

#170-91

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**National Oceanic and Atmospheric  
Administration**

**Endangered Fish and Wildlife; Petition  
and Finding To Remove the Eastern  
Pacific Gray Whale Stock From the  
List of Endangered and Threatened  
Wildlife**

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

**ACTION:** Notice of receipt of petition and  
finding.

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**SUMMARY:** NMFS announces receipt of a  
petition under the Endangered Species  
Act (ESA) to remove the eastern Pacific  
gray whale (*Eschrichtius robustus*)  
stock from the U.S. List of Endangered  
and Threatened Wildlife (the List).  
NMFS finds that the petition presents  
substantial information indicating that  
the requested action is warranted but  
because a proposed regulation to  
remove this stock from the List has been  
published, it is not necessary to  
commence a formal review of the status  
of this stock under the petition.

**DATES:** Comments on the petition must  
be received by February 10, 1992.

**ADDRESSES:** Comments should be  
mailed to the Director, Office of  
Protected Resources, National Marine  
Fisheries Service, 1335 East-West  
Highway Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:**  
Dr. Charles Karnella, NMFS, at (301)  
427-2332.

**SUPPLEMENTARY INFORMATION:****Background**

Section 4 of the ESA as amended (16 U.S.C. 1531 *et seq.*), contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to, or remove a species from the List. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary of either the Interior or Commerce, depending upon the species involved, shall determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS interprets "substantial scientific or commercial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted (50 CFR 424.14(b)). Section 4(b)(3)(B) of the ESA requires that, within 12 months of receipt of a petition to add a species to, or remove a species from the List, a finding be made as to whether the requested action is: (a) Not warranted; (b) warranted; or (c) warranted, but precluded by other listing activity. Such a 12-month finding is to be published promptly in the **Federal Register**. If, based upon a review of the status of the stock, the finding is that the action is warranted, section 4(b)(3) also requires prompt publication in the **Federal Register** of a proposed regulation to implement such action.

On January 3, 1990 (55 FR 164), NMFS announced that it was conducting status reviews under section 4(c)(2) of the ESA on certain listed species (including the gray whale) under its jurisdiction, and solicited comments and biological information. That status review was completed and made available to the general public in June 1991. In addition to a status review, NMFS is required under section 4(c)(2)(B) of the ESA to determine whether any species should (1) be removed from the List; (2) be changed in status from an endangered species to a threatened species; or (3) be changed in status from a threatened species to an endangered species. On June 27, 1991 (56 FR 29471), NMFS announced that, based upon the recently completed status review, it intended to publish a proposed determination that the listing status of the eastern North Pacific population of gray whale should be changed. That proposed determination and rule was completed and published in the **Federal Register** on November 22, 1991. 56 FR 58869).

**Petition**

Coincident with completion of the status review under section 4(c)(2) of the ESA and after work was initiated on the proposed determination and rule, the Secretary of Commerce received, on March 7, 1991, a petition from the Northwest Indian Fisheries Commission and others, which requested, under section 4(b)(3)(A) of the ESA, the removal of the eastern stock of the North Pacific gray whale from the ESA. On March 27, 1991, the Under Secretary for Oceans and Atmosphere, NOAA, acknowledged the petition and NMFS began a review to determine whether the petition presented "substantial scientific or commercial information" that would support such an action.

NMFS has completed that review and has determined that the petition presents substantial information indicating that the requested action is warranted. However, because a status review has been completed, published, and made available for public comment, NMFS has determined that conducting another status review under section 4(b)(3)(A) would be duplicative and unnecessary. In addition, a proposed regulation to delist the gray whale has been published. This proposed regulation can be taken as the finding action required by section 4(b)(3)(B) for petitions found to contain substantial information. Under the provisions of section 4, NMFS has 1 year from date of publication of the proposal to issue a final rule and decision. That decision will be published in the **Federal Register**.

Dated: December 5, 1991.

**William W. Fox, Jr.**,

*Assistant Administrator for Fisheries.*

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