

be indicated in ranges) of the chemical in wastes to any off-site location and an indication of the basis for the estimate.

(17) The following information relative to waste treatment:

(i) An indication of the wastestream containing the reported chemical.

(ii) The treatment method.

(iii) An indication of the concentration of the chemical in the wastestream prior to treatment.

(iv) An estimate in percent of the efficiency of the treatment plus an indication of whether the estimate is based upon operating data.

(18) Pollution prevention data (reporting is optional) which includes the type of pollution prevention modification, quantity of the chemical in the wastes prior to treatment and disposal (for both the current and prior reporting year), a production index, and the reason for the pollution prevention action.

[FR Doc. 91-695 Filed 1-10-91; 8:45 a.m.]

BILLING CODE 6500-50-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Rights in Technical Data

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical data advanced notice of proposed rulemaking; additional public hearing.

SUMMARY: The Department of Defense, General Services Administration and the National Aeronautics and Space Administration published an advanced notice of proposed rulemaking on Technical Data on October 15, 1990, (FR 41788). We are scheduling an additional public hearing. This document changes the public hearing schedule to add a public hearing.

DATES: A public hearing will be held at 9:00 a.m. January 25, 1991.

ADDRESSES: U.S. Chamber of Commerce, Herman Lay Room, 1615 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda W. Neilson, telephone (703) 697-7266.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Linda E. Greene,

Deputy Director, Defense Acquisition Regulatory System.

[FR Doc. 91-693 Filed 1-8-91; 2:12 pm]

BILLING CODE 6820-JC-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To List the Pacific Fisher as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding; 90-day petition finding for the Pacific fisher.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the Pacific fisher (*Martes pennanti pacifica*) in California, Oregon and Washington to the List of Endangered and Threatened Wildlife. The Service finds that the petition has not presented substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this notice was made on October 23, 1990. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address listed below until further notice.

ADDRESSES: Information, comments, or questions concerning the Pacific fisher petition may be submitted to the Field Supervisor, Sacramento Field Station, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle at the above Sacramento, California, Field Station address (telephone 916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) (16 U.S.C. 1531-1544), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of

the receipt of the petition, and the finding is to be published promptly in the Federal Register.

On June 5, 1990, the Service received a petition from Mr. Eric Beckwitt, Forest Issues Task Force, Sierra Biodiversity Project, to list the Pacific fisher (*Martes pennanti pacifica*) as an endangered species in California, Oregon, and Washington. Co-sponsors of the petition include the National Audubon Society and seven of its local chapters, the California Wilderness Coalition, the Greater Ecosystem Alliance, the Northcoast Environmental Center, and the Oregon Natural Resources Council. The petition was dated May 29, 1990.

This finding is based on numerous documents, including published and unpublished studies, agency documents, literature syntheses, and field sighting records. Interviews with researchers, wildlife managers, personnel from other Region 1 field offices, and others familiar with North American furbearers were conducted. In addition, field station staff met with the petitioner to discuss the petition and the listing process, and obtain copies of letters and documents cited in the petition. This information was promptly supplied by Mr. Beckwitt. All documents on which this finding is based are on file in the Sacramento Fish and Wildlife Enhancement Field Station.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an Endangered Species under the Act. The term "species" is defined by the Act to include "subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." (16 U.S.C. 1532 (16)). Thus, the first deliberation was whether or not the Pacific fisher is a recognized subspecies or distinct population that interbreeds.

Controversy exists as to whether the Pacific fisher is a distinct subspecies, as named by Rhoads (1898). Hagmeier (1959) questioned whether subspecific status is appropriate based on a lack of distinguishing morphological characteristics. However, based on an analysis by Jones (1990), it appears that the Pacific fisher is probably genetically, though not morphometrically, distinct from the Rocky Mountain form.

Jones cites Chesser (1983) as listing three factors that may act as barriers to continuous dispersal and consequently reduce gene flow between subpopulations: (1) Geographic distance; (2) ecological distance; and (3) behavioral distance. Jones concluded that, based on his ongoing study in north-central Idaho that showed

avoidance of open-canopied habitat by fishers, the presence of the Okanogan Valley "effectively reduces the likelihood of any migration occurring between the two populations in the continental United States." He adds that the Snake and Columbia Rivers also act as effective barriers except for the rare instances when the rivers freeze. Thus, any genetic exchange would have to occur in central to northern British Columbia. The large geographic distance from the Pacific States to central British Columbia, then to Idaho, in conjunction with the ecological barrier presented by the relatively open Okanogan Valley, led Jones to conclude that genetic exchange between the Rocky Mountain and Pacific fishers is "extremely low". Thus, it is our determination that, while genetic information is insufficient to determine whether subspecific status is appropriate, that the Pacific fisher represents a distinct population that interbreeds. The Pacific fisher is therefore a "species" within the meaning of the Act.

