

for the military department is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapons system warranties required by 246.770-2 if—

\* \* \* \* \*

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

\* \* \* \* \*

(2) Notifications shall include—

\* \* \* \* \*

## PART 252—CONTRACT CLAUSES

### 252.217-7027 [Removed]

11. Section 252.217-7027 is removed.

12. Section 252.217-XXXX is added to read as follows:

### 252.217-XXXX Contract Definitization.

As prescribed in 217.7405(b), use the following clause:

Contract Definitization (XXX XXXX)

(a) A (insert specific type of contract action) is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a (insert type of proposal; e.g., fixed-priced or cost-and-fee) proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract action is as follows (insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated (insert "cost/price ceiling" or "firm-fixed price") in no event to exceed (insert the not-to-exceed amount).

(End of Clause)

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Eagle Lake Rainbow Trout and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces the 90-day finding on a petition to list the Eagle Lake rainbow trout (*Oncorhynchus mykiss aquilarum*) under the Endangered Species Act (Act) of 1973, as amended. The Service finds that the petition did not present substantial information indicating that the petitioned actions may be warranted.

DATES: The finding announced in this document was made on July 25, 1995.

ADDRESSES: Information, data, comments, or questions concerning this finding should be submitted to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. The petition, petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Windham, staff biologist, at the

above address or telephone 916-979-2725.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species.

The Service has made a 90-day finding on a petition to list the Eagle Lake rainbow trout (*Oncorhynchus mykiss aquilarum*). The petition, dated April 25, 1994, was submitted by John F. Bosta, of Susanville, California, and was received by the Service on April 28, 1994. The petition requested the Eagle Lake rainbow trout be listed as threatened or endangered, that critical habitat be designated, and that a recovery plan be developed. The petitioner provided some life history information for the Eagle Lake rainbow trout and material related to the fish passage problems, habitat degradation, and lack of natural reproduction. Recommendations for correcting habitat problems were included with the petition.

The Eagle Lake rainbow trout is a species of concern to the Service (November 15, 1994; 59 FR 58982). Such taxa are typically those for which some information indicates threats to the species exit but sufficient information on biological vulnerability and threats is not currently available indicating that listing as endangered or threatened is warranted.

Eagle Lake rainbow trout are endemic to Eagle Lake, Lassen County, California. Although they have been planted in numerous waters, no known self-sustaining populations of genetically pure Eagle Lake rainbow trout in waters exist outside of its native habitat. With the annual stocking of 200,000 Eagle Lake trout, the subspecies has been sustained almost entirely by California Department of Fish and Game's hatchery production since 1950. The petition and referenced literature

describe the lack of natural reproduction as the most serious concern for the long-term survival of Eagle Lake rainbow trout. Due to passage barriers and habitat degradation in Pine Creek (the only major tributary for spawning), no significant natural reproduction of Eagle Lake rainbow trout has occurred for over 40 years. Though efforts by the Forest Service to improve fish passage and riparian habitat may not be completed for 5 years, these efforts to restore natural spawning in Pine Creek are now underway.

In making a finding as to whether a petition presents substantial commercial and scientific information to indicate the petitioned action may be warranted, the Service must consider whether the petition is accompanied by a detailed narrative justification [50 CFR § 424.14 (b)(2)(ii)]. The regulations require the Service to "consider whether such petition \* \* \* [p]rovides information regarding the status of the species over all or a significant portion of its range" [50 CFR § 424.14 (b)(2)(iii)], including current distributional and threat information. Furthermore, the Service is required to "consider whether such petition \* \* \* [i]s accompanied by 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)(iv)].

Despite the limited distribution of the Eagle Lake trout, the petition included insufficient information regarding present fish population numbers and trends. In addition, the petition failed to provide substantial threat data concerning projected and ongoing management considerations with respect to the existing popular sport fishery and the stocking program for the trout. The petition also did not address the extent to which threats have been lessened by the significant recovery efforts now underway. More importantly, the future status of the subspecies may improve because of the significant recovery efforts now underway and the ongoing stocking program. Therefore, the Service finds that the petition does not present substantial information indicating that the listing of the Eagle Lake rainbow trout may be warranted.

The Service has reviewed the petition, literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the

petitioned actions may be warranted. The Eagle Lake rainbow trout will remain a species of concern to the Service, and the Service will continue to seek information regarding the status or threats to the subspecies. If additional information becomes available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

The petitioner also requested that critical habitat be designated and a recovery plan be developed. If the Service decides in the future to propose the fish for listing, the Service will determine whether designation of critical habitat is prudent at the time a species is listed under the Act. Recovery planning efforts begin once a species is listed.

#### Author

The primary author of this document is Kevin Stubbs, Sacramento Field Office (see ADDRESSES section).

#### Authority

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

Dated: July 25, 1995.

#### John G. Rogers,

*Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 638

[Docket No. 950725190-5190-10; I.D. 062695A]

RIN 0648-AH71

### Coral and Coral Reefs of the Gulf of Mexico; Amendment 3

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). Amendment 3 would prohibit the taking of wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida north and west of the Levy/Dixie County line; remove the prohibition on taking wild live rock in the EEZ by chipping between the Pasco/Hernando County and Levy/Dixie

County, Florida lines; establish annual quotas for wild live rock harvesting for 1995 and 1996 in the Gulf EEZ; and reduce the amount of substrate that may be taken with allowable octocorals in the Gulf EEZ. The intended effect is to protect the live rock resource and fishery habitat in the Gulf EEZ and to simplify the regulations implementing the FMP.

**DATES:** Written comments must be received on or before September 18, 1995.

**ADDRESSES:** Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review and an environmental assessment, or for copies of a minority report on Amendment 3 by two Council members, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX 813-225-7015.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

#### Background

Under Amendment 2 to the FMP, the harvest of wild live rock in the Gulf EEZ off Florida north of Monroe County is being phased out and the taking of wild live rock elsewhere in the Gulf is prohibited. Effective January 1, 1997, all wild live rock harvests are prohibited in the Gulf EEZ. Amendment 2 also established certain restrictions on wild live rock harvesting and possession, required permits and reporting during the phase-out period, and established an aquacultured live rock permit system. The intent of Amendment 2 was to protect an essentially nonrenewable resource and prevent a net loss of fishery habitat. Florida has the only reported live rock landings from the EEZ; live rock harvesting is banned in Florida waters. The final rule to implement Amendment 2 was published December 28, 1994 (59 FR 66776).

During development of Amendment 2, the Council was concerned about the continuing effects of wild live rock harvesting in the northern Gulf, especially the Florida Panhandle area, because live rock is relatively scarce in