



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

#### RTID 0648-XB130

### Receipt of Receipt of a Petition to Issue Protective Regulations for Banggai

### Cardinalfish under Endangered Species Act

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

**ACTION:** Receipt of petition for rulemaking; request for information.

**SUMMARY:** We, NMFS, announce receipt of a petition to promulgate a rulemaking under the Endangered Species Act (ESA) to provide for the conservation of the Banggai cardinalfish (*Pterapogon kauderni*). Specifically, the petition requests that we extend the prohibitions of the ESA to this species, including prohibitions on import, export, and all commercial activities for both wild and captive-bred populations. We solicit information and comments that may be relevant to our analysis of protective regulations.

**DATES:** Written comments and information must be received by *[insert date 60 days after date of publication in the Federal Register]*.

**ADDRESSES:** You may submit information on this document, identified by NOAA–NMFS–2021–0060, by the following method:

- *Electronic Submission:* Submit electronic information via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter NOAA–NMFS–2021–0060. Click on the “Comment” icon and complete the required fields. Enter or attach your comments.

*Instructions:* Comments sent by any other method or received after the end of the specified period, may not be considered. All comments received are a part of the public

record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous submissions (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable electronic file (PDF) formats only.

The petition and previous rulemaking documents related to the listing of the species can be obtained electronically on the NMFS website at:

<https://www.fisheries.noaa.gov/species/banggai-cardinalfish#conservation-management>.

**FOR FURTHER INFORMATION CONTACT:** Stephania Bolden by phone at (727 551-5768) or email at [Stephania.Bolden@noaa.gov](mailto:Stephania.Bolden@noaa.gov); or Erin Markin by phone at (301 427-8416) or email at [Erin.Markin@noaa.gov](mailto:Erin.Markin@noaa.gov), NMFS, Office of Protected Resources.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(d) of the ESA provides that, whenever a species is listed as threatened, the Secretary of Commerce (Secretary) shall issue such regulations as the Secretary deems necessary and advisable to provide for the conservation of the species (16 U.S.C. 1533(d)). Under section 4(d), the Secretary may by regulation extend to any threatened species any or all of the prohibitions in ESA section 9(a)(1), which apply automatically to fish or wildlife species listed as endangered (16 U.S.C. 1538(a)(1)). Section 9(a)(1) makes it unlawful, with limited specified exceptions, for any person subject to the jurisdiction of the United States to: (A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species

taken in violation of subparagraphs (B) and (C); (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species; (F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of the ESA and promulgated by the Secretary pursuant to authority provided by the ESA.

On January 20, 2016, we published a final rule listing Banggai cardinalfish as threatened under the ESA (81 FR 3023). The final listing rule provides a summary of our conclusions regarding the threats to the species, and the 2015 status review summarized the scientific information that informed the listing decision. These documents are available on the NMFS website (see **ADDRESSES**).

On March 29, 2021, we published a notice announcing the initiation of a 5-year review of the Banggai cardinalfish and requested information on the species, particularly information on the status, threats, and recovery of the species that has become available since its listing (86 FR 16326). On the basis of this review, as required under section 4(c)(2)(B) of the ESA, we will determine whether the listing classification for this species remains accurate, or whether the species should be reclassified (from threatened to endangered) or delisted (16 U.S.C. 1533(c)(2)(B)).

### **Information in the Petition**

On April 22, 2021, we received a petition from the Center for Biological Diversity, Animal Welfare Institute, and the Defenders of Wildlife requesting we promulgate a rulemaking under section 4(d) of the ESA to provide for the conservation of the Banggai cardinalfish. The petition states that the Banggai cardinalfish are particularly vulnerable to extinction from collection for the aquarium trade, and that since the species' listing in 2016, populations have continued to decline, with collection from the wild still occurring to supply the aquarium trade. The petition also alleges the ecosystem the

Banggai cardinalfish depend on is becoming unsuitable due to loss of key microhabitat species (corals, sea urchins, and sea anemones), coral bleaching events, and climate change. The petition states that between the loss of habitat and “the decrease in the species’ population abundance and fitness resulting from decades of overexploitation, Banggai cardinalfish cannot withstand continued, high levels of take from the wild.” The petition concludes that an ESA section 4(d) rule is both “necessary and advisable” for the conservation of the species, and requests that we initiate rulemaking, specifically recommending we apply the prohibitions under ESA sections 9(a)(1)(A) and 9(a)(1)(E) through 9(a)(1)(G) (see **Background**) and require a threatened species permit for import or export of specimens, products, and live Banggai cardinalfish, including for introduced populations and captive-bred fish unless accompanied by a pre-Act Certificate of Exemption (50 CFR 222.201 – 222.205). The petition is available on the NMFS website (see **ADDRESSES**).

### **Information Solicited**

NMFS will consider public comments and information received in evaluating the request by the petitioners (see **DATES** and **ADDRESSES**). In addition to comments and information pertaining to any aspect of the petition, NMFS specifically requests information regarding:

- The adequacy of existing measures regulating collection and trade of the Banggai cardinalfish throughout its range;
- Availability and efficacy of captive-bred fish for aquaria trade both domestic and international;
- Information on the collection/harvest (including, but not limited to, number, location, mortality rate), and trade (import/export data, value, transit mortality rates) of wild fish for aquaria trade; and

- Implementation and efficacy of Indonesia's National Plan of Action (NPOA) (2017-2021) for Banggai cardinalfish and adequacy of enforcement of Banggai cardinalfish regulations.

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