The petition states that fishers prefer large, contiguous blocks of mature and old growth coniferous or mixed deciduous/coniferous forest. The petitioners provide strong evidence that such habitat has declined substantially in the past because of extensive logging in the three Pacific States. The reduction of this type of habitat is well documented in numerous assessments made in the last several years during reviews of the status of the northern spotted owl (*Strix occidentalis caurina*). However, the petitioners do not provide substantive evidence that fishers prefer later seral stage vegetation in the Pacific States. Indeed, the petition states that fishers may be found in a "broad range" of forest types.

Requisite to making an appropriate determination as to the degree of destruction or modification that a species' habitat has undergone, one must determine the species' habitat preferences and requirements in that portion of the range under consideration. Only one study (Buck *et al.* 1983) has examined fisher habitat use in the Pacific States. That study, conducted on the Shasta-Trinity National Forest in the Coast Range of northern California, showed that fishers showed some preference for mature, closed-canopied stands; that open areas were avoided in some cases (but received significant use in others); and that multi-species stands are preferred. Differences in habitat preference between age classes, sexes, and geographic subareas of the study were also noted.

The study by Buck *et al.* (1983) involved a relatively small number of animals (21), relatively few radio locations of each specimen (only 3 were relocated 50 or more times), significant biases in habitat preference analyses, inaccurate telemetry data inherent in sampling from the ground in steep canyons, and several other problems readily admitted by the authors. Although their data may contribute significant insights into the biology of the fisher in that small portion of the species' range, the authors advise that land managers proceed with caution when using these data in formulating management strategies for fishers.

Contrary to the scarcity of fisher habitat use data in the Pacific States, considerable study has occurred in the Eastern States, the Lake States, and in Canada. Although habitat use by a species in one part of its range may lend insights into its habitat use elsewhere, such inferences must be drawn very cautiously. That is particularly true where the population being examined is far removed geographically from the populations that were the source of the data. Moreover, habitat preferences in populations other than the Pacific States are quite varied, further confounding any attempt to extrapolate data from one population to another.

Some authors report a strong preference for later seral stage vegetation by fishers, but others noted significant use of relatively young stands of timber, including former agricultural land reverting to forest. Some authors report avoidance of openings, while others report that open areas may be an important source of abundant prey. Two recent literature syntheses of habitat use data (Douglas and Strickland 1987, Banci 1989) illustrate the disparities in habitat use reported by different authors. Both reports state that ecotones, such as those provided by small, irregularly shaped openings in timber stands, may provide prey diversity important to fishers, which have an unusually diverse diet for a mustelid.

The petitioners stated the fishers have apparently disappeared from portions of their former range, based on an absence of recent sightings in those areas. However, sighting data must be interpreted cautiously, since many factors can influence the number of sightings reported in a given area. Such factors include rates of human use, the ability of persons to identify animals, and a lack of knowledge that sightings may be important. For example, the petitioners state that no recent sightings have been reported in the Coast Range

of California south of Trinity County. While this may have been true at the time the petition was written, at least five sightings have occurred in 1989-90 in Tehama and Mendocino Counties (USFS 1990).

The petitioners expressed concern that forest and fire management practices have resulted in a risk of catastrophic events, such as wildfire and windthrow, that may threaten the remaining blocks of suitable fisher habitat. However, as stated previously, little evidence exists as to habitat preferences of the Pacific fisher. It has not been demonstrated that large, contiguous blocks of late seral stage habitat are required for maintenance of viable fisher populations. Therefore, an assessment of the risk posed by catastrophic events is premature. In summary, insufficient information exists in the literature to draw reliable conclusions regarding habitat preferences by Pacific fishers and, more importantly, to assess what impact alteration of forest habitat within the subspecies' range has had on population viability.

Extensive fur trapping in the early part of this century resulted in considerable taking of Pacific fishers, and may have resulted in localized extirpation in small portions of its range. Because of observed declines in capture rates noted by State agencies monitoring fur trappers, commercial harvest of fishers became illegal in California in 1046 (Gould, pers. comm.), in Oregon in 1037 (Posey, pers. comm.), and in Washington in 1033 (McAllister, pers. comm.). Although some trapping of fishers probably occurs incidentally to legal trapping for other furbearers, the amount of such mortality is unknown. Marshall (pers. comm.) stated that such incidental mortality is probably rare in Oregon due to the relative rarity of the animal itself.

Recovery of fisher populations (both naturally and with the aid of reintroductions) in areas where they were decimated by trapping is well documented in other areas of the country. However, few data exist in the Pacific States to determine whether recovery is needed and, if so, in what areas. Since it is unknown how common fishers were before extensive trapping occurred, and no hard data exists on current fisher densities, assessment of the effect of trapping on the population, and the extent of any recovery that may be occurring, is speculative. Given the protected status in all three states, commercial overutilization is not likely occurring.

