

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
<i>Dudleya abramsii</i> ssp. <i>parva</i> .	Conejo dudleya	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
<i>Dudleya cymosa</i> ssp. <i>marcescens</i> .	Marcescent dudleya	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
<i>Dudleya cymosa</i> ssp. <i>ovatifolia</i> .	Santa Monica Mountains dudleya.	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
<i>Dudleya verityi</i>	Verity's dudleya	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
<i>Pentachaeta lyonii</i>	Lyon's pentachaeta	U.S.A. (CA)	Aster (Asteraceae)	E	606	NA	NA

Dated: December 26, 1996.  
 Jay L. Gerst,  
 Acting Director, Fish and Wildlife Service.  
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 BILLING CODE 4310-55-P

**50 CFR Part 17**  
**RIN 1018-AB75**

**Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Population of the Copperbelly Water Snake**

**AGENCY:** Fish and Wildlife Service, Interior.  
**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines threatened species status pursuant to the Endangered Species Act of 1973, as amended (Act), for the copperbelly water snake (*Nerodia erythrogaster neglecta*) in the northern portion of its range. The Service also determines that the copperbelly water snake does not warrant listing as a threatened species in the southern portion of its range and is not finalizing that portion of the proposal. This snake was referred to as the northern copperbelly water snake in several previous Federal Register publications. Historical records and recent studies indicate that this animal has declined substantially, especially in the northern portion of its range, and now persists largely in isolated pockets of suitable habitat. Rangewide, the snake has been impacted by a variety of human-induced causes, including urban/suburban encroachment, coal mining, and wetland drainage. These impacts continue to threaten the snake in the northern portion of its range but are being substantially reduced in the

southern portion of its range due to modifications in surface coal mining and reclamation practices.  
**EFFECTIVE DATE:** February 28, 1997.  
**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Bloomington Field Office, 620 South Walker Street, Bloomington, Indiana 47403; telephone 812/334-4261.  
**FOR FURTHER INFORMATION CONTACT:** David Hudak, Field Supervisor (see **ADDRESSES** section), 812/334-4261, extension 200.

**SUPPLEMENTARY INFORMATION:**  
 Background

The plain-belly water snake (*Nerodia erythrogaster*) was formally described as a species in 1938 as *Natrix erythrogaster* (Clay 1938). The copperbelly water snake, *Nerodia erythrogaster neglecta*, was recognized as a distinct subspecies in 1949 (Conant 1949). It is one of six recognized subspecies of the plain-belly water snake (McCranie 1990). The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife . . ." (section 3(15)). Thus, although taxonomically recognized as a subspecies, *N. e. neglecta* will be referred to as a "species" through the remainder of this rule. This legal, as opposed to biological, use of the term "species" should not be understood to mean that this rule covers the entire species *Nerodia erythrogaster*. The two decisions announced in this rule apply only to the subspecies *N. e. neglecta*.

Because *N. e. neglecta* was not recognized until 1949, museum specimens of the copperbelly water snake archived before that time were identified only as the plain-belly water

snake. Correction of these mislabelled specimens is difficult due to the rapid fading of colors from preserved specimens. Thus, the original range and distribution of the copperbelly water snake is not precisely known due to this taxonomic history and the loss of suitable habitat before recognition of the copperbelly water snake as a distinct subspecies (Conant 1949, 1951, 1955; Minton 1972).

The key field identification feature of the copperbelly water snake is its coloration. The snake has a solid dark, usually black, back with a bright orange-red underside that is visible from a side view. The head and eyes of the copperbelly water snake are proportionally larger than similar species (Clay 1938; Conant 1938, 1951; Minton 1972). The copperbelly water snake is most often confused with the yellowbelly water snake (*Nerodia erythrogaster flavigaster*), an adjacent subspecies to the south and west in Illinois and Kentucky. The most obvious single distinguishing characteristic is the belly color. The copperbelly water snake has a bright orange-red underside, whereas the yellowbelly water snake has a pale yellow belly. In addition, it has blotches of dark pigment extending onto the ventral scales that meet or nearly meet at the belly, whereas the yellowbelly water snake has dark pigment encroaching onto only the edge of the ventral scales (Brandon and Blanford 1995; Minton 1972; Conant 1938, 1949).

After its recognition as a subspecies, the known historical range of the copperbelly water snake was described by Schmidt (1953) as "south central Michigan and northwestern Ohio, southwestward through Indiana to extreme southeastern Illinois and adjacent Kentucky." A notable feature of the documented historical range is the

large gap in location records between the southern and the northern population segments. The most widely accepted theory suggests that the northern segment is a relict of the more extensive southern population (Conant 1938, 1951; Adler 1963). Today, the distribution of the copperbelly water snake is clearly divided into a southern segment in southeastern Illinois, western Kentucky, and southern Indiana; and an isolated northern segment in northern Indiana, southern Michigan, and northwestern Ohio.

Currently, within the southern population segment there are five local clusters known in Illinois, 18 in Kentucky, and 13 in southern Indiana. The northern population segment consists of eight local clusters that are known to have had the species present in the last ten years; copperbelly water snakes were found at five of these northern sites during 1996 surveys. Local clusters consist of snakes within connected, or nearly connected, habitat units and which are able to interbreed because of this proximity. Thus, local clusters may include several "sites" or "occurrences" as these terms are commonly used in databases maintained by states or private conservation organizations.

