect the two existing critical habitat areas by extending the Bering Sea area boundary west and south to the Fox Islands, through Unimak Pass to the edge of the continental slope, and east to the Kodiak Island critical habitat area. The petitioners state that this revision encompasses ''a key migratory point'' and provides ''connectivity between two essential foraging grounds'' (Center for Biological Diversity and Save the North Pacific Right Whale, 2022, p. ii).

Oceanographic data indicate that Unimak Pass is a very biologically productive area with high concentrations of phyto- and zooplankton due to the mixing of waters from the North Pacific and Bering Canyon along the Bering Sea shelf. This productivity attracts a large diversity of fish and marine birds and mammals, including North Pacific right whales, as evidenced by acoustic and visual detections. Based on acoustic moorings

deployed in the center of Unimak Pass annually from 2009 to 2015, various types of North Pacific right whale vocalizations were detected on 37 of 1,778 days and vocalizations were detected across all years and seasons (Wright et al. 2018). These acoustic detections suggest that North Pacific right whales utilize Unimak Pass throughout the year and that this may be important habitat for the species.

North Pacific right whales have also been visually observed in and around Unimak Pass as recently as February 2022. Commercial fisherman reported sighting at least two right whales just outside of the pass in February, providing the first visual confirmation of the species in the area during that time of year.

In the Barnabas Trough and Albatross Bank area of the Gulf of Alaska, there have been increased sightings and detections of North Pacific right whales in and around currently designated critical habitat. Though historic data indicate that individuals were harvested commercially in the Gulf, there has been limited evidence of their presence since the 1960s. Similar to Unimak Pass, there is high biological productivity near Barnabas Trough and Albatross Bank, due to the tidal mixing that results in nutrient rich waters throughout the summer months. The North Pacific right whale sightings and detections that have occurred in this area have corresponded with high densities of North Pacific right whale primary prey, the essential feature of the designated critical habitat, and fecal samples that indicate recent feeding (Wade *et al.* 2011).

In 2015, Ferguson *et al.* identified a biologically important area (BIA) for North Pacific right whale feeding that encompasses and extends beyond the designated critical habitat in the Gulf of Alaska. The BIA is based on opportunistic sighting data, acoustics recordings, and historical whaling data (Ferguson *et al.* 2015). In August 2021, two pairs of North Pacific right whales were sighted by NOAA Fisheries scientists: one pair was feeding at the edge of critical habitat in Barnabas Trough, and the other pair was in the vicinity of the southeast edge of the feeding BIA. The identification of the BIA based on a diversity of data, recent visual sightings, and acoustic detections suggest that North Pacific right whale utilization of areas in the Gulf of Alaska may extend past the currently designated critical habitat.

Petition Finding

Based on the information presented and referenced in the petition, as well as all other information readily available in our files, and pursuant to the criteria specific in 50 CFR 424.14(c) and (e), we find the recent information presented by the petitioners on the distribution and behavior of North Pacific right whales in the Gulf of Alaska and the Southeast Bering Sea to constitute substantial information indicating that revision of critical habitat may be warranted.

Information Solicited

To ensure that our review of North Pacific right whale critical habitat is complete and based on the best available scientific and commercial information, we are soliciting relevant information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning: (1) The essential habitat needs and use of the whales; (2) the areas of the Gulf of Alaska and the Southeastern Bering Sea proposed in the petition for inclusion as critical habitat; (3) the physical and biological features that are essential to the conservation of North Pacific right whales and that may require species management considerations or protection; (4) information regarding potential benefits or impacts of designating any particular areas, including information on the types of Federal actions that may affect the area's physical and biological features; and (5) current or planned activities in the areas the petition requests to be added as critical habitat and costs of potential modifications of those activities due to critical habitat designation.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: July 7, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–14838 Filed 7–11–22; 8:45 am]

BILLING CODE 3510–22–P