

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100322160-0161-01]

RIN 0648-XV10

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition to List the Bumphead Parrotfish as Threatened or Endangered and Designate Critical Habitat Under the Endangered Species Act (ESA)

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

ACTION: 90-day petition finding; request for information.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list the bumphead parrotfish (*Bolbometopon muricatum*) as threatened or endangered and designate critical habitat under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, we initiate a status review of the bumphead parrotfish to determine if listing under the ESA is warranted. To ensure this status review is comprehensive, we solicit scientific and commercial information regarding this species.

DATES: Information and comments must be submitted to NMFS by May 3, 2010

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN) 0648-XV10, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

Mail: Alecia Van Atta, Assistant Regional Administrator, Protected Resources Division, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. Comments will be posted for public viewing after the comment period has closed. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain a copy of the petition from the above address or online from the NMFS website:

http://www.fpir.noaa.gov/PRD/prd_esa_section_4.html

FOR FURTHER INFORMATION CONTACT:

Patrick Opay, NMFS, Pacific Islands Region, (808) 944-2242 or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:**Background**

On January 4, 2010, we received a petition from WildEarth Guardians to list the bumphead parrotfish as threatened or endangered under the ESA. The petitioner also requested that critical habitat be designated for this species concurrent with listing under the ESA. The petition asserts that overfishing is a significant threat to the bumphead parrotfish and that this species is declining across its range and is nearly eliminated from many areas. The petition also asserts that degradation of its coral habitat through coral bleaching and ocean acidification is a threat to this species, as coral is its primary food source. The petition asserts that biological traits (e.g., slow maturation and low reproductive rates), shrinking remnant populations and range reductions, the effects from increasing human populations in the species range, and inadequate regulatory protection are subjecting the bumphead parrotfish to extinction in the foreseeable future. The petition briefly summarizes the description, taxonomy, natural history, distribution, and status for the petitioned species.

The bumphead parrotfish is the largest of the parrotfish species and has a wide range. It can be found throughout the Indo-Pacific including the Red Sea and East Africa to the Line Islands and Samoa, north to Taiwan and the Yaeyama Islands (Japan), south to the Great Barrier Reef and New Caledonia, to Palau, Caroline, Marshall, and the Mariana Islands in Micronesia. In the United States it occurs in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Pacific Remote Island Areas. It is not found in Hawaii or Johnston Atoll.

The petition states that this species is classified as vulnerable by the World Conservation Union (IUCN). The IUCN defines vulnerable as a species considered to be facing a high risk of extinction in the wild. We believe that

bumphead parrotfish populations have been declining throughout their range and placed this species on our Species of Concern list in 2004.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (see 16 U.S.C. 1533(b)(3)(A)). Joint ESA-implementing regulations issued by NMFS and U.S. Fish and Wildlife Service (50 CFR 424.14(b)) define "substantial information" in this context as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: "(i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a 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; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) 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)). To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. When it is found that substantial information indicating that the petitioned action may be warranted is presented in the petition, 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 1 year of receipt of the petition, we shall conclude the review with a finding as to whether or not the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the available

information, as compared to the narrow scope of the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a “species,” which is defined to include taxonomic species as well as subspecies and, for any vertebrate species which interbreeds when mature, a distinct population segment (DPS) (16 U.S.C. 1532(16)). The bumphead parrotfish is classified as a taxonomic species. The petitioner requested consideration of the entire taxonomic species. A species or subspecies 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)).

Biological of the Bumphead Parrotfish

This species is slow growing and long-lived (up to 40 years), with delayed reproduction and low replenishment rates (Choat and Robertson, 2002; Hamilton, 2003). Bumphead parrotfish live in coral reef habitats from 3 to 160 feet (1–50 m) depth (Donaldson and Dulvy, 2004). They occur in barrier and fringing reefs during the day, but rest in caves or shallow sandy lagoon flats at night (Donaldson and Dulvy, 2004). Juveniles use seagrass beds inside lagoons while adults are more commonly found in outer lagoons and seaward reefs. This species sleeps in large groups, making them highly vulnerable to exploitation by spearfishers and netters at night (Myers, 1999; Donaldson and Dulvy, 2004). The bumphead parrotfish is primarily a corallivore, but also eats benthic algae. They use their large head to ram corals and break them into pieces that are more easily ingested (each fish ingests tons of structural reef carbonates per year) (Bellwood *et al.*, 2003), contributing significantly to the ecology and dynamics of reefs. Aggregations of this species are important coral sand producers on reefs and may be important in maintaining ecosystem resilience (Bellwood *et al.*, 2003).