It is believed, based on drainage patterns and post-1949 records of copperbelly water snakes, that its former range was nearly continuous over the three southern states. Only remnants of that original distribution are still evident, however; coal mining, drainage and damming of wetlands, channelization, damming and diversion of streams and rivers, and residential and commercial development of its habitat have disrupted and fragmented the distribution of the copperbelly water snake. Many once-connected local clusters are now isolated.

In Illinois, the copperbelly water snake distribution is believed to once have been continuous through southern Illinois; however, due to continued habitat loss and fragmentation, only five small, isolated local clusters remain today (Brandon pers. comm. 1994).

Kentucky, historically and presently, is considered to have the largest number of copperbelly water snakes rangewide. It is believed the species was once abundant and continuous throughout the western Kentucky coal field. The once-continuous range of the copperbelly water snake is now restricted to 18 isolated local clusters.

Similarly, in southern Indiana, the distribution of the species has been fragmented into 13 discrete populations.

The northern population segment has experienced extensive habitat loss; and

the impacts from habitat fragmentation and degradation on this smaller population are very pronounced. Consequently, the northern population segment has been relegated to a few small, scattered and isolated local clusters in southern Michigan, northeastern Indiana, and northwestern Ohio. Under current conditions and trends, extirpation of the northern population is expected to occur within the next few decades (Kingsbury pers. comm. 1994 and 1996).

Copperbelly water snakes migrate seasonally throughout their habitat, which consists of bottomland forests and shrub swamps. Although the species is a "water" snake, much of its time is spent away from water in the terrestrial, forested part of its habitat (Kingsbury pers. comm. 1994). Copperbelly water snakes emerge from their hibernation sites in early spring and migrate through wooded or vegetated corridors to wetland areas. They can often be seen basking, breeding, and foraging near shallow wetland edges in woodlands. When the woodland swamps begin to dry in late spring or in early June, the snakes again disperse and move through wooded or vegetated corridors to their summer habitat areas. Summer activities usually center around forest and forest edges (Conant 1951, Kingsbury pers. comm. 1994). For this reason, upland habitat is essential for the snake's summer foraging activities.

By late fall, copperbelly water snakes seek out hibernation sites. It is believed that copperbelly water snakes use hibernation sites that are at elevations higher than the floodstage line and ponding areas (Sellers 1991). Kingsbury (pers. comm. 1996), based on results of radio-telemetry studies, reported that copperbelly water snakes do utilize bottomland hibernation sites. Bottomland hibernation sites have been identified as felled tree-root networks (Lodato 1985), crayfish burrows (Kingsbury pers. comm. 1994), dense brush piles, fieldstone piles, and perhaps beaver and muskrat lodges (Sellers 1991). These studies indicate that upland hibernation sites are essential to the long-term survival of viable populations of the snake. A mid-winter flood, coupled with freezing temperatures, could be lethal to snakes and could decimate the local copperbelly water snake population if floodplain and riverbank areas are the only hibernation sites available.

This species is known to form small groups in the spring and fall. Groups of snakes have been observed swimming, feeding, courting, and resting together (Conant 1938; Martin 1982, *in* Sellers

1991). Courtship and mating occurs in April, May, and June. Copperbelly water snakes have a longer gestation period than other water snakes sharing their range, and their average litter size (18) is also smaller (Schmidt and Davis 1941). Young snakes are born in the fall near, or in, the hibernaculum and may not become active until the following spring.

#### Distinct Population Segments

The range of the copperbelly water snake contains a geographical barrier between the local clusters in Michigan, Ohio, and northeastern Indiana, and the rest of the local clusters in southern Indiana, Kentucky, and Illinois. This gap is apparent from historical and recent known locations for the snake (Adler 1963, Conant and Collins 1991, Sellers 1991). This hiatus between the northern and southern populations currently is approximately 180 miles wide. Within the gap those areas of habitat that are potentially suitable for copperbelly water snakes are small and isolated, making copperbelly water snake movement through this gap extremely unlikely.

These populations qualify as distinct under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Act, published in the Federal Register on February 7, 1996 (61 FR 4722-4725). The Policy identifies three criteria that must be satisfied in order to list a distinct population segment of a species or subspecies as threatened or endangered—discreteness, significance, and conservation status.

The wide geographic gap in suitable and inter-connected habitat between the northern and southern Indiana local clusters clearly identifies these as discrete and isolated population segments. The loss of the peripheral, isolated, northern population is considered significant as characterized under the policy, as it would result in a significant reduction in the range of the taxon.

The existence of two distinct population segments for the copperbelly water snake enables the Service to treat each as a species and to make separate determinations for each of them. Therefore, the Service is adopting the following designations of the two population segments, and these terms will be used in the remainder of this rule.

*Northern Population Segment*—Michigan, Ohio, and Indiana north of 40 degrees north latitude (approximately Indianapolis, IN).

*Southern Population Segment*— Illinois, Kentucky, and Indiana south of 40 degrees north latitude.

#### Final Determination on Northern Population Segment

As discussed below in the Summary of Factors Affecting the Species section, the threats affecting the northern population segment arise from several sources that are not addressed in the Conservation Agreements. Because these threats continue to affect the northern population segment the Service has determined that the northern population segment of the copperbelly water snake warrants listing as a threatened species.

#### Final Determination on Southern Population Segment

Since the 1993 proposal for the threatened listing of the copperbelly water snake there have been several parallel efforts to develop formal methods to reduce threats to the species and its habitat. In recent months these efforts have coalesced into two Conservation Agreements, with the Service being a signatory to both. One Agreement deals specifically with the effects of coal mining in Indiana. The second Agreement covers the impacts of coal mining in Kentucky and Illinois and also institutes other conservation measures in all three states.

