The program will satisfy the Regional Water Quality Control Board requirement to monitor mercury in waters downstream of historic quicksilver mines in the Guadalupe River watershed. Increased information regarding CCC steelhead habitat use and preference and proper management of mercury loads in this watershed are benefits associated with this research program.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: March 16, 2011.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110309187–1185–01]

RIN 0648–XA105

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition To List the Caribbean Electric Ray as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list the Caribbean electric ray (*Narcine bancroftii*) as threatened or endangered under the ESA. We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition and related materials are available upon request from the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or online from the Southeast Regional Office-Protected Resources Division Web site: *http://sero.nmfs.noaa.gov/pr/ListingPetitions.htm.*

FOR FURTHER INFORMATION CONTACT: Andrew Herndon, NMFS Southeast Region, 727–824–5312, or Marta Nammack, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION: On September 7, 2010, we received a petition from WildEarth Guardians to list the Caribbean electric ray as threatened or endangered under the ESA. The petitioner asserts that the species has declined 98 percent since 1972 in the northern Gulf of Mexico and that it faces threats from incidental taking as shrimp trawl bycatch and also from habitat degradation, including the BP oil spill in the Gulf of Mexico.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 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, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), 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, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. 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 review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA–U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS 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)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered because of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (jointly, "the Services") (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains 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; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) 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)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature, the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or State statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Information on Species Status and Extinction Risk

The petition describes a few demographic factors specific to the Caribbean electric ray that could be indicative of its extinction risk, including: the abortion of embryos by gravid females when stressed, low survival rates of incidentally caught individuals, the species' relative rarity, and a critically low population count. The petition also states that the species' declines in the Gulf of Mexico and South Atlantic and habitat degradation are additional factors indicating the species is imperiled. These two factors are discussed in the ESA section 4(a)(1) factor analysis section below.

The majority of the other demographic factors are discussed in the World Conservation Union's (IUCN) synopsis of the threats to the species, which the petitioner relies heavily upon to support the assertion that the Caribbean electric ray is imperiled. The IUCN provides the following rationale for assigning a critically endangered classification to the Caribbean electric ray: "Electric rays are sluggish swimmers, with small home ranges, highly localized within an area and concentrating in surf zones adjacent to barrier beaches and on offshore sand bars in warm months and moving offshore in winter (Rudloe, 1989), making them susceptible to localized population depletion. The species is captured as bycatch by inshore shrimp trawl and other fisheries. It does not appear to be utilized and is discarded at sea, but survivorship rates are thought to be very low. Furthermore, abortion of embryos by captured gravid females is of concern. While specific catch data are lacking over most of the species' range, declines to 2 [percent] (95% confidence intervals 0.5 to 5%) of its baseline abundance in 1972 have been demonstrated in the Northern Gulf of Mexico. Shrimp trawl fishing is intense in that area and while the implementation of Turtle Exclusion Devices and Bycatch Reduction Devices has lowe[re]d overall bycatch rates, these mitigation measures are thought to be ineffective for this species due to it[s] size and sluggish swimming ability. Given the species' very low age at maturity it would take a very intense fishery to locally eliminate this species; however, this has been demonstrated in the Northern Gulf of Mexico. Further data showing declines of a similar magnitude are available from the U.S. east coast and Florida. While specific data are lacking, fishing activities, both artisanal and commercial in nature are generally intense and most often unregulated in shallow inshore waters of the remainder of the species' range. Given that large declines have been documented in U.S. waters where data are available, there is no reason to suspect that similar declines have not also occurred elsewhere across the species' range. The species is therefore globally assessed as Critically Endangered, based on observed declines in U.S. waters and inferred declines throughout the rest of the species' range. Information from outside U.S. waters is a priority (Carvalho *et al.,* 2007)."

