

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

4. Section 90.1203 is amended by revising paragraph (a) to read as follows:

**§ 90.1203 Eligibility.**

(a) The following groups of entities are eligible to hold a Commission license for systems operating in the 4940–4990 MHz band on a primary basis.

(1) Entities providing public safety services as defined under § 90.523. All of the requirements and conditions set forth in that section also govern authorizations in the 4940–4990 MHz band.

(2) Critical infrastructure industry (CII) entities as defined under § 90.7.

\* \* \* \* \*

5. Section 90.1205 is amended by revising paragraph (c) to read as follows:

**§ 90.1205 Permissible operations.**

\* \* \* \* \*

(c) Aeronautical mobile operations are permitted on a secondary, non-interference basis to 4.9 GHz terrestrial services under the following restrictions. Altitude may not exceed 457 meters (1500 feet) above ground. Licensees may use only low power devices as defined by § 90.1215 for aeronautical mobile use. All applications for aeronautical operation require prior Commission approval. The applicant shall provide a description of proposed operation to demonstrate that the proposed aeronautical mobile operations protect radio astronomy operations and 4.9 GHz terrestrial services from interference. Applicants shall submit their applications to their respective regional planning committee or the National Association of Regional Planning Committees for coordination. The applicant shall certify that it has served a copy of the application to all radio astronomy observatories listed in the Table of Frequency Allocations, § 2.106 footnote US311 of this chapter, whose geographic boundaries fall within [distance to be determined] kilometers of the edge of the proposed aeronautical operation. The Commission will coordinate all applications for aeronautical mobile operation with the National Telecommunications and Information Administration. The Commission has the discretion to impose special conditions and operating restrictions on individual licenses as

necessary to reduce risk of interference to radio astronomy operations and 4.9 GHz terrestrial services.

6. Section 90.1209 is amended by revising paragraph (b) to read as follows:

**§ 90.1209 Policies governing the use of the 4940–4990 MHz band.**

\* \* \* \* \*

(b) Each application for a new frequency assignment or for a change in existing facilities as listed in § 1.929(c)(4) of this chapter must be submitted through the applicable regional planning committee (RPC) for coordination. In areas without active RPCs, all licensees shall cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities. A database identifying the locations of registered stations will be available at <http://wireless.fcc.gov/uls>. RPCs and licensees should examine this database before seeking station authorization, and make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will minimize the potential to cause and receive interference. Point-to-point stations must employ either horizontal or vertical polarization; point-to-point unpolarized transmissions are prohibited. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the Commission may prohibit the use of any 4.9 GHz channel under a system license at a given geographical location when, in the judgment of the Commission, its use in that location is not in the public interest.

\* \* \* \* \*

7. Section 90.1213 is amended by revising the introductory text to read as follows:

**§ 90.1213 Band plan.**

The following channel center frequencies are permitted to be aggregated for channel bandwidths of 5, 10, 15 or 20 MHz as described in paragraph (b) of this section. Channel numbers 1 through 5 and 14 through 18 are 1 MHz bandwidth channels and channel numbers 6 through 13 are 5 MHz bandwidth channels. Channel numbers 1 through 5 and 14 through 18 are designated for narrow bandwidth operations and should be used in

aggregations only if all other 5 MHz channels are blocked.

\* \* \* \* \*

8. Section 90.1219 is added to read as follows:

**§ 90.1219 Deployment reporting.**

(a) Licensees in the 4.9 GHz band shall file deployment reports with the Commission. Licensees may attach deployment reports to FCC Form 601. The report shall contain the following information:

(1) Status of equipment development and purchase, including number of devices and users;

(2) Site development, including use of existing towers;

(3) Deployments and upgrades (commencement and completion), including site information and location; and

(4) Applications in development or in use.

(b) During the first year following the initial grant or modification of a 4.9 GHz license, reports are due every three months after the grant date. After the first anniversary of the license grant, licensees must file deployment reports on an annual basis.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 224**

[Docket No. 120425024–1024–01]

RIN 0648–XB089

**Endangered and Threatened Wildlife; 90-Day Finding on a Petition To Delist the Green Turtle in Hawaii and Notice of Status Review**

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

**ACTION:** Ninety-day petition finding, request for information, and initiation of status review.

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition to identify the Hawaiian population of the green turtle (*Chelonia mydas*) as a Distinct Population Segment (DPS) and delist the DPS under the Endangered Species Act (ESA). The green turtle was listed under the ESA on July 28, 1978. Breeding populations of the green turtle in Florida and along the Pacific Coast of Mexico are listed as endangered; all

other populations are listed as threatened. We find that the petition viewed in the context of information readily available in our files presents substantial scientific and commercial information indicating that the petitioned action may be warranted.

We are hereby initiating a status review of green turtles as currently listed to determine whether the petitioned action is warranted and to examine green turtles globally with regard to application of the DPS policy in light of significant new information since the listing of the species in 1978. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this species and potential critical habitat from any interested party.

**DATES:** Scientific and commercial information pertinent to the petitioned action and the global DPS review must be received by October 1, 2012.

**ADDRESSES:** You may submit information or data, identified by "NOAA-NMFS-2012-0154," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic information via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit information via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter "NOAA-NMFS-2012-0154" in the keyword search. Locate the document you wish to provide information on from the resulting list and click on the "Submit a Comment" icon to the right of that line.