The Conservation Agreements will promote the conservation of the copperbelly water snake and its habitat during surface coal mining in Indiana by delineating approximately 10,400 acres of high quality copperbelly water snake habitat as core habitat areas that will not be affected by surface coal mining. Furthermore, the Agreements require the maintenance of habitat corridors connecting all other copperbelly water snake habitats, restrict the mining of large habitat fragments that are outside of the core areas to practices that will ensure the survival of existing copperbelly water snake local clusters, and ensure that all snake habitat that is mined will be reclaimed in such a way as to increase both the quantity and quality of snake habitat.

In Kentucky the Conservation Agreements provide that a maximum of four percent of the approximately 112,400 acres of known copperbelly water snake habitat can be disturbed by surface coal mining activities. All copperbelly water snake habitat has been divided into management units of which no one unit may have more than ten percent of its area disturbed by mining activities, and all copperbelly water snake habitat that is mined will be

reclaimed in such a way as to increase both the quantity and quality of snake habitat.

Similarly, in Illinois, the Agreements require that all copperbelly water snake habitat that is mined will be reclaimed in such a way as to increase both the quantity and quality of snake habitat.

The Conservation Agreements also ensure that in all three states within the southern population segment the state natural resource departments will emphasize land acquisition, management, and law enforcement to manage and conserve the copperbelly water snake as if it were a federally listed species. In Illinois and Kentucky, where the snake is not listed as threatened or endangered by the states, there will be special regulations written to provide the species with protection from take. In addition, the Office of Surface Mining Reclamation and Enforcement will prioritize their Clean Stream initiative program to aid protection and enhancement of copperbelly water snake habitats. The Farm Bureau's role will be to publicize the conservation needs of the snake to its members.

These provisions of the Conservation Agreements significantly reduce the threats from surface coal mining at all known copperbelly water snake local clusters in the southern population segment. Because habitat destruction and degradation resulting from surface coal mining was the predominant recent threat to the southern population segment, the Service has determined that the southern population segment does not warrant listing as a threatened species at this time.

#### Previous Federal Action

The copperbelly water snake was recognized as a category 2 species in the Service's December 30, 1982, (47 FR 58454); January 6, 1989, (54 FR 554); and November 21, 1991, (56 FR 58804) Animal Notices of Review. On November 12, 1991, the Service reassigned this species to category 1. On August 18, 1993, the Service published the proposed rule to list the copperbelly water snake as threatened (58 FR 43860). The Service extended the public comment period on October 12, 1993, (58 FR 52740) for 30 days. The public comment period was re-opened on March 22, 1994, for an additional 30 days (59 FR 13472) to hold a public hearing on April 5, 1994. On July 11, 1994, the Service published a Notice in the Federal Register (59 FR 35307) indicating that the deadline for the final listing determination had been extended six months (until February 18, 1995) while re-opening the public comment

period until November 1, 1994. As a result of significant new data received during, and immediately following, the public comment period, on December 15, 1994, (59 FR 64647) the Service re-opened the public comment for 30 days, and announced the availability of the new data.

The Service was prohibited from making final determinations on listing proposals during a congressionally-imposed moratorium that began on April 10, 1995 (Public Law 104-06). To ensure that the Service could continue to receive and review relevant data and continue discussions with interested parties, the comment period was reopened on August 15, 1995, (60 FR 42140) and closed at the end of the fiscal year on September 30, 1995. During the first half of fiscal year 1996 the moratorium and a lack of appropriated funds prevented the Service from taking any actions related to listing species. Subsequent to the ending of the moratorium and restoration of funding for listing activities, the comment period was reopened on July 16, 1996, (61 FR 37034) to receive data that might have become available during the moratorium and listing program shut-down. That comment period was extended another 60 days on September 17, 1996, (61 FR 48876) in order to receive a report on the northern population segment. The comment period ended on November 15, 1996.

The processing of this final rule conforms with the Service's final listing priority guidance published in the Federal Register on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time, there are no pending Tier 1 actions.

#### Summary of Comments and Recommendations

In the August 18, 1993, proposed rule and subsequent notices reopening the comment period, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and state agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in newspapers across the range of the species inviting public

comment. A public hearing was requested by Mr. James Baker, of the Western Kentucky Coal Association, and Ms. Bertha Daubendiek, of the Michigan Nature Association. The public hearing was held in Indianapolis, IN, on April 5, 1994. Twenty-six people attended the hearing. One-hundred forty-two comments were received during the comment periods and at the public hearing and are discussed below; some parties provided more than one comment.

On July 11, 1994, the Service published a notice (59 FR 35307) extending the one-year listing decision deadline until February 18, 1995. Comments had been submitted on the proposed rule indicating that there were scientific disagreements concerning the location of, and significance of, intergradation in Illinois and Kentucky. When such a scientific disagreement exists, the one-year period within which the Service must ordinarily take final action on a proposal to list a species may be extended for not more than six months in accordance with section 4(b)(5)(B)(I) of the Act. During the six-month extension the Service funded additional studies in Illinois and Kentucky. The reports of these studies, as well as information from a third study funded by the Indiana Department of Natural Resources, were publicized and made available for review by the public.

The Service received comments from one-hundred forty-two individuals and organizations. Forty-eight commentors supported the proposal. Thirty-three parties provided suggestions and/or information but did not indicate either support of, or opposition to, the proposal. Sixty-one commentors expressed opposition to the proposal. Many provided data further substantiating or clarifying the threats to the species. During the most recent public comment period two draft Conservation Agreements were submitted which are intended to significantly reduce the threats from surface coal mining. This new information on the reduction in threats has been incorporated into the final rule where appropriate (see Summary of Factors Affecting the Species, below).

