

should be addressed to the Audio Services Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-195, adopted December 3, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Haiku, Channel 293C.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-33047 Filed 12-17-97; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MM Docket No. 97-193; RM-9125]

**Radio Broadcasting Services; Kaunakakai, HI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 272C to Kaunakakai, Hawaii, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Native Hawaiian Broadcasting. See 62 FR 47406, September 9, 1997. Coordinates used for Channel 272C at Kaunakakai, Hawaii, are 21-05-30 and 157-01-24. With this action, the proceeding is terminated.

**DATES:** Effective January 26, 1998. A filing window for Channel 272C at Kaunakakai, Hawaii, will not be opened

at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-193, adopted November 26, 1997, and released December 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

**List of Subjects in 47 CFR Part 73**

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Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kaunakakai, Channel 272C.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-33045 Filed 12-17-97; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AD28**

**Endangered and Threatened Wildlife and Plants; Final Rule To List Three Aquatic Invertebrates in Comal and Hays Counties, TX, as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines three aquatic

invertebrate species known only from Comal and Hays counties, Texas, to be endangered species under the Endangered Species Act of 1973, as amended (Act). The invertebrates to be listed are Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*). The primary threat to these species is a decrease in water quantity and quality as a result of water withdrawal and other human activities throughout the San Antonio segment of the Edwards Aquifer. This action implements Federal protection provided by the Act for these three invertebrates.

**EFFECTIVE DATE:** January 20, 1998.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

**FOR FURTHER INFORMATION CONTACT:** Ruth Stanford, Ecologist (see ADDRESSES section) (512/490-0057; facsimile (512/490-0974).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Service designates Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) as endangered under the authority of the Act (16 U.S.C. 1531 *et seq.*). These three aquatic invertebrate species are restricted in distribution to spring sites in Comal and Hays counties, Texas, and in the case of Peck's cave amphipod and Comal Springs dryopid beetle, the associated aquifer. Peck's cave amphipod is known from Comal Springs and Hueco Springs, both in Comal County. The Comal Springs riffle beetle is known from Comal Springs and San Marcos Springs (Hays County). The Comal Springs dryopid beetle is known from Comal Springs and Fern Bank Springs (Hays County).

The water flowing out of each of these spring orifices comes from the Edwards Aquifer (Balcones Fault Zone—San Antonio Region), which extends from Hays County west to Kinney County. Comal Springs are located in Landa Park, which is owned and operated by the City of New Braunfels, and on private property adjacent to Landa Park. Hueco Springs and Fern Bank Springs are located on private property. The San Marcos Springs are located on the property of Southwest Texas State University.

Peck's cave amphipod is a subterranean, aquatic crustacean in the family Crangonyctidae. The Comal Springs riffle beetle is an aquatic, surface-dwelling species in the family Elmidae. The Comal Springs dryopid beetle is the only known subterranean member of the beetle family Dryopidae. Elmid and dryopid beetles live primarily in flowing, uncontaminated waters.

The first recorded specimen of the amphipod *Stygobromus* (= *Stygonectes*) *pecki* (Holsinger 1967) was collected by Peck at Comal Springs in June 1964. Reddell collected a second specimen at the same place in May 1965. In 1967, Holsinger named the species *Stygonectes pecki*, in Peck's honor, selecting the 1965 specimen as the type specimen. Later he included all the nominal *Stygonectes* species in the synonymy of the large genus *Stygobromus*. The Service has used "cave amphipod" as a generic common name for members of this genus, and this name was simply transliterated as "Peck's cave amphipod" without reference to a particular cave.

Over 300 specimens of Peck's cave amphipod have been collected since its description. Most specimens were netted from crevices in rock and gravel near the three largest orifices of Comal Springs on the west side of Landa Park in Comal County, Texas (Arsuffi 1993, Barr 1993). Barr collected one specimen from a fourth Comal spring run on private property adjacent to Landa Park and one specimen from Hueco Springs, about 7 kilometers (km) (4 miles (mi)) north of Comal Springs (Barr 1993). Despite extensive collecting efforts, no specimens have been found in other areas of the Edwards Aquifer.