- *Mail or hand-delivery:* Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

*Instructions:* All information received is a part of the public record and may be posted to <http://www.regulations.gov> without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept information from anonymous sources. Attachments to electronic submissions will be accepted in Microsoft Word, Excel, Corel WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Heather Coll, NMFS, Office of Protected Resources, (301) 427-8455.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 16, 2012, NMFS and the U.S. Fish and Wildlife Service (USFWS) (together, the Services) received a petition from the Association of Hawaiian Civic Clubs to identify the Hawaiian green turtle population as a Distinct Population Segment (DPS) and delist the DPS under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Copies of the petition are available upon request (see **ADDRESSES**, above).

## ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable and within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce is required to 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 we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted, as is the case here, 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, within 12 months of receipt of the petition we conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a comprehensive review of all best available information, as compared to the narrow scope of review at the 90-day stage, which focuses on information set forth in the petition, this 90-day finding does not prejudice the outcome of the status review.

Under the ESA, the term "species" means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint NMFS-USFWS policy clarifies the Services' interpretation of the phrase "Distinct Population Segment," or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: Discreteness of the population segment in relation to the remainder of the species; and, if discrete, the significance of the population segment to the species.

A species is "endangered" if it is in danger of extinction throughout all or a

significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) Extinction. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) Recovery. The principal goal of the Services is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) Original data for classification in error. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

The ESA requires us to designate critical habitat concurrent with final listing rule "to the maximum extent prudent and determinable" (16 U.S.C. 1533 (a)(3)(A)). The ESA defines "critical habitat" as " \* \* \* the specific areas within the geographical area occupied by the species at the time it is listed \* \* \* on which are found those

physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and \* \* \* specific areas outside the geographical area occupied by the species at the time it is listed \* \* \* upon a determination \* \* \* that such areas are essential for the conservation of the species.” 16 U.S.C. 1532(5)(A). Critical habitat was previously designated for the green turtle in coastal waters surrounding Culebra Island, Puerto Rico (63 FR 46693; September 2, 1998).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define “substantial information,” in the context of reviewing a petition to list, delist, or reclassify a species, as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition (1) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

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

To make a 90-day finding on a petition to list, delist, or reclassify a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the

agency to help us in evaluating the petition. We will accept the petitioners’ 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 disregarded at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners’ assertions. In other words, conclusive information indicating the species may meet the ESA’s requirements for listing is not required to make a positive 90-day finding.

The petition contains information on the species with emphasis on the green turtle population in Hawaii, including its biology and ecology, population status and trends, and elements for identifying the Hawaiian population as a DPS. To support their assertion that the Hawaiian population of green turtles is discrete from other green turtle populations, they posit that the Hawaiian population is discrete due to genetic distinction, spatial disconnectedness, and morphological differences, and is derived mostly from the nesting population at French Frigate Shoals. Petitioners assert that the Hawaiian population of green turtles is significant to the taxon to which it belongs because there would be a significant gap in the species’ range if the Hawaiian population were lost, as there are no other breeding populations within the area ranging from approximately 15° to 30° North latitude and from 180° to 150° West longitude in the Central North Pacific Ocean. Further, petitioners provide information on the Hawaiian population of the green turtle relative to all ESA section 4(a)(1) factors and assert that the Hawaiian green turtle population, upon being identified as a DPS, should be delisted.

#### Petition Finding

Based on the above information and criteria specified in 50 CFR 424.14(b)(2), we find that the petitioners present substantial scientific and commercial information indicating that identifying the Hawaiian population of green turtle as a DPS and delisting this DPS may be warranted. Under section 4(b)(3)(A) of the ESA, an affirmative 90-day finding requires that we promptly commence a status review of the petitioned species (16 U.S.C. 1533 (b)(3)(A)). Furthermore, the Services completed a 5-year review

of the green turtle on August 31, 2007, as required under Section 4(c)(2) of the ESA, and this review revealed that, in the time subsequent to the global listing of the green turtle, a substantial amount of information had become available on population structure (through genetic studies) and distribution (through telemetry, tagging, and genetic studies). The 5-year review recommended that a review of the species be conducted in the future.

#### Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether green turtles should be listed as DPSs, including the identification of the Hawaiian population of the green turtle as a DPS, and, if so, whether they should be classified as endangered or threatened, or delisted based on the above ESA section 4(a)(1) factors. Specifically, we are soliciting information in the following areas: (1) Historical and current population status and trends; (2) historical and current distribution; (3) migratory movements and behavior; (4) genetic population structure, including recommendations on a global DPS structure; (5) current or planned activities that may adversely impact green turtles; and (6) ongoing efforts to conserve green turtles. We request that all information and data be accompanied by supporting documentation such as (1) maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter’s name, address, and any association, institution, or business that the person represents.

We are also requesting information on areas within U.S. jurisdiction that may qualify as critical habitat for any DPS of green turtles that we might consider for listing. Areas that include the physical and biological features essential to the conservation of the species should be identified, and information regarding the potential need for special management considerations for those features should be provided. Essential features include, but are not limited to (1) Space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; (5) habitats that are protected from disturbance or are representative of the historical, geographical and ecological distributions of the species (50 CFR 424.12(b)).

**References Cited**

A complete list of references is available upon request from NMFS Protected Resources Headquarters Office (see **ADDRESSES**).

**Authority**

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

Dated: July 26, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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