Written comments and oral statements presented at the public hearings and/or received during the comment periods are addressed in the following section. Comments of a similar nature are grouped together. Comments received on the southern population segment that is not being listed are also addressed below.

*Issue 1:* The morphological and genetic research conducted in Illinois is

insufficient to distinguish between *N. e. neglecta*, *N. e. flavigaster*, and their intergrades.

*Service Response:* Although the results of the genetic analysis did not prove to be a reliable method for distinguishing *neglecta* from the intergrades, the morphological analysis was able to successfully identify the subspecies for 95 percent of the snakes examined. The Service believes that, for the purposes of delineating the boundary of an intergrade zone in southern Illinois, the high degree of reliability of morphological distinctiveness is sufficient to distinguish between the two subspecies. However, because there is no intergrade zone within, or near, the northern population segment, identifying intergrades from copperbelly water snakes is not a concern with this final determination.

*Issue 2:* Critical habitat should be designated.

*Service Response:* Section 4 of the Act requires designation of critical habitat concurrent with listing, to the maximum extent prudent and determinable (also see 50 CFR 424.12). The Service finds that designation of critical habitat is not prudent for this species. This finding is based on the conclusion that such a designation would not be beneficial to the species. As discussed under Factor B in the Summary of Factors Affecting the species, and in the Critical Habitat section, the copperbelly water snake would become vulnerable to collectors and vandals who would be readily able to locate the known populations by the publication of critical habitat maps and other specific location information. Furthermore, the Service does not believe critical habitat will provide any additional benefit beyond that already provided under section 7 of the Act.

*Issue 3:* Economic, recreational, and other impacts should be considered when listing a species.

*Service Response:* Section 4 of the Act requires the Service to consider only biological and commercial trade information in determining whether to list a species. The Service recognizes the potential for adverse economic impacts stemming from this listing, and will work closely with mining, development, agricultural, and other interests throughout the range of the copperbelly water snake to accommodate economic and recreational activities to the extent possible while ensuring the continued survival and recovery of the snake.

*Issue 4:* Exemptions from the taking prohibitions for normal or routine farming activities should be provided.

*Service Response:* As of October 1, 1994, the Service must identify, to the

extent possible, specific activities that will and will not likely result in violation of section 9 of the Act. The Service believes that agricultural activities on lands considered to be unsuitable habitat for the copperbelly water snake, but which are adjacent to copperbelly water snake habitat, are unlikely to result in a take pursuant to section 9 of the Act. Refer to additional discussion on actions that may or may not constitute take under Available Conservation Measures.

*Issue 5:* Several commentors stated that the status information for Kentucky is incomplete and inaccurate, therefore, the proposal should be delayed until further studies can be completed in Kentucky.

*Service Response:* The Service agrees that total population estimates are lacking for this species; however, the Service considered several additional factors that are also important in developing a biologically accurate species status assessment. Gross population estimates are particularly important for species for which distinct local populations are not readily identified. However, the biological security of many declining species is more a function of the number of healthy local populations than the total number of individuals in the wild. Therefore, although quantitative surveying has not been completed throughout the range of the snake, pertinent and significant information regarding the other aspects of the snake's status is known. The Service believes precise population estimates are not necessary to recognize overall declining trends of the snake. The trends and the overall health of copperbelly water snake local clusters throughout its historical and current distribution are a more accurate reflection of the snake's status than are rough estimates of the number of snakes at a given time. In addition to the gross population estimates and the number of populations, the Service also considers factors such as the size of existing populations, historical and current rates of decline, current recruitment rates, distribution and proximity of populations, quantity and quality of available habitat, genetic diversity, and imminent and potential threats to the species and its habitat.

*Issue 6:* One commentor stated that the Service is basing their decision on erroneous data. In particular, the accuracy of the habitat acreage estimates was questioned within the Bryan *et al.* (1994) Kentucky status report.

*Service Response:* The Service recognizes that earlier habitat estimates were based on older topographic

quadrangle maps and limited aerial photography and personal knowledge, and therefore, the habitat estimates were not necessarily indicative of what precisely exists today. However, those sources of information represented the best available information at the time, as the surveyors were not able to obtain permission to survey current habitat on most of the land under mining lease. Since the Bryan *et al.* (1994) study the Service has updated its habitat estimates for Kentucky and vastly refined its knowledge of where suitable habitat still exists within the states. This work involved field verification of topographic maps, recent aerial photography and geographic information system mapping of the photos, meeting with copperbelly water snake experts and state field biologists, and field work by Kentucky State Nature Preserves Commission biologists. The Conservation Agreement for Kentucky is based upon this updated information.

*Issue 7:* Coal mining in Kentucky is creating, rather than eliminating, copperbelly water snake habitat wherever previously mined areas are reclaimed to wildlife habitat.

*Response:* Based on the available information, the Service believes coal mining reclamation procedures generally are not providing snake habitat (Bryan *et al.* 1994; Kingsbury pers. comm. 1996; MacGregor pers. comm. 1994; Sellers 1991). Mined land generally has been reclaimed to cropland, hay fields, and wildlife land unsuitable for the snake, such as upland forest, upland game habitat, and deep water impoundments. Ponds and wetlands reclaimed or restored on mined lands are often too widely scattered and lack suitable fish and/or amphibian populations, hibernation sites, and cover to be suitable copperbelly water snake habitat. However, the Service believes that coal mining activities can be compatible with the conservation of the copperbelly water snake if the extent, timing, and reclamation design are modified to incorporate snake conservation measures. As described in the Final Determination on Southern Population Segment section, the Conservation Agreements are instituting such changes to mining and reclamation activities throughout the southern population segment. The Service believes that these reclamation methods will increase and enhance copperbelly water snake habitat.