Analysis of Petition

We evaluated the petition and information readily available in our files to determine if the petition presents an amount of scientific or commercial information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. The petition clearly recommends the administrative measure

of listing the bumphead parrotfish as endangered or threatened and designating critical habitat, and gives the scientific and common name of the species. The petition contains a narrative justification for the recommended measure, and discusses past and present population status and trends. The petitioner argues that while historically common or abundant throughout its range, the bumphead parrotfish is now declining and globally rare, citing Donaldson and Dulvy (2004), Chan *et al.* (2007), and NMFS (2009).

The petition further asserts that the populations of this species have declined at least 30 percent over the past 30 years, citing IUCN information (Chan *et al.*, 2007). The petition argues that the bumphead parrotfish is rarely encountered in U.S. Line and Phoenix Islands, and is nearly extirpated in Guam, East Africa, and the Marshall Islands. Our Pacific Islands Fisheries Science Center surveys of U.S. Pacific Islands and reefs conducted from 2000 to 2009 indicate that this species is extremely rare throughout the U.S. Pacific Islands except for Wake Atoll. The petition asserts that while the species was commercially important in the 1990s, the species is now rare in markets and nearly extirpated in Fiji, and is declining in Palau, Indonesia, and the south end of the Great Barrier Reef, citing Hasurmai *et al.* (2005), Foster *et al.* (2006), Chan *et al.* (2007), Habibi *et al.* (2007), Waddell and Clarke (2008), and NMFS (2009). The petition discusses interviews of local fishers in Palau conducted in 2003 by the Society for Conservation of Reef Fish Aggregations in which fishers explained that many bumphead parrot fish were caught years ago, but very few are found now. Respondents stated that 250 animals of this species were caught in just 1 fishing trip in 1975, whereas captures declined to 30 to 50 per trip after 1975, and now very few are caught. Another interview respondent reported that in their area they could catch up to 150 bumphead parrotfish in a month in the 1960's, but only up to 60 could be caught in a month after 1990, and the animals were half the size. The interviews suggested that this species had declined noticeably by the early 1990's. The petition asserts that in a global survey of over 300 reefs, the bumphead parrotfish was not found in 67 percent the sites in the Indo-Pacific, citing NMFS (2009).

The ESA requires us to determine whether species are threatened or endangered because of any of the following section 4(a)(1) factors: the present or threatened destruction,

modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1)). The petition describes factors which it asserts have led to the current status of the bumphead parrotfish, as well as threats which it asserts the species currently face, categorizing them under the section 4(a)(1) factors.

The petition asserts destruction of coral reefs is an important threat to reef fishes, citing Dulvy *et al.* (2003) and Waddell and Clarke (2008), further asserting that the bumphead parrotfish is vulnerable to degradation of its coral habitat, citing NMFS (2009). Coral is a primary food source for this species, and the petition provides examples of activities that are adversely affecting corals in Micronesia, the Marshall Islands, the Mariana Islands, Indonesia, American Samoa, Palau, and Guam. Additionally, the petition asserts that the negative effects of coral bleaching and ocean acidification present a significant threat to the bumphead parrotfish throughout its range (through degradation or loss of its food source and habitat). The petition cites examples of coral bleaching events in American Samoa (citing Aeby *et al.*, 2008), the Pamyra Atoll and Kingman Reef (citing Clarke *et al.*, 2008), Jarvis Island (citing Id.), Howland Island (citing Id.), the Marshall Islands (citing Berger *et al.*, 2008), Indonesia (citing Habibi *et al.*, 2007), Micronesia (citing George *et al.*, 2008), Palau (citing Marino *et al.*, 2008), and Guam (citing Burdick *et al.*, 2008). The petition asserts that the increased frequency and intensity of extreme weather events due to climate change harm coral reefs and thus may negatively impact bumphead parrotfish. The petition further asserts that increasing human populations within the range of the bumphead parrotfish present additional threats to the species through increased fishing pressure and impacts on coral habitat.

The petition asserts that overutilization through commercial and subsistence overfishing is a significant threat to the bumphead parrotfish, claiming it is one of the most vulnerable species to fishing pressure, citing Donaldson and Dulvy (2004) and NMFS (2009). It is particularly susceptible to spear and net fishing, as this fish sleeps in large groups at night. One of the main threats to this species is overexploitation, especially the taking of sleeping adults at night with spears or nets. The petition asserts that this

species is not adequately protected by federal or state laws or policies to prevent its endangerment or extinction. The petition asserts that more or better protective measures are needed for large females, and that a moratorium on commercial fishing and export, gear restrictions, and blanket protection for the species is necessary.

