

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AU43****Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Queen Charlotte Goshawk as Threatened or Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of opening of public comment period on status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the opening of a public comment period to update the 1997 status review for the Queen Charlotte goshawk (*Accipiter gentilis laingi*), a subspecies of the northern goshawk that lives in the temperate rainforests of Southeast Alaska and insular British Columbia. This update has been initiated in response to a recent Court order remanding a previous 12-month finding with instructions to determine if Vancouver Island, British Columbia, Canada, is a significant portion of this goshawk's range and, if so, to determine whether the bird is endangered or threatened under the Endangered Species Act of 1973, as amended. This public comment period will allow all interested parties an opportunity to provide information on the status of the subspecies throughout its range, thereby assisting us in evaluating the significance of the Vancouver Island population of the goshawk in relation to the taxon as a whole.

**DATES:** Comments must be submitted to us on or before February 13, 2006.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of the following methods:

1. You may submit written comments and information by mail to: Queen Charlotte Goshawk Comments, U.S. Fish and Wildlife Service, 3000 Vintage Blvd., Suite 201, Juneau, AK 99801-7125.
2. You may hand-deliver written comments and information to our Juneau Fish and Wildlife Field Office, 3000 Vintage Blvd., Room 260.
3. You may fax your comments to (907) 586-7099.
4. You may send your comments by electronic mail (e-mail) directly to the Service at [QCGoshawk@fws.gov](mailto:QCGoshawk@fws.gov), or to the Federal eRulemaking Portal at <http://www.regulations.gov>. All

submissions must include the identification number RIN 1018-AU43. Please include "Attn: Queen Charlotte Goshawk" in the beginning of your message, and do not use special characters or any form of encryption. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

**FOR FURTHER INFORMATION CONTACT:** Steve Brockmann at the above address (telephone: (907) 780-1181; e-mail: [steve\\_brockmann@fws.gov](mailto:steve_brockmann@fws.gov)).

**SUPPLEMENTARY INFORMATION:****Public Comments Solicited**

We intend that any final action resulting from this updated status review will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party are hereby solicited.

We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Queen Charlotte goshawk throughout its range, including:

1. Taxonomy, distribution, habitat selection, food habits, population density and trends, habitat trends, and effects of forest management on goshawks;
2. Any information pertinent to determining whether Vancouver Island may constitute a significant portion of the range of the subspecies, such as:
  - a. Any information pertinent to whether and how the threats to goshawks on Vancouver Island affect the survival and persistence of Queen Charlotte goshawks elsewhere (Alaska, Queen Charlotte Islands);
  - b. Any information concerning the historical value of the habitat on Vancouver Island, including the uniqueness or importance for other reasons (such as breeding, feeding, or suitability for population expansion) of the habitat on Vancouver Island to the subspecies;
  - c. To what extent the habitat on Vancouver Island contributes to the

representation, resilience, or redundancy of the subspecies as a whole;

3. Information relevant to the accuracy of our 1997 status review; and
4. Information relevant to whether or not there are any populations of the subspecies that may qualify as distinct population segments.

We will base our finding on a review of the best scientific and commercial data available, including all information received during the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our Juneau Fish and Wildlife Field Office at the above address.

**Background**

On May 9, 1994, the U. S. Fish and Wildlife Service received a petition from eight conservation groups and two individuals to list the Queen Charlotte goshawk as endangered. Logging of old-growth forest, where the bird nests and forages, was the primary threat identified. On August 26, 1994, we published our 90-day finding that the petition presented substantial information indicating that listing may be warranted, opened a public comment period, and initiated a status review to determine whether listing the subspecies was warranted (59 FR 44124). Following our status review, we determined that listing the subspecies under the Act was not warranted and subsequently published our finding in the **Federal Register** on June 29, 1995 (60 FR 33784). We expressed concern for long-term survival of the bird under the existing management plan for the Tongass National Forest (covering over 90 percent of Southeast Alaska), but acknowledged that a new management