Like all members of the exclusively subterranean genus *Stygobromus*, this species is eyeless and unpigmented, indicating that its primary habitat is a zone of permanent darkness in the underground aquifer feeding the springs. Above ground, individuals are easy prey for predators, but they usually take shelter in the rock and gravel crevices and may succeed in reentering the spring orifice. Barr (1993) got most specimens in drift nets at spring orifices and found them less often as she moved downstream, supporting the notion that they may be easy prey and do not likely survive for long outside the aquifer.

The Comal Springs riffle beetle is a small, aquatic beetle known from Comal Springs and San Marcos Springs. It was first collected by Bosse in 1976 and was described in 1988 by Bosse *et al.* The closest relative of *H. comalensis* appears to be *H. glabra*, a species that occurs

farther to the west in the Big Bend region (Bosse *et al.* 1988).

Adult Comal Springs riffle beetles are about 2 millimeters (mm) ( $\frac{1}{8}$  inch (in)) long, with females slightly larger than males. Unlike the other two organisms listed here, the Comal Springs riffle beetle is not a subterranean species. It occurs in the gravel substrate and shallow riffles in spring runs. Some riffle beetle species can fly (Brown 1987), but the hind wings of *H. comalensis* are short and almost certainly non-functional, making the species incapable of this mode of dispersal (Bosse *et al.* 1988).

Larvae have been collected with adults in the gravel substrate of the spring headwaters and not on submerged wood as is typical of most *Heterelmis* species (Brown and Barr 1988). Usual water depth in occupied habitat is 2 to 10 centimeters (cm) (1 to 4 in) although the beetle may also occur in slightly deeper areas within the spring runs. Populations are reported to reach their greatest densities from February to April (Bosse *et al.* 1988). The Comal Springs riffle beetle has been collected from spring runs 1, 2, and 3 at Comal Springs in Landa Park (springs j, k, and l in Brune 1981) and a single specimen was collected from San Marcos Springs 32 km (20 mi) to the northeast.

The Comal Springs dryopid beetle is a recently discovered species. It was first collected in 1987 and described as a new genus and species in 1992 by Barr (California State University) and Spangler (National Museum of Natural History, Smithsonian Institution). Adult Comal Springs dryopid beetles are about 3.0–3.7 mm ( $\frac{1}{8}$  inch) long. They have vestigial (non-functional) eyes, are weakly pigmented, translucent, and thin-skinned. This species is the first subterranean aquatic member of its family to be discovered (Brown and Barr 1988; Barr, *in litt.* 1990; Barr and Spangler 1992).

Collection records for the Comal Springs dryopid beetle are primarily from spring run 2 at Comal Springs, but they have also been collected from runs 3 and 4 at Comal and from Fern Bank Springs about 32 km (20 mi) to the northeast in Hays County. Collections have been from April through August. Most of the specimens have been taken from drift nets or from inside the spring orifices. Although the larvae of the Comal Springs dryopid beetle have been collected in drift nets positioned over the spring openings, they are presumed to be associated with air-filled voids inside the spring orifices since all other known dryopid beetle larvae are terrestrial. Unlike Peck's cave

amphipod, the Comal Springs dryopid beetle does not swim, and it may have a smaller range within the aquifer.

The exact depth and subterranean extent of the ranges of the two subterranean species (Comal Springs dryopid beetle and Peck's cave amphipod) are not precisely known because of a lack of methodologies available for studying karst aquifer systems and the organisms that inhabit such systems. Presumably an interconnected area, the subterranean portion of this habitat, provides for feeding, growth, survival, and reproduction of the Comal Springs dryopid beetle and Peck's cave amphipod. However, no specimens of these species have appeared in collections from 22 artesian and pumped wells flowing from the Edwards Aquifer (Barr 1993) suggesting that these species may be confined to small areas surrounding the spring openings and are not distributed throughout the aquifer. Barr (1993) also surveyed nine springs in Bexar, Comal, and Hays counties considered most likely to provide habitat for endemic invertebrates and found *Stygoparnus comalensis* only at Comal and Fern Bank springs and *Stygobromus pecki* only at Comal and Hueco springs.