*Issue 8:* The factors threatening the species are no longer significant because there are Federal and state laws protecting the species.

*Response:* The Service recognizes the efforts of private groups and governmental programs, and agrees that some of the past threats to the species have been reduced and/or eliminated. However, interpretation and enforcement of the Food Security Act, the Clean Water Act, and the Surface Mining Reclamation Control Act have not provided sufficient protection to the copperbelly water snake or its habitat. Furthermore, state protection of the copperbelly water snake is not currently uniform across its range and the lack of any state authority to protect the habitat of state-listed species significantly weakens the protection of the species. However, the Service agrees that, for the Southern Population Segment, where mining and the lack of consistent state protection against take previously were the major threats to the species, the recently signed Conservation Agreements will provide adequate protection.

*Issue 9:* The population data cited in the proposed rule are incorrect.

*Response:* The Service agrees that population numbers for much of the copperbelly's occupied range are not very useful due to the difficulty with censusing elusive animals such as water snakes. However, the Act requires the Service to make its determinations on the basis of the best available scientific and commercial data, which need not be population estimates or counts that can be statistically analyzed. Also, as noted under Issue 5, the Service has not relied heavily on population data for its determinations. The Service also points out that additional monitoring of snake habitat and populations will be carried out as a result of the two Conservation Agreements, so our knowledge of copperbelly water snake numbers will continue to improve.

*Issue 10:* The Service failed to recognize the tracts of habitat already in protective ownership, such as the Patoka River National Wildlife Refuge, Land Between the Lakes, and properties under Indiana Department of Natural Resource ownership.

*Service Response:* Although the proposed rule did not emphasize the areas already protected for the species, the Service is aware of these areas and has concluded that habitat under public and private conservation ownership is not sufficient to protect the copperbelly water snake throughout its range. This determination was based on the following information. First, in the southern population segment, while suitable habitat does exist within the Patoka River corridor in southern Indiana, currently the National Wildlife Refuge ownership consists of only two

hundred twenty-five acres which provide benefit to the snake. Furthermore, significant tracts of copperbelly water snake habitat within the Patoka River corridor are privately owned and are currently being adversely impacted by coal mining. Second, snakes found within the publicly-owned Land Between the Lakes are considered to be intergrades and would not be included in a listing of the southern population segment. Third, few populations of copperbelly water snakes are found on state-owned land. In the northern population segment, only two of the eight known sites are under partial state ownership and a third is partly owned by a private conservation organization.

*Issue 11:* The listing analysis concentrated on historical habitat degradation and destruction trends rather than current habitat loss trends.

*Service Response:* As previously mentioned, the Service considers a variety of factors in making a listing determination. Although historical rates of decline are considered during the species' status assessment, many other factors, including current rates of decline, potential and imminent threats, gross population estimates, number of populations, distribution of populations, genetic diversity, and current recruitment rates are evaluated as well. Historical rates of decline are utilized by the Service to ascertain if a species is undergoing a precipitous or gradual decline. Also, the historical trend information is also useful in identifying the likelihood of natural cyclical fluctuations in numbers. The Service utilized the historical trend information in aggregate with all other information in determining if listing is warranted.

*Issue 12:* Conservation agreements which significantly reduce the threats to the species should be considered in the listing decision.

*Service Response:* The states of Kentucky, Illinois, and Indiana; the Kentucky Farm Bureau; the Office of Surface Mining, Reclamation, and Enforcement; the Western Kentucky Coal Association; and others submitted a Conservation Agreement which primarily addresses coal mining threats in Kentucky and Illinois. Similarly, the State of Indiana and the Indiana Coal Council submitted a Conservation Agreement which addresses coal mining threats in Indiana. The Service has reviewed those Agreements and concurs that, when fully implemented, the Agreements will reduce the threats to the southern population segment of the copperbelly water snake sufficiently to

preclude the need to list that population segment.

*Issue 13:* The Service also received comments from conservation organizations opposed to the use of Conservation Agreements to preclude the need to list the species. Their opposition is based on the non-binding nature of Conservation Agreements and the risk of mitigation efforts failing.

*Service Response:* Both Conservation Agreements include monitoring and compliance measures along with the flexibility to respond to changes needed to allow the Agreements to be successful. The Service is a signatory on both Agreements and will be an active partner in their implementation and monitoring. Further, the Service will constantly evaluate the status of the species, and if the Agreements fail to meet expectations, will reevaluate the need to list the southern population segment.

#### Peer Review

The Service routinely has solicited comments from parties interested in, and knowledgeable of, taxa which have been proposed for listing as threatened or endangered species. A July 1, 1994, policy statement (59 FR 34270) established the formal requirement that a minimum of three peer reviewers be asked to provide input into the Service's listing decisions. Although the proposed rule to list the copperbelly water snake as a threatened species predated that policy, the Service nonetheless elected to apply the formalized peer review process to the proposal. During the July 16, 1996, to November 15, 1996, comment period, the Service solicited the expert opinions of five biologists having recognized expertise in herpetology and/or conservation biology and requested their review of the published and unpublished data concerning the copperbelly water snake. In order to ensure an unbiased examination of the data, the Service contacted biologists who previously had only minor or no involvement in discussions on the possible listing of the snake.