The petition states that, due to high predation rates, Pacific fishers are not recovering in areas where populations were decimated by trapping. The petition states that Roy (1990) speculates that a lack of predation in the northeastern United States may be the primary reason that fishers persist in highly fragmented forest and farmland habitats, and that the presence of predators in the Pacific States may render fragmented forests incapable of supporting fishers populations over time. Three studies that reported predation in the Western states are cited. Buck *et al.* (1983) suspected that 4 of 21 fishers in his study died as a result of predation. Roy (1990) reported that Jones lost 3 of 15 radioed fishers to predation in Jones' Idaho study, and Roy (1990) lost 10 of 32 fishers to predation in his study in Montana. However, Roy (pers. comm.) was monitoring reintroduced animals, and stated that he suspects that may have been contributory to the high predation rate he observed.

Although Roy's results seem to show a high rate of predation, those results are somewhat tainted because the animals were not native to the area. Predation rates in Buck's and Jones' studies lend little support to the argument that predation is a significant threat to fisher population viability, since little is known about population sizes and trends, birth rates, death rates, or other demographic parameters necessary to determine the significance of a single mortality factor. Such demographic data, as well as an assessment as to whether forest fragmentation contributes to predation, needs to be addressed before the risk of predation to the fisher population can be properly determined.

Based on the foregoing analysis, we believe that there may be reason for concern for a population that has undergone significant habitat alteration throughout the majority of its range. However, without better information of the habitat needs, population size and trends, and demographic parameters of the Pacific fisher population, insufficient scientific information exists to determine whether regulatory protection under the Act may be justified. Several studies designed to acquire such data are in the formative stages, but the data necessary to properly conduct a status review will not be available for at least two years. In addition, a number of other studies need to be initiated and completed before a scientifically credible determination can be made as to the status of the fisher in the Pacific States.

A task force convened by the Forest Service earlier this year, made up of

scientists and land managers from that agency who are most familiar with the current state of knowledge surrounding the fisher, concluded that there are significant gaps in our understanding of the species' status and management needs in the Pacific States. The task force listed information needs that will be required before a management strategy for the species can be formulated. Based on a review of the literature and extensive discussion with researchers and agency biologists, the Service concurs with the task force's assessment.

Based on the best scientific and commercial information currently available, the Service finds that the petition to list the fisher does not present substantial information indicating the requested action may be warranted.

References Cited.

- Banci, V. 1989. A fisher management strategy for British Columbia. B.C. Ministry of Environment: Victoria, B.C. Wildlife Bulletin No. B-63.
- Buck, S., Mullis, C., and A. Moosman. 1983. Final report: Corral Bottom—Hayfork Bally fisher study. Unpublished manuscript. From a cooperative study conducted by the U.S. Forest Service, California Department of Fish and Game and Humboldt State University.
- Douglas, W. D., and M. A. Strickland. 1987. Chapter 40: Fisher. In: Wild furbearer management and conservation in North America. (Ontario, Canada: Ministry of Natural Resources).
- Hagmeier, E. M. 1959. A re-evaluation of the subspecies of fisher. *Can. Field Natur.*, 73:185-197.
- Jones, J. L. 1990. Letter from Jeffrey L. Jones, Wildlife Biologist, Wisdom, MT to Mr. Charles H. Lobdell, Fish and Wildlife Service, Boise, ID dated August 9, 1990.
- Rhoads, S. N. 1898. Contributions to a revision of the North American beavers, otters, and fisher. *Trans. Amer. Philos. Soc., New Ser.*, 19:417-439.
- Roy, K. 1990. Letter from Kevin Roy, graduate student, Wildlife Biology Office, School of Forestry, University of Montana, Missoula, MT, 59812, to Eric Beckwitt regarding the draft fisher petition. May 7, 1990. (K. Roy's Thesis on fishers in low abundance areas in Montana will shortly be completed).
- USFS. 1990. Mendocino National Forest unpublished sighting map.

Author

This notice was prepared by Steve Spangle of the Sacramento, California Fish and Wildlife Enhancement Field Station (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting, Recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3508; unless otherwise noted.

Dated: December 21, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-625 Filed 1-10-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650.

[Docket No. 901247-0347]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) by clarifying the language and intent of 50 CFR 650.21 (a) and (b). In these paragraphs, the word "presumed" would be replaced with the word "deemed."

DATES: Comments on the proposed rule must be received on or before February 11, 1991.

ADDRESSES: Comments may be mailed to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Scallop Regulations."

Copies of the Regulatory Impact Review, Environmental Impact Statement, and Regulatory Flexibility Analysis may be obtained from the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Management Specialist, 508-281-9273.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the FMP (50 CFR part 650) require that Atlantic sea scallops meet specified meat-count and shell-height standards up to and including the first transaction after the scallops have been harvested. In § 650.21, paragraphs (a) and (b) state that if a sample group of scallops in possession does not meet the standard, "the total amount of scallops in possession will be presumed in violation."