Although these species are fully aquatic and two of the three require flowing water for respiration, the absolute low water limits for survival are not known. They survived the drought of the middle 1950's, which resulted in cessation of flow at Comal Springs from June 13 through November 3, 1956. Hueco Springs is documented to have gone dry in the past (Brune 1981, Barr 1993) and, although no information is available for Fern Bank Springs, given its higher elevation, it has probably gone dry as well (Glenn Longley, Edwards Aquifer Research and Data Center, personal communication, 1993). San Marcos Springs has not gone dry in recorded history.

These invertebrates were not extirpated by the only recorded temporary cessation of spring flow. However, given that they are fully aquatic and that no water was present in the springs for a period of several months, they were probably negatively impacted. These species are not likely adapted to surviving long periods of drying (up to several years in duration) that may occur in the absence of a water management plan for the Edwards Aquifer that accommodates the needs of these invertebrates. Stagnation of water may be a limiting condition, particularly for the Comal Springs dryopid beetle and Peck's cave amphipod.

Stagnation of water and/or drying within the spring runs and the photic (lighted) zone of the spring orifices would probably be limiting for the Comal Springs riffle beetle because natural water flow is considered important to the respiration and therefore survival of this invertebrate species. Elmid and dryopid beetles have a mass of tiny, hydrophobic (unwetable) hairs on their underside where they maintain a thin bubble of air through which gas exchange occurs (Chapman 1982). This method of respiration loses its effectiveness as the level of dissolved oxygen in the water decreases. A number of aquatic insects that use dissolved oxygen rely on flowing water to obtain oxygen.

#### Previous Federal Action

In a petition dated September 9, 1974, the Conservation Committee of the National Speleological Society requested the Service to list *Stygobromus* (= *Stygonectes*) *pecki*. The species was included in a notice of review published on April 28, 1975 (40 FR 18476). A "warranted but precluded" finding regarding several species in that petition was made on October 12, 1983, and published on January 20, 1984 (49 FR 2485). A warranted but precluded finding means that available information indicates listing the species as threatened or endangered is appropriate but that the listing is precluded by higher priority actions. The same determination has been repeated for Peck's cave amphipod in subsequent years. The species was included as a category 2 candidate in comprehensive notices of review published on May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). Category 2 candidates were those species for which data in the Service's possession indicated that listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not known or on file to support proposed rules. *Stygobromus pecki* was elevated to category 1 status in the 1994 notice of review (59 FR 58982). Category 1 candidates were those species for which the Service had on file substantial information on biological vulnerability and threats to support a proposal to list. As published in the **Federal Register** on February 28, 1996 (61 FR 7596), candidate category 2 status was discontinued and only category 1 species are currently recognized as candidates for listing purposes.

In a petition dated June 20, 1990, and received June 21, 1990, Mr. David Whately, then Director of the City of

New Braunfels Parks and Recreation Department, requested that the Service list five invertebrate taxa, including Peck's cave amphipod and four insects. The Service treated this as a second petition for the amphipod. A notice of finding published April 29, 1991 (56 FR 19632), announced that the petition presented substantial information and that listing the Comal Springs riffle beetle and the Comal Springs dryopid beetle may be warranted. Formal status review was initiated for those species. Both species became candidates for listing in the 1994 notice of review (59 FR 58982).

Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle were proposed for listing on June 5, 1995 (60 FR 29537). The Act requires that a final determination on a proposed listing be made within one year of the proposal. However, a congressionally-imposed moratorium on final listing actions combined with a rescission of funding for the Service's listing program prohibited timely publication of this final rule.