Comments were received within the comment period from all five reviewers. All five reviewers concurred with the Service on factors relating to the taxonomy, and biological and ecological information. One reviewer believed current Kentucky data were insufficient.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the northern population segment of

the copperbelly water snake should be classified as a threatened species, and that listing is not warranted for the southern population segment of the copperbelly water snake. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the copperbelly water snake (*Nerodia erythrogaster neglecta*) are as follows:

#### A. *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Habitat loss and fragmentation were the primary causes of the decline of the copperbelly water snake and continue to be the major factors threatening the continued existence of the species. From 1790 to the mid-1980's, much of the copperbelly water snake's wetland habitat was modified or destroyed. According to Dahl and Johnson (1990), Indiana has lost 87 percent of its original wetlands, Illinois 85 percent, Michigan 50 percent, Ohio 90 percent, and Kentucky 81 percent. The principal cause of these losses was land conversion to agricultural use. This was especially true from 1950 through the 1970's, when agriculture was cited as the cause for 87 percent of the wetland loss nationwide (Dahl and Johnson 1990). However, since that time, other land uses and modifications such as dredging, coal mining, stream channelization, road construction, and commercial and residential development have played a more significant role in the loss of wetland habitat.

The loss of snake habitat is especially evident in areas occupied by the northern population segment of the snake, where the species has been relegated to only a few small, isolated habitat areas. The northern population segment has, since 1986, occupied only eight very limited sites in four southern Michigan counties, one northwestern Ohio county, and one northeastern Indiana county. Six of these local clusters, including the Indiana and Ohio local clusters, are encompassed within an area of about 100 square miles. The other two local clusters are 35 to 60 miles to the northwest.

Two of the eight sites have a portion of their area protected by state ownership, and one is partially owned by a private conservation organization. The remaining sites are all private property with uncertain fates. A key

characteristic of these sites is separation by unsuitable habitat from each other and from important habitat components. The unsuitable habitat is primarily agricultural land, rural residential sites, and roads.

Landscape fragmentation and isolation of local clusters from each other increases the likelihood of extinction by causing each local cluster to function as an independent, but much smaller population. Very small populations are far more susceptible to local extirpation from factors such as drought and from genetic irregularities caused by inbreeding.

Other factors that may be adversely affecting northern population habitat include increased residential development, sedimentation, and contamination caused by fertilizer runoff (Sellers 1996a, 1996b.). A large residential complex has been developed around a deep water lake that is utilized by the snake during droughts. New residences have been built near the Cass/St. Joseph counties local cluster. Residences add to roadway traffic, increase habitat fragmentation, and increase the likelihood of direct harm to snakes by people, pets, and vehicles. Sedimentation, usually resulting from agricultural activities, but also caused by construction, may change hydrological characteristics and plant succession, as well as reduce the numbers of amphibian and fish used by the snake as food.

The presence of copperbellies at two of the eight northern local clusters has not been confirmed since 1987, and since 1989 at a third site. Two of these three sites were surveyed in 1996, one of them for 46 hours, and no copperbellies were found. The third site has not been surveyed since 1987. Suitable habitat at these three sites still seems to be available. While it may be reasonable to conclude that snake numbers at the two recently surveyed sites have declined, surveys have not been frequent enough to conclude with certainty that these two local clusters no longer support copperbellies. Northern population survey data since 1986 are not complete for all local clusters, and do not support any conclusion as to an overall trend of increase or decrease. However, total numbers of snakes seen have remained very low since 1986. The low numbers and possible disappearance of snakes from various sites in the last 10 years indicates that progress toward extirpation which became apparent in the 1950's and 1960's probably is continuing, and underscores the perilous state of the northern population segment. The northern population probably will be

extirpated within the next few decades without immediate additional protection (Kingsbury pers. comm. 1994 and 1996).

Specific habitat-related threats that have cumulatively led to the extirpation of northern population segment copperbelly water snake local clusters include woodlot, brush, and other land clearing; habitat constriction and fragmentation from surrounding development; road construction; and coal mining.

Although coal mining has been a major recent factor in the decline of the species in the southern portion of its range, the Service believes mining practices can be compatible with the existence of the snake. Coal mining can be compatible with the copperbelly water snake if the extent, the timing of the mining, and the reclamation design are modified to incorporate snake conservation measures. The Conservation Agreements for the southern population segment make such changes to coal mining and reclamation practices, thus greatly reducing mining threats to the species, and providing compatibility between mining and snake conservation. Because habitat loss and degradation from surface coal mining constituted the main threats facing the southern population, the Service believes that the reduction of the coal mining impacts by the Conservation Agreements precludes the need to list the southern population segment.

While the northern population segment is not impacted by coal mining, it is significantly affected by all of the other threats of destruction, modification, or curtailment of its habitat listed above.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Scientific overutilization, without careful regulation, can pose a threat. During the first 30 years after its discovery and formal publication of its description, many copperbelly water snakes were collected as specimens for museums. Although museums have abandoned this practice, amateur collectors continue to take wild snakes (Sellers 1991). The species is believed to be collected fairly regularly because of its rarity, large size, unique coloration, and value in the pet trade. For example, an international commercial dealer reportedly offered \$260 to an amateur collector for a breeding pair of copperbelly water snakes.