The petition also asserts that the bumphead parrotfish is nearly extirpated from many areas within its range and that small population sizes and narrowing range may increase the likelihood of extinction through random events, or loss of genetic variability over time and a concomitant inability to cope with environmental change.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. Based on that literature and information, we find that the petition meets the aforementioned requirements of the ESA regulations under 50 CFR 424.14(b)(2). The petition (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a 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; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of citations to journals that are readily accessible. This information would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Therefore we determine that the requested listing actions may be warranted.

Information Solicited

Information on Status of the Species

As a result of this finding, we commence a status review on the bumphead parrotfish to determine whether listing this species under the ESA is warranted. We intend that any final action resulting from this review be as accurate and as effective as possible. Therefore, we open a 30-day public comment period to solicit information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of this species throughout its range, including:

(1) Historical and current distribution and abundance of the species

throughout its range (U.S. and foreign waters);

(2) Historic and current condition of the species and its habitat;

(3) Population trends;

(4) The effects of climate change on this species and the coral reef ecosystems on which it depends over the short- and long-term;

(5) The level of current fishing pressure and known effects of such fishing;

(6) The effects of other threats, including but not limited to, coastal development, coastal point source pollution, agricultural and land use practices, disease, predation, reef fishing, physical damage from boats and anchors, marine debris, and aquatic invasive species, on the distribution and abundance of coral habitat important to the species over the short- and long-term;

(7) The coral species consumed by this species and the status of each those corals; and

(8) Management programs for conservation of this species, including mitigation measures related to any of the threats listed above.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please send any comments to the ADDRESSES listed above. We will base our findings on a review of the best scientific and commercial information available, including all information received during the public comment period.

Information Regarding Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of a species and after taking into account efforts being made to protect the species (16 U.S.C. 11533(b)(1)(A)). Therefore, in making its listing determinations, we first assess the status of the species and identify factors that have led to its current status. We then assess conservation measures to determine whether they ameliorate a species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, we consider the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation of the species; and the presence of monitoring provisions to

determine effectiveness of recovery efforts and that permit adaptive management (Policy on the Evaluation of Conservation Efforts, 68 FR 15100; March 28, 2003). In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provisions of adequate monitoring and funding for conservation efforts are essential to ensure that the intended conservation benefits will be realized. We encourage all parties to submit information on ongoing efforts to protect and conserve the bumphead parrotfish, as well as information on recently implemented or planned activities and their likely impact(s).

Information Regarding Potential Critical Habitat

Critical habitat is defined in section 3(5) of the ESA as: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) 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)). Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that they do not fund, authorize or carry out any actions that are likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 11533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). In advance of any determination to propose listing of the bumphead parrotfish as threatened or endangered under the ESA, we solicit information that would assist us in developing a critical habitat proposal.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat

(50 CFR 424.12(b)) state that the agency “shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.” Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. *Id.*

Section 4(b)(2) of the ESA requires the Secretary to consider the “economic impact, impact on national security, and any other relevant impact,” of designating a particular area as critical habitat (16 U.S.C. 1533(b)(2)). Section 4(b)(2) further authorizes the Secretary to exclude any area from a critical habitat designation if the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. *Id.* We seek information regarding the benefits of designating specific areas geographically throughout the range of the bumphead parrotfish as critical habitat. We also seek information on the economic impact of designating particular areas as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

In accordance with our regulations (50 CFR 424.13) we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose citizens harvest such species from the high seas. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties.

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all “influential scientific information” and “highly influential scientific information” disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered “influential scientific information,” we solicit the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority

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

Dated: March 30, 2010.

Eric C. Schwaab,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100201058-0158-01]

RIN 0648-AY50

Fisheries of the Northeastern United States; Proposed 2010 Specifications for the Spiny Dogfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the spiny dogfish fishery for the 2010 fishing year (FY) (May 1, 2010,

through April 30, 2011). The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 5 years and to provide an opportunity for public comment. This specification setting will apply to FY 2010 only. The intent of this rulemaking is to specify the commercial quota and other management measures, and to rebuild the spiny dogfish resource. NMFS proposes that the annual quota be set at 12 million lb (5,443.11 mt), and that the possession limit for dogfish remain set at 3,000 lb (1.36 mt). These proposed specifications and management measures are consistent with the FMP and promote the utilization and conservation of the spiny dogfish resource.

DATES: Public comments must be received no later than 5 p.m. eastern standard time on May 3, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648-AY50, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** 978-281-9135, Attn: Lindsey Feldman.

- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on 2010 Dogfish Spex.”

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (MAFMC), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Richard Seagraves, Acting Deputy Director, Mid-Atlantic