#### Summary of Comments and Recommendations

In the June 5, 1995, proposed rule (60 FR 29537) and associated **Federal Register** notices all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and requested to comment.

A public hearing request came from Mr. David Langford, Executive Vice President of the Texas Wildlife Association, by letter dated June 22, 1995. The hearing was held on July 24, 1995 at the New Braunfels Civic Center in New Braunfels, Texas. Legal notices of the public hearing, which invited general public comment, were published in *The New Braunfels Herald-Zeitung*, the *San Marcos Daily Record*, the *Uvalde Leader-News*, the *Medina Valley-Times*, and the *San Antonio Express-News*. Sixteen people attended the public hearing and one person provided oral testimony.

The Service received 1 oral and 24 written comments on the proposal. Of the letters and oral testimony received, nine supported the proposed action, seven opposed it, and nine did not clearly state support or opposition.

The Service solicited formal scientific peer review of the proposal from six peer review biologists during the public comment period and received comments from two reviewers. Their

comments are either incorporated into this listing decision as appropriate, or are addressed below.

Written and oral comments presented at the public hearing and received during the comment period were incorporated into this final rule where appropriate. Comments not incorporated are addressed in the following summary. Comments of a similar nature or point are grouped and summarized. Where differing viewpoints around a similar issue were made, the Service has briefly summarized the general issue.

*Comment 1:* Threats to the species are greatly exaggerated and inconsistent with available data. No real or immediate threat exists that would justify listing these invertebrates.

*Service Response:* The primary threat to these species is loss of water in their habitat at Comal Springs and other springs where they occur. This threat is discussed in detail in Factor A of this rule.

*Comment 2:* Samples of all three of the species were collected after the springs had ceased flowing in the immediately preceding years.

*Service Response:* Spring flow did not cease from all outlets in 1990, and only spring run 1 at Comal saw significant loss of water. During brief periods of very low spring flow the spring runs probably retain sufficient subsurface moisture to allow the Comal springs riffle beetle to survive. Furthermore, when periods of low spring flow are brief and the spring runs are not completely dry, the subsurface water level likely remains higher and closer to the spring openings. These conditions may allow the survival of these species, whereas a period of extensive, long-term cessation of spring flow likely would not. Because these invertebrates are fully aquatic and require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remains around the spring orifices, may negatively impact the species. Loss of water entirely, within their habitat, would result in the extirpation of these aquatic species.

*Comment 3:* It was noted that the Edwards Aquifer Authority (Authority) was created by S.B. 1477 to regulate withdrawal of water from the aquifer. The Authority withstood legal challenges with the passage of H.B. 3189, which was passed with the cooperation and guidance of the Department of Justice and implementation is anticipated. The commenter further stated that implementation of S.B. 1477 and H.B. 3189 will regulate water withdrawal,

thus eliminating the primary threat, and the need to list the species.

*Service Response:* Some of the legal issues regarding the establishment of the Authority have been resolved since the time the proposed rule was published and the elected board is in effect at this time. However, an aquifer management plan that would provide for protection of these species and their habitat is not yet in place. Further progress of this board could be beneficial in the future and, if threats are reduced or removed, could result in downlisting or, possibly, delisting the species.

*Comment 4:* The City of New Braunfels has obtained surface water to meet base demand which will eliminate pumping in the immediate area of the springs and substantially diminish threats to the species.

*Service Response:* As discussed in Factor A, all of the springs where these species occur are affected by water withdrawal throughout the aquifer's artesian zone to the west. Therefore, a management plan for the entire aquifer, not just the area near the springs, is necessary to moderate threats to the species.

*Comment 5:* Service treatment of this complex and dynamic issue is incomplete and erroneous. The Service ignores Texas Natural Resources Conservation Commission (TNRCC) rules and proposed amendments to address water quality.