#### *C. Disease or Predation*

The snakes are vulnerable to predation during migration, especially when their migration routes are interrupted by cleared areas such as roads, mowed areas, and farmlands. Dispersing through such areas increases the likelihood of the snakes being preyed upon by natural predators such as skunks, raccoons, and raptors. Due to habitat fragmentation, the ability to use suitable cover to migrate safely throughout its home range is a limiting factor in the life cycle of the copperbelly water snake. In addition to predation, vehicle-caused mortality and injury also has increased as suitable habitat becomes more fragmented by transportation corridors. Such habitat fragmentation is especially significant to the northern population segment where seasonal movements among its smaller habitat patches force snakes to cross roadways or other open habitat (Sellers 1991).

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

The copperbelly water snake receives varying degrees of protection through state listings as an endangered, threatened, or nongame species throughout its range. Michigan, Indiana, and Ohio confer full legal protection to the copperbelly water snake; it is illegal to collect, kill, or injure the snake in these three states. Illinois and Kentucky offer no legal protection to the snake at this time.

Whereas three states have laws and regulations which protect the species from take, the lack of uniform protection throughout the United States hampers enforcement and imperils the species by creating loopholes for illegal take and trade. More importantly, legal provisions for protection and management of copperbelly water snake habitat at the state level are non-existent. Because destruction and alteration of habitat are the major reasons for the species' decline, the inability to protect non-federally listed species' habitat will exacerbate the continued decline of the copperbelly water snake without additional Federal protection.

As discussed under Factor A above, to alleviate any potential threats to the snake from surface mining, the recently-signed Conservation Agreements will require consideration of the southern population segment of the copperbelly water snake and its habitat in the surface mining and reclamation permitting process as if the species was federally-listed as threatened or endangered in Kentucky and Illinois. In

Indiana core areas of snake habitat have been designated and will remain undisturbed by surface mining; snake habitat outside of the core areas can be mined to some extent but new reclamation standards will produce habitat suitable for copperbelly watersnakes. The Service believes that this modification to past permitting practices will remedy the threats presented by surface mining.

#### *E. Other Natural or Manmade Factors Affecting its Continued Existence*

Weather extremes such as drought, flooding, and unusually mild, as well as severe, winters may influence the population of the copperbelly water snake. These factors affect the snake's ability to estivate for prolonged periods, as well as impeding access to, and use of, essential upland hibernation and foraging sites and wetland breeding areas. While these factors are not as likely to affect larger and healthier populations, small, isolated copperbelly water snake local clusters, like those that make up the northern population segment, are especially vulnerable to these naturally occurring events.

The widely held general dislike for snakes by humans further threatens copperbelly water snakes. For example, Kingsbury (pers. comm. 1994) reported two incidents in which the species was intentionally killed, with a gravid (pregnant) female being one of the victims. Such intentional killing likely has been more common in the southern population segment, due to geographic proximity to poisonous wetland-inhabiting snakes. However, one of the Conservation Agreements will lead to regulations in all three states which will prohibit the killing of this species.

In the northern population segment, due to the small number and isolation of the surviving local clusters, the snake remains vulnerable to habitat modification and destruction and collection and persecution.

The southern population segment is more widespread and consists of larger and more numerous local clusters. Several of the larger local clusters are partially or entirely on Federal or state lands. Most of the remaining local clusters are on private land, and most of these are covered by approved permits for surface coal mining. The threats from surface coal mining have been greatly removed by the recently-signed Conservation Agreements with the coal mining industry and state and Federal regulatory authorities for surface mining. These Agreements will preserve existing core habitat needed by the species, and will modify past post-mining land reclamation practices so

that suitable copperbelly water snake habitat will be developed following mining. The Service believes these changes in mining and reclamation practices reduce the existing and potential threats from mining to a level at which the species in the southern portion of its range is no longer likely to become endangered in the foreseeable future, and therefore does not warrant listing as a threatened species at this time.

The Service will continue to work closely with the surface coal mining industry and state and Federal surface mining regulatory agencies to monitor and evaluate the effects of the modified surface mining practices on the snake.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the copperbelly water snake in finalizing this rule. Based on this evaluation, the preferred action is to list the northern population segment of the copperbelly water snake, *Nerodia erythrogaster neglecta*, as a threatened species; the Service will not finalize the proposal to list as threatened the southern population segment of the copperbelly water snake.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the northern and southern population segment of the copperbelly water snake at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the

species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the Summary of Factors Affecting the Species, the copperbelly water snake is known to be subject to collection, and those snakes would become increasingly vulnerable to reptile collectors who would be able to locate the known populations by the publication of critical habitat maps and other specific location information. Publication of critical habitat locations would also aid the intentional killing of individual snakes by individuals opposed to Federal and state conservation efforts for the species. The Service is concerned that threats made against the snakes during the listing process will be more likely to be carried out if snake locations are published.

Furthermore, critical habitat designation would not provide significant additional protection over that afforded through the normal recovery process, through section 7 consultation, and the prohibitions of section 9 of the Act. The precarious status of the northern population segment necessitates identical section 7 biological opinion thresholds for determining adverse modification of critical habitat and jeopardizing the continued existence of the species. Furthermore, sufficient habitat protection is provided by the Service's current interpretation of the meaning of "harm" in the Act's definition of "take"; this interpretation holds that habitat degradation which significantly impairs essential behaviors constitutes "harm" and is prohibited by the Act.