The IUCN could not identify a population trend for the Caribbean

electric ray. The petition cites the decline in species abundance in the northern Gulf of Mexico reported in Shepherd and Myers (2005) as evidence the population is in decline. Population decline can result in extinction risk that is cause for concern in certain circumstances (*e.g.,* if the decline is rapid and/or below a critical minimum population threshold and the species has low resilience for recovery from a decline) (Musick, 1999). While the petitioner provides some evidence that the Caribbean electric ray population, at least in the Northern Gulf of Mexico, may have declined relatively rapidly, it fails to provide substantial information that the species is at a critically low population level or has a low resilience for recovery. An analysis of the apparent population decline is discussed below in the Other Natural or Manmade Factors section.

The petitioner claims the Caribbean electric ray has such a critically low population count that "it is increasingly vulnerable to extirpation from stochastic events." To determine that there is substantial information indicating that the species may be in danger of extinction now or in the foreseeable future due to small population size or stochastic events, information provided in the petition or existing in our files should be specific to the species and should reasonably suggest that these factors may be operative threats that act on the species to the point that it may warrant protection under the ESA. Broad statements about a generalized threat to species with small populations do not constitute substantial information that listing may be warranted. There is no information in our files indicating the species is at risk due to small population size or stochastic events, and the petition fails to provide any species specific information to that effect. Presumably, the petitioner believes the 98 percent decline in trawl abundance from 1972 to 2002 in the Northern Gulf of Mexico has reduced the population of the Caribbean electric ray to a critically low level (*see* the discussion under the Other Natural or Manmade Threats section for more on this decline). However, while a decline in relative catch per unit effort during fisheries independent monitoring (FIM) surveys likely does imply a decline in abundance, relative to 1972 levels, there are no estimates of abundance in the petition or in our files. Thus, the claim of a critically low population count is unsupported. Data in our files, which is a continuation of the same dataset analyzed by Shepherd and Myers (2005), show that since 2002 Caribbean electric rays have been documented in FIM cruises every year through 2010. Further, the Caribbean electric ray was the fifth (out of 31) most common species recorded in the data presented in Shepherd and Myers (2005). While we do not have an estimate of population numbers, the data does indicate that the species is relatively common, and it occurs in high enough abundance to be detected repeatedly during annual sampling. Species that are vulnerable to stochastic events generally have small ranges (endemism), fractured ranges, or dependence on limited habitat features that are themselves vulnerable to stochastic events. The petition and the information in our files do not provide any support that vulnerability to stochastic events may be an extinction risk concern for the Caribbean electric ray.

Outside the United States and the Northern Gulf of Mexico, shrimp fishing may be catching Caribbean electric rays, but beyond general statements on the quantities of bycatch produced during shrimp trawling, the petition fails to provide any information on what impact those fisheries may be having on the species. While we acknowledge that bycatch in foreign shrimp fisheries may be affecting the Caribbean electric ray, the petition provides no evidence that those interactions have somehow reduced Caribbean electric ray populations to critically low levels. There is also no information within our files to indicate that bycatch in foreign shrimp fisheries is having an effect on the Caribbean electric ray.

While the onus of determining what a critically low population count may be for the Caribbean electric ray should not necessarily fall on the petitioner, the petitioner must provide at least some information on what a critically low population count may be. Otherwise, the statements that the Caribbean electric ray populations are critically low are nothing more than an unsupported conclusion. The petition fails to provide substantial evidence that the Caribbean electric ray's population is critically low throughout its range. Data in the petition and in our files suggest that in the northern Gulf of Mexico the Caribbean electric ray is relatively common and regularly encountered (NMFS unpublished data, Shepherd and Myers 2005).