*Service Response:* The Service acknowledges the extreme complexity of issues regarding the quality and quantity of water in the Edwards Aquifer. The TNRCC rules deal primarily with water quality issues. The more significant issue, however, is maintaining adequate spring flows and the likelihood that a water management plan will be in effect in the foreseeable future that will provide protection for these invertebrates, as discussed in Factor A.

*Comment 6:* If currently listed species are provided adequate spring flow, then species that have survived previous cessation of spring flow will receive adequate protection without the need to list.

*Service Response:* While there are species within the Comal and San Marcos ecosystems that are presently listed as threatened or endangered, none of these listed species are assured adequate spring flow. Furthermore, some of the techniques, such as spring flow augmentation, under consideration by some for providing spring flow, will not adequately provide for the invertebrates addressed in this final rule. For example, the Comal Springs riffle beetle occurs in the spring runs. If

water is "augmented" into this area after the springs cease flowing, the spring orifices will act as recharge features. The water would return to the aquifer rather than remaining in the spring runs. In addition, if augmentation is attempted through subsurface modifications of the aquifer, the habitat of the two subterranean species could be negatively impacted.

*Comment 7:* In 1991, the Service reported that these invertebrates were endemic to Comal Springs. Now each of the invertebrates is known from one other spring and each is known from all of the upper springs at Comal. This establishes a potentially wide range for the species. The subterranean habits of two of the species and the fact that they are found at springs as much as 20 miles apart suggests a much wider distribution in the aquifer that would obviate the need to list them as endangered.

*Service Response:* Status surveys that were conducted for each of these species following the petition to list them found only one new location for each species. Locations in more than one spring run at Comal Springs is not surprising given the proximity of the spring runs. As stated previously, extensive surveys for the species at springs throughout Bexar, Comal, and Hays counties and examination of numerous well samples have found each of the species at Comal Springs and in very low numbers at one additional spring system each. The species were not found at most of the locations surveyed.

Disjunct distributions (e.g., those that are separated by 20 miles) are common in nature and can arise from many evolutionary and ecological processes. Unfortunately, these species are not sufficiently studied to allow us to give a precise explanation for the disjunct distribution, or to determine with certainty whether it is disjunct.

Information in the Background section discusses the fact that specimens of the subterranean species have not been found in well samples throughout the aquifer area, in spite of extensive sampling. The Service believes this is a good indication that the species are not widely distributed underground. We do believe that efforts to collect the species in any appropriate habitat where researchers were granted access were sufficient to determine that, in all probability, the species do not exist throughout the underground portions of the aquifer.

*Comment 8:* Listing is not warranted until highly variable and interruptible spring flow is considered as part of the

historical cycle to which these species are adapted to survive.

*Service Response:* These species exhibit no morphological characteristics or behaviors indicating an ability to survive extended drying of their habitat. The Comal Springs riffle beetle lacks the ability to fly that many other riffle beetles have, suggesting that it is adapted to continuous and reliable spring flows (although flow may still be variable). The more frequent and severe drying that is expected at current and increasing rates of withdrawal from the aquifer will create a condition to which these species are not adapted to survive.

*Comment 9:* As late as 1991, the Service made a warranted but precluded finding for Peck's cave amphipod. The proposed listing gives no explanation of the change in position from "warranted but precluded" to "proposed for listing." This is ironic since potential threats to the species have been substantially addressed during this 4-year period.

*Service Response:* A warranted but precluded finding means that the best available information indicates that listing the species is appropriate but that other pending listing actions are more urgently needed and given a higher priority. Many of those other listing actions have now been completed. Before publishing the proposed listing, the Service reviewed the most current information available and determined that the threats to the species are still significant. The Service acknowledges and commends the efforts that so many individuals, agencies, and organizations have put into looking for ways to manage the Edwards Aquifer in a manner that will both protect the endemic species and provide for human water users. However, significant aquifer issues remain unresolved.

*Comment 10:* Spring flow may be irrelevant to the suitability of habitat in the aquifer for the subterranean species.

