

inspected for size, injuries, and responsiveness. The injured horseshoe crabs numbered 310, or 8.86% of the total, while 71, or 2.03%, were noted as slow moving. An additional 16, or 4.06% were deemed mortal. In addition, six horseshoe crabs were rejected due to small size. Overall, 3,097 horseshoe crabs were used (bled) in the manufacture of a LAL.

Two hundred of the bled horseshoe crabs were randomly selected for activity, morphometric and aging studies. The activity level for all 200 animals was categorized as "active". Morphometric studies noted that average inter-ocular distances, prosoma widths and weights of these 200 horseshoe crabs were comparable to previous years (2001–2010). Of the 200 horseshoe crabs examined in 2011, a little more than half (52%) were categorized as medium aged followed by young (31%). Older animals were greater in number (17%) than most of the other years with the exception of the 2004 year (19%) and the 2010 year (26%).

The 200 studied horseshoe crabs and 325 additional bled horseshoe crabs were tagged and released into the Delaware Bay. To date, the tagging of 4,938 horseshoe crabs during 2001–2011 have resulted in 104 live recaptures. The observed horseshoe crabs were found 1 to 8 years after release, primarily along the Delaware Bay shores during their spawning season.

#### Proposed 2012 EFP

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons proposed/utilized during the EFPs in 2001–2011. Limuli proposes to continue to tag at least 15 percent of the bled horseshoe crabs as they did in 2011. NMFS would require that the following terms and conditions be met for issuance and continuation of the EFP for 2012:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;
2. Requiring collections to take place over a total of approximately 20 days during the months of July, August, September, October, and November. (Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November.);
3. Requiring that a 5½ inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to

the consistency in the way horseshoe crabs are harvested for data collection;

4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

5. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and

6. Requiring that any turtle take be reported to NMFS, Northeast Region, Assistant Regional Administrator of Protected Resources Division, within 24 hours of returning from the trip in which the incidental take occurred.

As part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS would require that the EFP holder provide data on sex ratio and daily harvest. Also, the EFP holder would be required to examine at least 200 horseshoe crabs for morphometric data. Terms and conditions may be added or amended prior to the issuance of the EFP.

The proposed EFP would exempt two commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f), which prohibit the harvest and possession of horseshoe crabs from the Reserve on a vessel with a trawl or dredge gear aboard.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2012.

**Lindsay Fullenkamp,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 120807314–2314–01]

RIN 0648–XC155

#### Endangered and Threatened Species; 90-Day Finding on Petition To Delist the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon Under the Endangered Species Act

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition to delist the Southern Oregon/Northern California Coast (SONCC) Evolutionarily Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

**ADDRESSES:** Copies of the petition are available at: <http://www.nmfs.noaa.gov/pr/or> upon request from the Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Craig Wingert, NMFS, Southwest Region Office, (562) 980–4021; or Dwayne Meadows, Office of Protected Resources (301) 427–8403.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4 of the ESA (16 U.S.C. 1533) contains provisions allowing interested persons to petition the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife, and to designate critical habitat for any endangered or threatened species. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

On July 3, 2012, we received a petition from the Siskiyou County Water Users Association and Dr. Richard Gierak (the petitioners) requesting that we delist the SONCC ESU of coho salmon under the ESA. The petitioners previously submitted four petitions requesting that we delist coho salmon. We analyzed those petitions and found that they did not present substantial scientific or commercial information indicating the petitioned action may be warranted. One negative 90-day finding notice for three of these petitions was published on October 7, 2011 (76 FR 62375) and a second negative 90-day finding for the fourth petition was published on January 11, 2012 (77 FR 1668). The new petition largely reiterates the petitioners' previous arguments, including that the species is not native to northern California watersheds, including the Klamath River, the species abundance has increased since the early 1960s and is in good condition overall, and that non-man-made factors (e.g., ocean conditions, floods, fires, and drought) rather than man-made factors are responsible for the decline in coho salmon abundance. These arguments

were addressed in our responses to the previous petitions and therefore not repeated here.

In the current petition, the petitioners have specified their request to delist the SONCC coho salmon ESU, reiterated many of their previous arguments, and presented some additional information regarding coho and Chinook salmon fishing seasons in Oregon streams, Yukon River salmon run predictions, changes in salmon landings over the past 1–2 decades, and increases in Pacific Ocean water temperature. We carefully analyzed this additional information and found that it is: Not relevant to the petitioned action (e.g., the Oregon and Yukon fisheries are different ESUs from the petitioned species); not supported by literature citations or other references in the petition (e.g., historical landings and ocean temperature information), and therefore constitutes unsupported assertions; or it simply does not support the petitioned action (e.g., information about coho and Chinook salmon fishing seasons in Oregon streams that are not within the range of this ESU). As a result of these deficiencies, the petition does not present any additional substantial scientific or commercial information that indicates the petitioned action may be warranted. Moreover, none of this additional information modifies the underlying scientific basis for our original determination to list the SONCC coho salmon ESU or causes us to re-evaluate our analysis of delisting petitions that were previously submitted by the petitioners.

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

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define “substantial information” as the “amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)(1)). In determining whether a petition presents substantial scientific or commercial information to list or delist a species, we take into account information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, followed by prompt publication in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). ESA

implementing regulations state that a species may be delisted only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened for one or more of the following reasons: The species is extinct; the species is recovered; or subsequent investigations show 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)).

#### Petition Finding

As discussed above, this subject petition does not present any additional substantial scientific or commercial information related to whether the SONCC ESU of coho salmon is recovered, extinct, or that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error. Therefore, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

#### References Cited

A complete list of the references used in this finding is available upon request (see **ADDRESSES**).

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

Dated: September 4, 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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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC107**

#### Takes of Marine Mammals Incidental to Specified Activities; Piling and Fill Removal in Woodard Bay Natural Resources Conservation Area, Washington

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental

harassment authorization (IHA) to the Washington State Department of Natural Resources (DNR) to incidentally harass, by Level B harassment only, harbor seals during restoration activities within the Woodard Bay Natural Resources Conservation Area (NRCA).

**DATES:** This authorization is effective from November 1, 2012, through March 15, 2013.

**ADDRESSES:** A copy of the IHA and related documents are available by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application, including references used in this document, may be obtained by visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. For those members of the public unable to view these documents on the Internet, a copy may be obtained by writing to the address specified above or telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**). Associated documents prepared pursuant to the National Environmental Policy Act (NEPA) are also available at the same site. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

#### SUPPLEMENTARY INFORMATION:

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has