The petition also cites the abortion of embryos by gravid females caught in shrimp trawls as another characteristic that imperils the species by lowering its reproductive output. The petition provides no information on the rate at which gravid females are caught or what percent of gravid female actually abort embryos. Without such information it is impossible to determine what effect this trait has on the population. In slower maturing species, with small brood sizes and long gestation periods, the abortion of embryos could be particularly harmful because of the time and energy needed to produce another litter, potentially reducing the species' resiliency for recovery. However, unlike other ray and shark species, the Caribbean electric ray matures relatively early (females at approximately 2 years of age (Carvalho *et al.,* 2007)), has a short gestation period, has relatively large litters, and has an estimated population doubling time ranging from 4.5–14 years (Froese and Pauly, 2010). Thus, the Caribbean electric ray has a relatively high resiliency for recovery.

The petition states that "Electric Rays are generally discarded at sea, and survivorship rates are believed to be quite low," citing the IUCN's assessment of the species (i.e., Carvalho *et al.,* 2007). Review of that assessment provided no additional information, and we have no information in our files on the survivorship of incidentally caught Caribbean electric rays. Beyond the IUCN statement, the petition provides no additional information on the survival rates of Caribbean electric rays incidentally caught in shrimp trawls. Providing only a single reference and no additional information regarding the survivorship of discarded Caribbean electric ray does not represent substantial information that the species warrants listing under the ESA.

The petition references the Reef Environmental Education Foundation's (REEF) database sightings of the Caribbean electric ray as evidence that "sightings of the Electric ray are extremely rare in recent years." That database indicates the Caribbean electric ray is not commonly observed (*i.e.,* less than 50 percent of the time), and when it is seen, it is usually in low abundance (*i.e.,* usually only a single individual). As the petition points out, the Caribbean electric ray is relatively small (*i.e.,* ~60 cm), buries itself in the sand or mud, and appears to prefer nearshore sandy habitats. Given these characteristics, it is not particularly surprising that a small, buried animal, commonly found away from reef habitats, is not reported frequently by divers. Further, there is no indication from these data that the number of sightings has declined over time. Additionally, Shepherd and Myers (2005) reported that the Caribbean electric ray was the fifth most common species encountered.

While it is unclear how rare the species actually is, rarity alone is not an indication that a species faces an

extinction risk that is cause for concern. A species' rarity could be of concern if the species was distributed in small, isolated populations, or had a very restricted geographic range and was subject to specific habitat degradation. The information in the petition suggests the species is wide-ranging, found from North Carolina, through the Gulf of Mexico, to the north coast of South America, as well as in the Lesser and Greater Antilles (Carvalho *et al.,* 2007). The petition argues that the Caribbean electric ray's habitat is being degraded, but does not provide information on any habitat degradation threats that are specific to the species (see discussion on habitat degradation below).

Based on the information provided in the petition and available in our files on demographic factors of the Caribbean electric ray, we conclude there is not substantial information to indicate the species may be facing an extinction risk that is cause for concern.

Information on Threats to the Species

We next evaluated whether the information in the petition concerning the extent and severity of one or more of the ESA section 4(a)(1) factors suggests these impacts and threats may be posing a risk of extinction to the Caribbean electric ray that is cause for concern. The petition states that three of the five ESA section 4(a)(1) factors may affect the Caribbean electric ray. We evaluate those three factors below.

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition states "[the Caribbean electric ray] is threatened by habitat destruction from energy development, burgeoning human populations, and other pressures," claiming that "though the [Caribbean electric ray]'s range is relatively large, localized habitat loss and degradation are threats to significant portions of the species' range." The petition also makes a general reference to how coastal areas of the United States and other nations are being threatened and destroyed, and non-specifically references studies suggesting these changes are "affecting all species of sharks and rays (Camhi *et al.,* 1998)." The only specific statement provided in the petition regarding the extent of habitat degradation is a referenced statement from the proposed rule to list the largetooth sawfish under the ESA (75 FR 25174; May 7, 2010), which stated:

> Coastal habitats in the southern [U.S.] Gulf of Mexico region have experienced and continue to experience losses due to urbanization. Wetland losses in the Gulf of Mexico region of the U.S. [average] annual net losses of 60,000 acres (242.8 km^2) of coastal and freshwater habitats from 1998 to 2004. Although wetland restoration activities are ongoing in this region of the U.S., the losses significantly outweigh the gains. These losses have been attributed to commercial and residential development, port construction (dredging, blasting, and filling activities), construction of water control structures, modification to freshwater inflows (Rio Grande River in Texas), and gas and oil related activities.

