

public comments and any additional information regarding the status of these subspecies and will complete a final determination within 12 months of publication of this proposed rule, as required under the ESA. Final promulgation of the regulation(s) will consider the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

#### Public Hearings

If requested by the public within 45 days of publication of this proposed rule, a hearing will be held regarding this proposal to amend the listing of the Southern Resident killer whale DPS by removing the exclusion for captive whales. If a hearing is scheduled, details regarding location(s), date(s), and time(s) will be published in a forthcoming **Federal Register** notice.

#### Classification

*National Environmental Policy Act (NEPA)*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6.)

*Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

*Executive Order 13122, Federalism*

In accordance with E.O. 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be shared with the relevant state

agencies in each state in which the species is believed to occur, and those states will be invited to comment on this proposal. As we proceed, we intend to continue engaging in informal and formal contacts with the states, and other affected local or regional entities, giving careful consideration to all written and oral comments received.

#### 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**) or on our Web page at: [http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/killer\\_whale/lolita\\_petition.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/lolita_petition.html)

#### List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Reporting and recordkeeping requirements.

Dated: January 17, 2014.

**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.*

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

#### **PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES**

■ 1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 et seq.

#### **§ 224.101 [Amended]**

■ 2. In paragraph (b) of § 224.101, remove “Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not including Southern Resident killer whales placed in captivity prior to listing or their captive born progeny; Ladoga ringed seal (*Phoca (=Pusa) hispida ladogensis*)”; and add in its place “Killer whale (*Orcinus orca*)” to read as “Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found;”

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 131206999–4046–01]

RIN 0648–BD85

#### **Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for Lobster Conservation Management Areas**

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); request for comments.

**SUMMARY:** At the request of the Atlantic States Marine Fisheries Commission, this notice announces a control date that may be applicable, but not limited to, limiting the number of permits or traps a business entity may own in Lobster Conservation Management Area 3 or in any of the Lobster Conservation Management Areas. NMFS intends this notice to promote awareness of possible rulemaking, alert interested parties of potential eligibility criteria for future access, and discourage speculative entry into and/or investment in the American lobster fishery while the Atlantic States Marine Fisheries Commission and NMFS consider if and how participation in the American lobster fishery should be controlled.

**DATES:** January 27, 2014 shall be known as the “control date” for the American lobster fishery, and may be used as a reference date for future management measures related to the maintenance of a fishery with characteristics consistent with the Commission’s objectives and applicable Federal laws. Written comments must be received on or before February 26, 2014.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0169 by any of the following methods:

■ **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0169](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0169), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

■ **Mail:** Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic

Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Lobster Control Date."

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. We may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). We accept attachments to electronic comments only in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats.

**FOR FURTHER INFORMATION CONTACT:**

Carly Bari, Fisheries Management Specialist, 978-281-9224, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:** The American Lobster Fishery Management Plan is implemented by the NMFS under the framework of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). Through the ISFMP, the Commission adopts fishery conservation and management strategies for the American lobster resource and coordinates the efforts of the states and NMFS to implement these strategies. The ISFMP establishes seven Lobster Conservation Management Areas (Areas), from Maine to North Carolina, including state waters, which extend from the coast to 3 nautical miles (5.56

km) from shore, and the Exclusive Economic Zone (EEZ), which extends from 3-200 nautical miles (5.56-370.4 km). Within each Area, the states appoint members of the lobster industry to serve on a Lobster Conservation Management Team who advises the Commission on management programs for each Area. The lobster fishery is a year-round fishery in the United States, including the summer and fall months when the lobsters are molting. Most lobsters are taken in lobster traps, while a small amount are taken incidentally in gillnets and trawls.

With the advent of the Commission's Trap Transferability Program, members of the lobster industry, as well as the Commission, became concerned about fishing power becoming consolidated in Area 3 among relatively few permit holders who could then purchase trap allocation, increase fishing power, and reshape the fishery in a way that would be detrimental to existing and historical fishing patterns. Area 3 is the largest of all the Lobster Conservation Management Areas, occurs exclusively in the EEZ, and extends from Maine to Cape Hatteras, North Carolina. Industry and the Commission were concerned that previously latent effort could be cheaply purchased and activated, which would create additional pressure on the lobster stock, as well as the fishing businesses currently existing in the area. Accordingly, the Commission approved Addendum XXII in October 2013, which recommended that the states and NMFS limit the number of traps that any one individual or entity may own.

On November 18, 2013, the Commission requested that NMFS publish this control date to discourage permit consolidation and speculative activation of previously unused effort or capacity in the American lobster fishery during the time that alternative management regimes to control capacity or latent effort are discussed and potentially developed and

implemented. This action communicates to fishermen that participation after the control date may not be treated the same as participation before the control date. This control date may also be considered for future management decisions and rulemaking for any of the Lobster Conservation Management Areas. NMFS may also choose to take no further action to control entry or access to the American lobster fishery.

This notification establishes January 27, 2014 as the new control date for potential use in determining historical or traditional participation in Area 3 of the American lobster fishery. Establishing a control date does not commit NMFS to develop any particular management regime or criteria for participation in these fisheries. In the future, NMFS may choose a different control date or a management program that does not make use of any control date. Any future action by NMFS will be taken pursuant to the Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery.

This notification and control date do not impose any legal obligations, requirements, or expectation.

**Authority:** 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5101 *et seq.*

Dated: January 17, 2014.

**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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