plan was being drafted that was expected to provide improved protection for the subspecies. That finding was challenged in Federal District Court in Washington DC, in a suit filed on November 17, 1995, by 8 of the original 10 petitioners, plus 2 additional conservation organizations and 1 additional individual. The Court granted a summary judgment for the plaintiffs on September 25, 1996, holding that we should not have relied on a draft revision of the 1979 Tongass Land Management Plan "to provide sanctuary for the goshawk," remanded the decision to us, and instructed us to make a listing determination based on the existing Forest Plan, *Southwest Center for Biological Diversity v. Babbitt*, 939 F. Supp. 2d 49 (D.D.C. 1996). The Court agreed to a deadline of May 31, 1997, to complete this analysis. On May 23, 1997, however, the Forest Service released a new plan, the Tongass Land and Resources Management Plan. We requested and received an extension from the court until August 31, 1997, to review the petitioned action and the status of the subspecies in light of the new plan. On September 4, 1997, we published our new finding that listing of the subspecies under the Act was not warranted (62 FR 46710), confirming our previous determination. This finding was challenged in District Court, and a decision was issued July 20, 1999. The finding was remanded to us, with instructions to provide a more accurate and reliable population estimate, and to consider a 1999 revision of the 1997 Tongass Land and Resources Management Plan. We appealed that decision, prevailed, and the case was remanded back to the District Court, *Southwest Center for Biological Diversity v. Babbitt*, 215 F. 3d 58 (D.C. Cir. 2000). On July 29, 2002, Magistrate Facciola, of the D.C. District Court, issued his findings and recommendations, *Southwest Center for Biological Diversity v. Norton*, 2002 WL 1733618 (D.D.C. July 29, 2002). Magistrate Facciola found that: (1) We had fulfilled the requirement of the Act to use the best scientific data available; (2) the "not warranted" determination was due deference; (3) our determination that the Queen Charlotte goshawk would persist in Alaska and certain Canadian islands was not unreasonable; (4) Vancouver Island, which constituted one-third of the subspecies' geographic range, was a "significant portion" of the subspecies' range; and (5) our failure to make a specific finding as to conservation of the subspecies on an island which

constituted one-third of the subspecies' geographic range was material omission.

On May 24, 2004, Judge Urbina, of the D.C. District Court, issued an order that adopted Magistrate Facciola's Findings and Recommendations in total, except for the Magistrate's finding that Vancouver Island constituted a significant portion of the range for Queen Charlotte goshawk. Instead, Judge Urbina directed us, upon remand, to reconsider and explain any determination regarding whether or not Vancouver Island is indeed a significant portion of the range, and assess whether the Queen Charlotte goshawk is endangered or threatened on Vancouver Island. This opening of the public comment period is consistent with Judge Urbina's order as we are re-evaluating the status of the subspecies in relation to Vancouver Island and as a taxon as a whole.

#### Author

The primary author of this document is Steve Brockmann, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Field Office, Juneau, Alaska.

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

Dated: December 7, 2005.

#### Marshall Jones Jr.,

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 051130316-5316-01; I.D. 110905C]

RIN 0648-AT21

### Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2006 Specifications

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

**ACTION:** Proposed specifications; request for comments.

**SUMMARY:** NMFS proposes specifications for the 2006 Atlantic herring fishery, which are the same as the specifications implemented in 2005. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the

upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on January 17, 2006.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Essential Fish Habitat Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.gov>.

Written comments on the proposed rule may be sent by any of the following methods:

- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments-2006 Herring Specifications";

- Fax to Patricia A. Kurkul 978-281-9135;

- E-mail to the following address: [Herr2006Specs@noaa.gov](mailto:Herr2006Specs@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: "Comments-2006 Herring Specifications;" or

- Electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259, e-mail at [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov), fax at 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVpt), joint venture