

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program

submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 19, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2006-0841; FRL-8261-8]

Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the East St. Louis, IL Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 211(k)(6) of the Clean Air Act, the Administrator of EPA shall require the sale of reformulated gasoline (RFG) in an ozone nonattainment area upon the application of the Governor of the State in which the nonattainment area is located. This notice proposes to extend the Act's prohibition against the sale of conventional (i.e., non-reformulated) gasoline in RFG areas to the Illinois portion of the St. Louis, Missouri-Illinois 8-hour ozone nonattainment area hereafter referred to as the East St. Louis, Illinois nonattainment area. The Agency proposes to implement this prohibition on May 1, 2007, for all persons other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA proposes to implement the prohibition on June 1, 2007. On June 1, 2007, the East St. Louis ozone nonattainment area would be a covered area for all purposes in the federal RFG program. EPA seeks comment on alternative implementation dates it could establish if unexpected delays in issuing the final rule render the proposed implementation dates impractical.

DATES: Comments on this proposed rule must be received in writing by January 26, 2007. To request a public hearing,

contact Kurt Gustafson at (202) 343-9219 or gustafson.kurt@epa.gov. If a hearing is requested no later than January 16, 2007, a hearing will be held at a time and place to be published in the **Federal Register**. Persons wishing to testify at a public hearing must contact Kurt Gustafson at (202) 343-9219, and submit copies of their testimony to the docket and to Kurt Gustafson at the addresses below, no later than 10 days prior to the hearing. After the hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a document in the **Federal Register** extending the comment period for 30 days after the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0841, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- **Mail:** Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0841. Comments may also be e-mailed to a-and-r-docket@epamail.epa.gov. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0841. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Kurt Gustafson, Transportation and Regional Programs Division (Mail Code 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-343-9219; fax number: 202-343-2800; e-mail address: gustafson.kurt@epa.gov.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of today's **Federal Register**, we are setting forth this amendment to the federal RFG regulations as a direct final rule without prior proposal because we view this as a noncontroversial amendment and

anticipate no adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

This document concerns the amendment to EPA's regulations governing RFG and the prohibition of the sale of conventional gasoline supplied to the East St. Louis area of Illinois. For further information, including the regulatory language, please see the information provided in the direct final rule of the same title which is located in the "Rules and Regulations" section of this **Federal Register**.

I. Public Participation and Effective Date

A. Public Comments

Section 211(k)(6) states that, "[u]pon the application of the Governor of a State, the Administrator shall apply the prohibition" against the sale of conventional gasoline in any area of the State classified as marginal, moderate, serious, or severe for ozone. Although section 211(k)(6) provides EPA some discretion to establish the effective date for this prohibition, and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date, EPA does not have discretion to deny a Governor's request. Therefore, the scope of this action is limited to setting an effective date for East St. Louis' opt-in to the RFG program, and not to decide whether East St. Louis should in fact opt in. For this reason, EPA is only soliciting comments addressing the implementation date and whether there is sufficient capacity to produce RFG, and is not soliciting comments that support or oppose East St. Louis' participating in the program.

EPA is proposing implementation dates for this rule of May 1, 2007, for all persons other than retailers and wholesale purchaser-consumers, and June 1, 2007 for retailers and purchaser-consumers. These dates coincide with the dates that regulated parties are to switch from producing or dispensing RFG with a wintertime formulation, to producing or dispensing VOC-controlled RFG for the summer ozone season. Section 211(k)(6)(A) of the Act

stipulates that the effective date of an RFG opt-in must be no later than one year after the application of the Governor is received. In this case, therefore, the effective date could be no later than July 10, 2007. EPA solicits comment on the proposed implementation dates, and also solicits comment on alternative implementation dates that could be used in the event that EPA is unable to issue a final rule quickly enough to use the proposed implementation dates.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent and label it as "Confidential Business Information." If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Hearing Procedures

Any person desiring to present testimony regarding this proposed rule at the public hearing (see DATES) should notify the contact person listed above of such intent as soon as possible. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first served basis to follow the previously scheduled testimony. EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. EPA-HQ-OAR-2006-0841 (see ADDRESSES).

The Director of EPA's Transportation and Regional Programs Division, Office of Transportation and Air Quality, or her designee, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The Presiding Officer is authorized to strike from the record statements which he/she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. This information will be available for public inspection at the EPA Air Docket, Docket No. EPA-HQ-OAR-2006-0841 (see ADDRESSES).

II. Background

The background for this proposal, including the text of the letter from the Governor of Illinois requesting that RFG requirements be applied in the East St. Louis ozone nonattainment area, is set forth in the companion direct final rule also published in today's **Federal Register**.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. EPA notes that the economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules. See 59 FR 7810-7811 (February 16, 1994). In that analysis the production cost of RFG was estimated to be 4 to 8 cents per gallon more than conventional gasoline. Since conventional gas regulations have evolved since that time to be more like RFG and since the State has a low RVP requirement that also more closely resembles RFG, EPA expects the costs of RFG in the East St. Louis area to be at the low end or lower than this range. Nonetheless, using the 4 to 8 cent per gallon estimate, the cost of the program in East St. Louis would be significantly

lower than the trigger for a significant regulatory action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the RFG/anti-dumping program (see 59 FR 7716, February 16, 1994), and has assigned OMB control number 2060-0277 (EPA ICR No. 1951.08).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

In promulgating the RFG and the related anti-dumping regulations for conventional gasoline, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. See 59 FR 7810-7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A-92-12.

Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in East St. Louis, which will become a covered area as a result of today's proposed rule, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities. Based on this, EPA certifies that this proposed rule would not have a significant adverse impact on a substantial number of small entities.

D. *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Although EPA does not believe that UMRA imposes requirements for this rulemaking, EPA notes that the environmental and economic impacts of the RFG program were assessed in EPA's Regulatory Impact Analysis for the 1994 RFG rules.

E. *Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10,

1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would only impose requirements on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the proposed rule will be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this proposed rule.

F. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the East St. Louis ozone nonattainment area, and gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this rule.

G. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*

Executive Order 13045, entitled "Protection of Children from Environmental Health and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant.

H. *Executive Order 13211: Actions that Significantly Affect Energy Supply*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. *Statutory Authority*

The Statutory authority for the action proposed today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k) and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: December 20, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6-22161 Filed 12-26-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 061212327-6327-01; I.D. 120706A]

RIN 0648-XB57

Endangered And Threatened Species; Proposed Endangered Status for North Pacific Right Whale

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a status review of the northern right whale under the Endangered Species Act (ESA). We initiated this review in response to a petition submitted by the Center for Biological Diversity, dated August 16, 2005, to list the North Pacific right whale as a separate endangered species. Based on the findings from the status review and consideration of the factors affecting this species, we have concluded that right whales in the northern hemisphere exist as two species: the North Pacific right whale (*Eubalaena japonica*) and the North Atlantic right whale (*E. glacialis*). We have also determined that each of these species is in danger of extinction throughout its range. To reflect this taxonomic revision, we are designating each separately as an endangered species. This rule proposes to list the North Pacific right whale as an endangered species; a proposed rule to list the North Atlantic right whale is issued separately. We also intend to designate critical habitat for the North Pacific right whale. A proposed rule for designation of critical habitat will follow this action. We are soliciting public comment on this proposed listing determination.

DATES: Comments on this proposed rule must be received by close of business on February 26, 2007. Requests for public hearings must be made in writing by February 12, 2007.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska

Region, NMFS, Attn: Ellen Walsh.

Comments may be submitted by:

- E-mail: ESA-NRW-status@noaa.gov. Include in the subject line the following document identifier: North Pacific Right Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Webform at the Federal eRulemaking Portal:

www.regulations.gov. Follow the instructions at that site for submitting comments.

- Mail: P. O. Box 21668, Juneau, AK 99802

- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska.

- Fax: (907) 586-7012.

The proposed rule and other materials relating to this proposal can be found on the NMFS Alaska Region website <http://www.fakr.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271-5006, fax (907) 271-3030; Kaja Brix, NMFS, (907) 586-7235, fax (907) 586-7012; or Marta Nammack, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

Petition

On August 16, 2005, we received a petition from the Center for Biological Diversity (CBD) to list the North Pacific right whale as a separate endangered species under the ESA. A copy of the petition may be viewed at our Alaska Region website (see **ADDRESSES**). CBD requested that we list the North Pacific right whale as a new endangered species based, in part, on recent scientific information that establishes a new taxonomic classification for right whale species. On January 26, 2006, we issued our finding that the petition presented substantial information indicating that the petitioned action may be warranted (71 FR 4344), and we requested information regarding the taxonomy and status of the North Pacific right whale, its habitat, biology, movements and distribution, threats to the species, or other pertinent information. This proposed rule summarizes the information gathered and the analyses conducted in a status review of right whales in the North Pacific Ocean and in the North Atlantic Ocean and constitutes our 12-month determination on CBD's petition.

Status Review

The review of the status of right whales in the North Atlantic and North Pacific Oceans describes the population

structure and examines the extent to which phylogenetic uniqueness exists between right whales found in the North Atlantic and North Pacific. The review also examines the biological status and threats to the right whales and their habitat.

Biology of Right Whales in the North Pacific Ocean

Right whales are large baleen whales that grow to lengths and weights exceeding 18 meters and 100 tons (90.7 metric tons), respectively. They are filter feeders whose prey consists exclusively of zooplankton. Right whales attain sexual maturity at an average age of 8-10 years, and females produce a single calf at intervals of 3-5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but is known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population moving between summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, individuals have been observed feeding in the Gulf of Alaska, the Bering Sea, and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*, 2004; Shelden *et al.*, 2005).

Historically, right whales occurred across the entire North Pacific Ocean from the western coast of North America to the Russian Far East (Scarff, 1986; Brownell *et al.*, 2001, Clapham *et al.*, 2004, Shelden *et al.*, 2005). Sightings in the 20th century were from as far south as central Baja California, Mexico, and the Yellow Sea, and as far north as the Bering Sea and the Okhotsk Sea (Goddard and Rugh, 1998; Brownell *et al.*, 2001). Right whales are frequently found in coastal or shelf waters. Such sightings, however, may be partially a function of survey effort, and thus may not reflect current or historical distribution. Sighting records also indicate that right whales occur far offshore, and movements over abyssal depths are known (Scarff, 1986; Mate *et al.* 1997). Clapham *et al.* (2004) plotted 20th century records together with data summarized from 19th century whaling catches. These plots show that right whales had an extensive offshore distribution in the 19th century, and were common in areas where few or no