The coastal habitats in the United States are being impacted by urbanization. However, the petition characterizes these impacts as generalized threats to the species. It fails to provide any information beyond these broad statements indicating how habitat degradation may be affecting the Caribbean electric ray to a point where it may warrant protection under the ESA. The only specific statements in the petition regarding habitat degradation appear to be almost entirely unrelated to the Caribbean electric ray. The species description provided in the petition states the Caribbean electric ray "concentrat[es] in the surf zone adjacent to barrier beaches and offshore sand bars in warm months and moves offshore in winter (Rudloe 1989)," and "are unable to penetrate fresh water to any extent." Given this description, the petition fails to demonstrate why or how the loss of wetlands and freshwater habitats would affect a species commonly found in sandy marine habitats. Thus, enumeration of these threats does not constitute substantial information that listing may be warranted.

The petition also discusses impacts from oil and gas exploration. It specifically mentions the Deepwater Horizon (DWH) oil spill, stating that following "the April 2010 [BP] oil spill disaster, the threat of habitat modification and degradation is now more acute for Gulf of Mexico marine life, including the Caribbean electric ray." The petition concludes that "the current oil spill situation, combined with the already-strained ecosystems in the Gulf of Mexico and coastal areas within the Ray's range, is a recipe for extinction, particularly given its current lack of ESA protection." The petition further states that "drilling [for oil and gas] * * * subjects marine species, including the [Caribbean electric ray], to elevated risks." Finally, the petition references the IUCN's statement that "pollution and oil exploration may also adversely affect the habitat of [the Caribbean electric ray], although no specific information is available (Carvalho *et al.,* 2007)," as supporting evidence of habitat degradation.

We also acknowledge oil and gas exploration may adversely affect the marine environment. The DWH oil spill was an unprecedented disaster, likely impacting the marine ecosystem in ways that may not be fully known for decades. However, like the discussion regarding the effects of losing coastal habitat, the petition fails to provide any information on the specific effects to Caribbean electric rays beyond broad statements on the impacts of oil and gas exploration. Thus, these threats do not constitute substantial information that listing may be warranted.

Beyond the impacts from habitat loss and oil and gas exploration, the petition also presents arguments that the destruction of coral reef habitats may be adversely affecting the Caribbean electric ray. The petition states that for "localized [Caribbean electric ray] populations living in coral reef habitats, habitat degradation in the form of coral reef destruction is a serious threat." Reef habitats in the Gulf of Mexico and Caribbean are threatened by multiple factors, including: natural abrasion and breakage, anthropogenic abrasion and breakage, sedimentation, persistent elevated sea surface temperature, competition, excessive nutrients, and sea level rise. However, the petition fails to demonstrate to what extent the Caribbean electric ray even utilize these habitats and how impacts to coral reefs would cause specific adverse effects to the species such that protection under the ESA may be warranted. Thus, these broad statements about generalized threats to the species do not constitute substantial information that listing may be warranted.

The petition also requests that we consider "the effects of Florida red tide [in] limiting the range of [Caribbean electric ray] around this State and other areas." Asserting that "[r]ed tide (*Karenia brevia*) is a local phenomenon in the Gulf of Mexico, along the Florida coast, and it impacts many species of fish and wildlife." While red tide events can cause deaths of aquatic species, possibly even the Caribbean electric ray, the petition fails to describe how and to what extent red tides may be affecting the species. More importantly, the petition fails to provide any compelling evidence regarding how the natural, localized phenomenon of red tide is threatening to destroy, modify, or curtail the habitat or range of the Caribbean electric ray. Thus, this does not constitute substantial information that listing may be warranted.