*Service Response:* The Service recognizes that the Peck's cave amphipod and the Comal Springs dryopid beetle are fully aquatic and show morphological adaptations to a subterranean existence. However, neither of these species has shown up in well samples and both have only been collected near the spring orifices, a key feature of their habitat is the water/spring orifice boundary. Reduced spring flows will alter the position and the nature of this boundary and may have a negative effect on these species. Further information is discussed in the Background section.

*Comment 11:* The Service's failure to define a range or location of habitat for these species is tantamount to an

admission that the Service does not know enough about the species to warrant a conclusion that the species' habitat is threatened by drought.

*Service Response:* The best available information indicates that the range of each species is limited to a small area near each spring opening where the species have been found. The range of each of the species is both small in size and probably disjunct in distribution. Further information on each species' habitat is presented in the Background section.

*Comment 12:* Until more is known about the proposed species, and some real harm is shown as a consequence of variable and interruptible spring flows, they are not endangered species.

*Service Response:* The Service must make determinations for listing of species based on "the best scientific and commercial data available" at the time of listing. Existing knowledge indicates that these species require a reliable supply of clean water. The species have survived past dry periods, but models and predictions cited in the proposal and in this final rule all agree that cessation of spring flow is likely to be more frequent and of longer duration given present pumping levels, as well as those outlined in S.B. 1477. Although S.B. 1477 limits total water withdrawal from the aquifer, the limits may currently be too high to assure long-term spring flow. The Texas Water Development Board (1992) models indicate that at the proposed pumping limit of 450,000 acre-feet, and given recharge levels and patterns similar to those that occurred from 1934 to 1990, Comal Springs could spend 10 to 20 years below 100 cubic feet per second (cfs), and could stop flowing entirely for several years at a time (Texas Water Development Board, personal communication). Negative impacts to the habitat in spring run 1 at Comal Springs, including drying, occur as flows approach 100 cfs.

*Comment 13:* Studies show that dissolved oxygen is high even at the lowest spring flows. Dissolved oxygen does not appear to be a determinative factor in the decision whether to list the species.

*Service Response:* The primary factor threatening the long-term survival of these species is availability of a sufficient quantity of water to maintain essential characteristics of their habitat. Although water quality, including the need for certain levels of dissolved oxygen, may be an important factor in their survival, the magnitude of the threat from total loss of water is viewed as the greater threat.

*Comment 14:* There is no economic advantage to protecting these invertebrates, and putting the life of virtually unknown species ahead of human welfare does not make sense.

*Service Response:* Like these invertebrates, humans depend on reliable supplies of clean water, and thus protecting our water resources is vital to protecting human health. While the Service cannot consider the economic consequences of species listings when making listing determinations, we believe that protecting these species will have a positive effect to humans in that it will ensure the persistence of the water resource for future generations and will maintain a healthy ecosystem. In addition, continuing spring flow is economically important both in the vicinity of the springs for water recreation businesses and downstream as far as the Gulf of Mexico, where inflow of fresh water into the bays and estuaries is vital to recreational and commercial fisheries.

#### **Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) should be classified as endangered species. 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to these three invertebrate species are as follows:

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

The main threat to the habitat of these aquatic invertebrates is a reduction or loss of water of adequate quantity and quality, due primarily to human withdrawal of water from the San Antonio segment of the Edwards (Balcones Fault Zone) Aquifer and other activities. Total withdrawal from the San Antonio region of the Edwards Aquifer has been increasing since at least 1934, when the total well discharge was 101,900 acre-feet (Edwards Underground Water District 1989). In 1989, the total well discharge was the highest on record at slightly more than 542,000 acre-feet (Longley

1991, Edwards Underground Water District 1992a). Between 1989 and 1995, total well discharge has ranged from 327,000 acre-feet in 1992 to 489,000 acre-feet in 1990 (U.S. Geological Survey, San Antonio, 1996).

