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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 170718681-7735-01]

RIN 0648-XF575

Endangered and Threatened Species; Initiation of a Status Review for Alewife and Blueback Herring under the Endangered Species Act (ESA)

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

ACTION: Notice of initiation of a status review; request for information.

SUMMARY: We, NMFS, announce the initiation of a new status review of alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*) to determine whether listing either species as endangered or threatened under the Endangered Species Act is warranted. A comprehensive status review must be based on the best scientific and commercial data available at the time of the review. Therefore, we are asking the public to provide such information on alewife and blueback herring that has become available since the listing determination in 2013.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than *[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]*

ADDRESSES: You may submit information for us to use in our status review, identifying it as “Alewife and Blueback Herring Status Review (NOAA-NMFS-2017-0094),” by either of the following methods:

- *Federal eRulemaking Portal.* Go to [www.regulations.gov/#!docketDetail;D= \[NOAA-NMFS-2017-0094\]](http://www.regulations.gov/#!docketDetail;D=[NOAA-NMFS-2017-0094]), click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- *Mail or hand-delivery:* Submit written comments to Tara Trinko Lake, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, Massachusetts 01930.

Instructions: Information sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All information received is a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Tara Trinko Lake at the above address, by phone at 978-282-8477 or tara.trinko@noaa.gov, David Gouveia, 978-281-9280 or david.gouveia@noaa.gov, or Marta Nammack, 301-427-8469 or marta.nammack@noaa.gov.

SUPPLEMENTARY INFORMATION:

This notice announces our active review of alewife and blueback herring. On August 12, 2013, we determined that listing alewife and blueback herring as threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) was not warranted (78 FR 48943). However, at that time, we committed to revisiting the status of both species in 3 to 5 years. The 3- to 5-year timeframe equated to approximately one generation time for these species, and allowed for time to complete ongoing scientific studies, including a river herring stock

assessment update that was completed by the Atlantic States Marine Fisheries Commission in August 2017.

The Natural Resources Defense Council and Earthjustice (the Plaintiffs) filed suit against us on February 10, 2015, in the U.S. District Court in Washington, D.C, challenging our decision not to list blueback herring as threatened or endangered. The Plaintiffs also challenged our determination that the Mid-Atlantic stock complex of blueback herring is not a distinct population segment (DPS). On March 25, 2017, the court vacated the blueback herring listing determination and remanded the listing determination to us. As part of a negotiated agreement with the Plaintiffs, we committed to publish a revised listing determination for blueback herring no later than January 31, 2019. We also agreed to conduct a new status review and publish in the *Federal Register* a notice of the status review, soliciting new information.

Background information about both species, including the 2013 listing determination, is available on the NMFS Greater Atlantic Regional Fisheries Office Web site:

https://www.greateratlantic.fisheries.noaa.gov/protected/pcp/soc/river_herring.html

Determining if a Species Is Threatened or Endangered

Paragraph (a)(1) of section 4 of the ESA (16 U.S.C. 1533) requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Paragraph (b) of ESA section 4 requires that our determination be made on the basis of the best scientific and commercial data available after

taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Application of the Distinct Population Segment Policy

In the application of the DPS policy, we are responsible for determining whether species, subspecies, or DPSs of marine and anadromous species are threatened or endangered under the ESA. If we are petitioned to list populations of a vertebrate species as DPSs, or if we determine that identifying DPSs may result in a conservation benefit to the species, we use the joint U.S. Fish and Wildlife Service-NMFS DPS policy (61 FR 4722; February 7, 1996) to determine whether any populations of the species meet the DPS policy criteria. Under this policy, in order to be considered a DPS, a population must be discrete from other conspecific populations, and it must be significant to the taxon to which it belongs. A group of organisms is discrete if physical, physiological, ecological or behavioral factors make it markedly separate from other populations of the same taxon. Under the DPS policy, if a population group is determined to be discrete, the agency may then consider whether it is significant to the taxon to which it belongs.

Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

Public Solicitation of New Information

With this notice, we commence a status review of alewife and blueback herring to determine whether listing the species as endangered or threatened under the ESA is warranted. To ensure that our review of alewife and blueback herring is informed by the best available scientific and commercial information, we are opening a 60-day public comment period to solicit information to support our status review.

For the status review to be complete and based on the best available scientific and commercial information, we request information on these species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on: (1) species abundance; (2) species productivity; (3) species distribution or population spatial structure; (4) patterns of phenotypic, genotypic, and life history diversity; (5) habitat conditions and associated limiting factors and threats; (6) ongoing or planned efforts to protect and restore the species and their habitats; (7) the adequacy of existing regulatory mechanisms and whether protections are being implemented and are proving effective in conserving the species; (8) data concerning the status and trends of identified limiting factors or threats; (9) information concerning the impacts of environmental variability and climate change on survival, recruitment, distribution, and/or extinction risk; and (10) other new information, data, or corrections including, but not limited to, taxonomic or nomenclature changes, identification of erroneous information in the previous listing determination, and improved analytical methods for evaluating extinction risk.

In addition to the above requested information, we are interested in any information concerning protective efforts that have not yet been fully implemented or demonstrated as effective. Our consideration of conservation measures, regulatory mechanisms, and other protective efforts will be guided by the Services "Policy for Evaluation of Conservation Efforts

When Making Listing Decisions” (PECE Policy) (68 FR 15100; March 28, 2003). The PECE established criteria to ensure the consistent and adequate evaluation of formalized conservation efforts when making listing decisions under the ESA. This policy may also guide the development of conservation efforts that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary. Under the PECE the adequacy of conservation efforts is evaluated in terms of the certainty of their implementation, and the certainty of their effectiveness. Criteria for evaluating the certainty of implementation include whether: the necessary resources are available; the necessary authority is in place; an agreement is formalized (*i.e.*, regulatory and procedural mechanisms are in place); there is a schedule for completion and evaluation; for voluntary measures, incentives to ensure necessary participation are in place; and there is agreement of all necessary parties to the measure or plan. Criteria for evaluating the certainty of effectiveness include whether the measure or plan: includes a clear description of the factors for decline to be addressed and how they will be reduced; establishes specific conservation objectives; identifies necessary steps to reduce threats; includes quantifiable performance measures for monitoring compliance and effectiveness; employs principles of adaptive management; and is certain to improve the species' status at the time of listing determination. We request that any information submitted with respect to conservation measures, regulatory mechanisms, or other protective efforts that have yet to be implemented or show effectiveness explicitly address these criteria in the PECE.

If you wish to provide your information for this status review, you may submit your information and materials electronically via email (see **ADDRESSES** section). We request that all information be accompanied by: (1) supporting documentation such as 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.

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

Dated: August 10, 2017.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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