Inadequacy of Existing Regulatory Mechanisms

The petitioner also maintains listing is warranted due to the inadequacy of existing regulatory mechanisms. The petition presents two basic tenets with regard to this claim: (1) There are no species specific regulations in place to protect the Caribbean electric ray; and (2) shrimp trawl bycatch is the primary threat to the Caribbean electric ray, and the regulations requiring the use of turtle excluder devices and bycatch reduction devices (TED/BRDs) are inadequate to protect the species because TED/BRDs do not effectively release Caribbean electric rays.

The simple lack of species specific regulations does not necessarily mean a species' listing is warranted. To conclude that listing may be warranted because of inadequate regulatory mechanisms, there must be evidence that the lack of regulations has actually caused or is a contributing factor to the potential endangerment of the Caribbean electric ray. The petition fails to provide any supporting information on how the lack of species specific regulations has actually contributed to the endangerment of the Caribbean electric ray.

The petition also claims that existing regulations requiring TED/BRDs are inadequate to protect the Caribbean electric ray because TED/BRDs are ineffective in releasing Caribbean electric rays. However, the petition fails to provide substantial information specific to the species regarding the release or retention rates of Caribbean electric rays in shrimp nets equipped with TED/BRDs. Instead, the petitioner's claim that TED/BRDs are ineffective is based on broad statements about finfish swimming ability related to size. Specifically, the petition states that "[d]evices intended to reduce bycatch are ineffective for this species due to it[s] size and slow speed (Steele *et al.,* 2002 at p. 349). As these researchers explain, this is because 'larger fish were more likely to escape [shrimp trawl nets] than smaller fish, probably because swimming ability is positively associated with size in fishes.'" However, this statement is misleading as written. The Steele *et al.* (2002) study did not catch any ray species and did not comment on whether TED/BRDs would be effective in releasing the Caribbean electric ray. The entire quote reads: "[w]ith some exceptions, larger fish were more likely to escape than smaller fish, probably because swimming ability is positively associated with size in fishes (Wardle, 1993)" (Steele *et al.,* 2002); the quote is not specific to the Caribbean electric ray. Beyond this non-specific statement, the petition fails to present any information to suggest that TED/BRDs are ineffective in releasing Caribbean electric ray.

Conversely, information from the NMFS technical experts who develop and test TED/BRDs indicate that TED/BRDs could be effective in releasing smaller animals depending on their orientation (J. Mitchell NMFS, to A. Herndon NMFS, pers. comm., 2010). NMFS' research on the effectiveness of TED/BRDs has not collected length frequency data for rays captured and released during those tests. However, NMFS scientists involved in that research indicate that for an animal the size of the Caribbean electric ray (*i.e.,* ~60 cm), the exclusion rate might be as high as 75 percent for a bottom opening TED, but likely lower (*i.e.,* less than 35 percent) for a top opening TED (J. Mitchell NMFS, to A. Herndon NMFS, pers. comm., 2010). However, no specific data are available on the effectiveness of TED/BRDs in releasing Caribbean electric rays from shrimp trawls.

The petition also fails to acknowledge any potential beneficial effects from the implementation of TED requirements in most shrimp fisheries in the mid-1990s. Given the information available, mandatory TED requirements likely have had at least some beneficial effect.

Other Natural or Manmade Factors

The petition states bycatch is the primary natural or manmade factor affecting the Caribbean electric ray's continued existence. More specifically, it states "[t]he decline of the ray by 98 [percent] since 1972 in the Northern Gulf of Mexico is likely primarily caused by shrimp trawling (Carvalho *et al.,* 2007)," citing ineffective TED/BRDs and intense shrimping effort as causative factors. However, the petition's conclusion appears to be based on misleading statements and invalid assumptions.