There is an integral connection between the water in the aquifer west of the springs and the water serving as habitat for these species. Water in the Edwards Aquifer flows from west to east or northeast and withdrawal or contamination of water in the western part of the aquifer can have a direct effect on the quantity and quality of water flowing toward the springs and at the spring openings. Prior to wells being drilled into the aquifer, almost all of the water entering the aquifer eventually exited at springs (Guadalupe-Blanco River Authority 1988).

The Texas Water Commission (TWC) (1989) classified the San Antonio segment of the Edwards Aquifer as a critical area in terms of its potential for groundwater problems related to overdrafting. They also ranked Bexar, Comal, and Hays counties among the top 23 counties in Texas for number of active groundwater public supply systems. Human population in the region is expected to increase (Technical Advisory Panel 1990, Edwards Underground Water District 1993), which will result in increased demand for water from the aquifer.

The Texas Water Development Board has applied its model (1992) of the Edwards Aquifer to determine the maximum pumping level that would allow Comal Springs to continue to flow, assuming historic recharge (Technical Advisory Panel 1990). They found that during a drought similar to that of the 1950's, the maximum pumpage that would allow spring flow at Comal Springs is about 250,000 acre-feet per year. "At this pumping level, Comal Springs could be expected to maintain some annual flow although they may flow on an intermittent basis during a recurrence of the drought of record" (Technical Advisory Panel 1990). The Panel also stated that in the year 2000, if pumping continues to grow at historical rates and a drought occurs, Comal Springs would go dry for a number of years (Technical Advisory Panel 1990).

Wanakule (1990) states that "the present problem facing the Edwards Aquifer is the threat of overdrafting of the annual average recharge rate." McKinney and Watkins (1993) evaluated the Texas Water Development Board model and other models and concluded that, without limiting withdrawal to about 200,000 acre-feet per year, Comal Springs will likely go

dry for extended periods during even a minor drought. The recent creation of the Authority may help to alleviate this threat to some degree (see Factor D for further discussion).

The Texas Water Development Board model runs indicate that at the proposed pumping limit of 450,000 acre-feet, and given recharge levels and patterns similar to what occurred from 1934 to 1990, Comal Springs could spend 10 to 20 years below 100 cfs, and could stop flowing entirely for several years at a time (Texas Water Development Board, personal communication, 1997). A model run with the same general parameters but a withdrawal of 400,000 acre-feet shows the same pattern with some increase in spring flow, but still extended periods with no spring flow (Texas Water Development Board, personal communication, 1997).

In 1984 and 1990, some of the higher-elevation Comal Springs ceased flowing and water levels in the index well (J-17) in San Antonio dropped to within 3.7 meters (m) (12 feet (ft)) of the historic low of 186.7 m (612.5 ft) that occurred in 1956 (Wanakule 1990). During the drought conditions in the summer of 1996, spring flows at Comal Springs dropped to a low of 83 cfs. During the entire year of 1996, spring flow stayed below 200 cfs for about 252 days and below 100 cfs, the approximate flow at which spring run 1 stops flowing, for about 59 days. Because these invertebrates require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remains around the spring orifices, may negatively impact the species. Complete loss of water would likely result in the extirpation of these aquatic species.

In addition to a loss of water, a decrease in the water level in the aquifer could lead to decreased water quality at the springs. The Balcones Fault Zone—San Antonio Region is bounded on the south and east by a "bad water" interface across which the groundwater quality abruptly deteriorates to greater than 1000 mg/l total dissolved solids. Crossing the bad water interface, groundwater goes from fresh to saline or brackish. Lowered water levels resulting from groundwater pumpage and/or decreased recharge may at some point result in deterioration of water quality in the fresh water section of the aquifer through movement of the bad water interface. The Comal and San Marcos Springs are less than 305 and 62 m (1,000 and 200 ft), respectively, from the bad water interface (TWC 1989, Edwards Underground Water District 1992b). Although the data are inconclusive at present, even a small

movement of the water may negatively impact the species.