In addition, Conservation Agreements for the snake and its habitat in the southern portion of its range, have removed significant threats to this species. Critical habitat for the snake will not be designated on any lands where the habitat is included in a Conservation Agreement, for the life of the agreement, so long as the agreement remains in effect consistent with its terms.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and encourages conservation

actions by Federal, Tribal, state, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continuous existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions that may require consultation include the U.S. Army Corps of Engineers regulatory involvement in projects such as the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 401 *et seq.*); Office of Surface Mining Reclamation and Enforcement coal mining permitting process; Federal Highway Administration funded projects; Bureau of Land Management lease activities; and Natural Resources Conservation Service projects.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply



to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the Federal Register on July 1, 1994, (59 FR 34272) to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9 for listed copperbelly water snakes, provided these activities are carried out in accordance with existing regulations and permit requirements:

- (1) Routine agricultural activities on property adjacent to occupied copperbelly habitat, excluding activities which convert wooded, shrubby, or brushy areas to cropland or pasture;
- (2) Possession of legally acquired copperbelly water snakes; and
- (3) Actions that may affect copperbelly water snakes that are funded, authorized, or carried out by a Federal agency if the action is conducted in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the copperbelly water snake and result in "take" to the northern population segment of the snake include, but are not limited to;

- (1) Collecting or handling of the snake in any manner;
- (2) Possess, sell, transport, or ship illegally taken copperbelly water snakes;
- (3) Substantial destruction or degradation of the species' wetland

habitat such as discharge of fill material, drainage, damming of wetlands, channelization, damming, diversion of streams or rivers, diversion or alteration of surface or ground water flow into or out of wetlands (due to roads, impoundments, discharge pipes, storm water detention basins, etc.);

(4) Discharges or dumping of toxic chemicals, silt, or other pollutants (e.g., sewage, oil, and gasoline) into waters supporting the species; and

(5) Interstate and foreign commerce and export without obtaining the appropriate permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the appropriate Service field office as follows: in Indiana, the Bloomington Field Office, 620 South Walker Street, Bloomington, Indiana 47403 (812/334-4261); in Michigan, the East Lansing Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823 (517/351-2555); and in Ohio, the Reynoldsburg Field Office, 6950-H Americana Parkway, Reynoldsburg, Ohio 43068 (614/469-6923) (see ADDRESSES section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Division of Endangered Species, Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111-4056 (telephone 612/725-3536; facsimile 612/725-3526).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Service's Bloomington, Indiana, Ecological Service Field Office. (See ADDRESSES section.)

Author

The primary authors of this document are Scott Pruitt of the Service's Bloomington Field Office (see ADDRESSES section) and Jennifer Szymanski (U.S. Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111-4056).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 10080 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under REPTILES, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

- \* \* \* \* \*
- (h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

\* \* \* \* \*  
REPTILES

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Snake, copperbelly water.	* Nerodia erythrogaster neglecta.	* U.S.A. (IL, IN, KY, MI, OH).	* Indiana north of 40 degrees north latitude, Michigan, Ohio.	* T	* 607	* NA	* NA
*	*	*	*	*	*	*	*

Dated: January 16, 1997.  
 John G. Rogers,  
 Acting Director, U.S. Fish and Wildlife Service.  
 [FR Doc. 97-2056 Filed 1-27-97; 8:45 am]  
 BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 960502124-6190-02; I.D. 012497B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in Registration Area E**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the scallop fishery in Scallop Registration Area E (Prince William Sound) east of 146° West long. This action is necessary to prevent exceeding the scallop total allowable catch (TAC) in this area.

**EFFECTIVE DATE:** 1200 hrs, Alaska local time (A.l.t.), January 24, 1997, until 2400 hrs, A.l.t., June 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.62(b), the 1996-1997 scallop TAC for Scallop Registration Area E was established by the Final 1996-1997 Harvest Specifications of Scallops (61 FR 38099,

July 23, 1996) and a reduced TAC was apportioned (62 FR 2043, January 15, 1997) as 17,300 lb (7,847 kg) of shucked scallop meat in the part of Registration Area E east of 146° West long.

In accordance with § 679.62(c), the Administrator, Alaska Region, NMFS, has determined that the scallop TAC for Scallop Registration Area E east of 146° West long. has been reached. Consequently, NMFS is prohibiting the taking and retention of scallops in Scallop Registration Area E east of 146° West long. from 1200 hrs, A.l.t., January 24, 1997, through 2400 hrs, A.l.t., June 30, 1997.

**Classification**

This action is required by § 679.62 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 24, 1997.  
 George H. Darcy,  
 Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.  
 [FR Doc. 97-2229 Filed 1-24-97; 3:50 pm]  
 BILLING CODE 3510-22-F

**50 CFR Part 679**

[Docket No. 961126333-6333-01; I.D. 012497A]

[Docket No. 960129018-6018-01; I.D. 122396A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610; Pacific Cod for Processing by the Inshore Component in the Western and Central Regulatory Areas**

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

**ACTION:** Closure and correction.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area. NMFS is also correcting a typographical mistake in FR Doc. 96-

33290 (I.D. 122396A) published on December 31, 1996.

**EFFECTIVE DATE:** 1200 hrs, Alaska local time (A.l.t.), January 26, 1997, until superseded by the Final 1997 Harvest Specifications for Groundfish.

**FOR FURTHER INFORMATION CONTACT:** Michael Sloan, 907-581-2062.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 610 was established by Interim 1997 Harvest Specifications (61 FR 64299, December 4, 1996) as 9,075 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 interim specification of pollock in Statistical Area 610 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,875 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 until superseded by the Final 1997 Harvest Specifications for Groundfish.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

**Correction**

In a directed fishing opening, FR Doc 96-33290, published December 31, 1996 (61 FR 69050), the first line of the