The petition asserts that shrimp trawling is likely the primary cause of the 98 percent decline of the ray since 1972 in the Northern Gulf of Mexico. This statement is misleading. The decline referenced by the petition is from a study by Shepherd and Myers (2005) that estimated the Caribbean electric ray's relative abundance from FIM survey data available from 1972 to 2002. The data presented in that study show what appears to be a significant decline in mean standardized catch per tow (MSCPT) of the Caribbean electric ray from 1972 to 1973. However, those data also show that from 1973 through 2002 the MSCPT for the Caribbean electric ray appears to remain essentially stable. The petitioner's statement regarding the decline of the species since 1972 does not mention the stable MSCPT from 1973 to 2002. Thus, the assertion regarding population decline appears to be based on a decline solely between two data points from 1972 to 1973.

Although questionable, we cannot dismiss the petition's conclusion that the decline in MSCPT from 1972 to 1973 was evidence of a population decline. However, the data provided by the petitioner also show that no additional decline in relative abundance appears to have occurred after 1973. The data in our files also indicate the Caribbean electric ray is still encountered consistently during FIM trawl projects. Based on this information, we do not believe the information presented on the decline in MSCPT from 1972 to 1973 is evidence that the species is currently facing an extinction risk that is cause for concern.

The petition also asserts "[s]imilar high rates of decline, around [a] 95 [percent] decrease, have occurred in the United States coastal areas between Cape Canaveral, Florida, and Cape Hatteras, North Carolina," citing the Shepherd and Myers (2005) study. However, no such statement could be found in the referenced study.

The petitioner's statements regarding the ineffectiveness of TED/BRDs were addressed in the preceding section.

The petition also provided outdated statistics on the total level of shrimp fishing occurring annually in the United States (4–5 million hours annually; Shepherd and Myers (2005)) in support of its argument that shrimp fishing is intense in areas where the Caribbean electric ray is present. While the amount of fishing effort reported by Shepherd and Myers (2005) may have been correct, the petitioner failed to acknowledge the drastic changes in the shrimp fishery, particularly in the northern Gulf of Mexico. Since 2001, the total annual amount of shrimp fishing effort in the Gulf of Mexico has declined each year with the exception of 2009. Effort has declined from a high of approximately 6.7 million hours in 2001 to approximately 2.1 million hours in 2008 (NMFS unpublished data); a reduction of over 68 percent. Effort rebounded slightly in 2009 to 2.6 million hours (NMFS unpublished data), approximately 61 percent less effort than was documented in 2001. External factors such as low shrimp prices, rising fuel costs, competition with imported shrimp products, and the impacts of hurricanes in the Gulf of

Mexico (particularly Hurricanes Katrina and Rita) are all factors that have acted to reduce fishing effort (GMFMC, 2007). This reduction in effort has likely reduced the potential threat of shrimp trawling to the Caribbean electric ray. Not acknowledging these reductions in effort is misleading and mischaracterizes the current potential threat of shrimp trawling.

The petitioner also claims that "[i]ntense shrimp fisheries exist in multiple other countries surrounding the Gulf of Mexico as well, within the [Caribbean electric ray's] range." The petition concludes that "[s]ince fishing activities are similarly intense and most often unregulated in these areas, similar declines to that of the United States are likely across the species' range (Carvalho *et al.,* 2007)." Information provided in the petition and readily available in our files does not support these statements.

Information provided in the petition on the range of the species shows the species occurring along the Atlantic coasts of Mexico, Belize, Costa Rica, Panama, and Colombia, as well as in Venezuela, Cuba, Jamaica, and the Lesser Antilles. Of the countries listed, only Mexico and Venezuela even appeared on the Food and Agricultural Organization's list of the top 35 shrimp fishing nations from 2000–2005 (Gillet, 2008). Subsequent to the publication of that list, commercial shrimp fishing in Venezuela has been banned. Likewise, Belize has also recently banned all industrial shrimp fishing. While Costa Rica, Panama, and Colombia do have active commercial shrimp fisheries, they fish primarily in the Pacific Ocean where the Caribbean electric ray is not found. The state of the commercial shrimp fishery in Cuba is unknown, but the political and economic climate within the country makes it unlikely to be a source of great fishing effort. In the Lesser Antilles, only Trinidad and Tobago has a commercial shrimp fishery (M. Barnette, NMFS, to A. Herndon, NMFS, pers. comm., 2010).

Based on the preceding information, it appears extremely unlikely that the Caribbean electric ray is facing intense shrimp fisheries in multiple other countries within the Caribbean electric ray's range. In fact, statements regarding the Caribbean electric ray's exposure to intense shrimp fisheries outside the United States are misleading. In the Caribbean electric ray's range, only Mexico has a sizeable shrimp fishery. The Mexican shrimp fishery has experienced the same limiting factors as the U.S. fleet, and has declined to a similar degree over the last decade (M. Barnette, NMFS, to A. Herndon, NMFS, pers. comm., 2010). Thus, the petition does not accurately represent the potential threat posed by shrimp trawling throughout the range of the species. The available information does not indicate that the potential impacts from shrimp fisheries have caused declines or likely contributed to the endangerment of the species throughout the rest of its range. Therefore, this threat does not constitute substantial information that listing may be warranted.

In summary, the petitioner claims that shrimp trawling has caused Caribbean electric ray declines in the Gulf of Mexico and South Atlantic, and is likely causing declines elsewhere, primarily because of ineffective TED/BRDs and intense fishing effort. Based on information presented in the petition and contained within our files, these statements are either unsubstantiated or inaccurate representations of the available data. Thus, the petition does not provide substantial information that listing may be warranted.

In addition to the potential threat from shrimp fishing, the petitioner also claims that the species is prone to a specific type of infection when in captivity. While the information provided by the petition does suggest that the species is prone to infection, the petition fails to explain why the species' susceptibility to infection in captivity suggests a threat to wild populations. Thus, the existence of disease in captive animals does not constitute substantial information that listing may be warranted.

Petition Finding

After reviewing the information contained in the petition and information readily available in our files, we conclude the petition fails to present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (*see* **ADDRESSES**).

Authority

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

Dated: March 17, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–6692 Filed 3–21–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA310

National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The NOAA Fisheries will hold a Workshop to discuss the data and models that will be used in the 2011 stock assessments for sablefish, petrale sole and Dover sole.

DATES: The Pre-assessment Workshop will be held beginning at 9 a.m., Tuesday, April 5, 2011 and end at 5:30 p.m. or as necessary to complete business for the day. The Workshop will reconvene on Wednesday, April 6 at 9 a.m. and will adjourn by 1 p.m.

ADDRESSES: The Pre-assessment Workshop for sablefish, Dover sole and petrale sole will be held at the Hallmark Resort, 744 S.W. Elizabeth Street, Newport, OR 97365; telephone: (1–888) 448–4449.

Science Center address: DOC, NOAA Fisheries, Northwest Fisheries Science Center, Newport Research Station—Bldg. 955, 2032 S.E. OSU Drive, Newport, OR 97365–5275; telephone: (541) 867–0500.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (541) 961–8475; or Dr. Jim Hastie, Northwest Fisheries Science Center (NWFSC); telephone: (206) 860–3412.

SUPPLEMENTARY INFORMATION: This Pre-Assessment Workshop is intended to provide a forum for the exchange of information and ideas between members of the fishing community and other members of the public, stock assessment authors, and data managers. The specific objectives of the workshop are to: (1) Discuss the data to be used in the sablefish, petrale sole and Dover sole stock assessment models; (2) discuss approaches for improving stock assessment modeling efforts; (3) identify anomalies in the data and discuss possible explanations; and (4) identify data gaps and future research possibilities.

Although non-emergency issues not contained in the meeting agenda may come before the Workshop participants for discussion, those issues may not be the subject of formal Workshop action