Other possible effects of reduced spring flow exist. These include changes in the chemical composition of the water in the aquifer and at the springs, a decrease in current velocity and corresponding increase in siltation, and an increase in temperature and temperature fluctuations in the aquatic habitat (McKinney and Watkins 1993).

Another threat to the habitat of these species is the potential for groundwater contamination. Pollutants of concern include, but are not limited to, those associated with human sewage (particularly septic tanks), leaking underground storage tanks, animal/feedlot waste, agricultural chemicals (especially insecticides, herbicides, and fertilizers) and urban runoff (including pesticides, fertilizers, and detergents).

Pipeline, highway, and railway transportation of hydrocarbons and other potentially harmful materials in the Edwards Aquifer recharge zone and its watershed, with the attendant possibility of accidents, present a particular risk to water quality in Comal and San Marcos Springs. Comal and San Marcos Springs are both located in urbanized areas. Hueco Springs is located alongside River Road, which is heavily traveled for recreation on the Guadalupe River, and may be susceptible to road runoff and spills related to traffic. Fern Bank Springs is in a relatively remote, rural location and its principal vulnerability is probably to contaminants associated with leaking septic tanks, animal/feedlot wastes, and agricultural chemicals.

Of the counties containing portions of the San Antonio segment of the Edwards Aquifer, the potential for acute, catastrophic contamination of the aquifer is greatest in Bexar, Hays, and Comal counties because of the greater level of urbanization compared to the western counties. Although spill or contamination events that could affect water quality do happen to the west of Bexar County, dilution and the time required for the water to reach the springs may lessen the threat from that area. As aquifer levels decrease, however, dilution of contaminants moving through the aquifer may also decrease.

The TWC reported that in 1988 within the San Antonio segment of the Edwards Aquifer, Bexar, Hays, and Comal counties had the greatest number of land-based oil and chemical spills in central Texas that affected surface and/or groundwater with 28, 6, and 4 spills, respectively (TWC 1989). As of July, 1988, Bexar County had between 26 and 50 confirmed leaking underground

storage tanks, Hays County had between 6 and 10, and Comal County had between 2 and 5 (TWC 1989) putting them among the top 5 counties in central Texas for confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the state (TWC 1989).

The TWC (1989), using the assessment tool DRASTIC (Aller, *et al.* 1987), classified aquifers statewide according to their pollution potential. The Edwards Aquifer (Balcones Fault Zone—Austin and San Antonio Regions) was ranked among the highest in pollution potential of all major Texas aquifers. The project's objective was to identify areas sensitive to groundwater pollution from a contaminated land surface based on the hydrogeologic setting. The area of particular concern was the Edwards Aquifer recharge zone and its watershed.

The TWC (1989) also reviewed and reported known and potential risks to Texas aquifers, such as from sanitary landfills, hazardous waste disposal facilities, industrial waste and sewage disposal wells, commercial feedlots, and graveyards. They found the following: "Based on this statewide assessment of potential and actual ground-water contaminants, waste disposal practices being employed and existing regulations which are available for contamination detection and mitigation, it was concluded that there are still conditions that exist or practices being used that are cause for concern. For the most part, the state presently has in place regulations that will effectively reduce future pollution, however past practices may return to haunt us."

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

No threat from overutilization of this species is known at this time.

#### *C. Disease or Predation*

While individuals of these three species may be preyed upon by various predatory insects or fish, no information indicates that this is a substantial threat.

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

Invertebrates are not included on the Texas Parks and Wildlife Department's (TPWD) list of threatened and endangered species and are provided no protection by the State. The TPWD

regulations do not contain provisions for protecting habitat of any listed species.

Traditionally, the State of Texas has had no authority to regulate withdrawal of groundwater from an aquifer. After a lawsuit filed against the Service by the Sierra Club (*Sierra Club v. Babbitt*, formerly *Sierra Club v. Lujan*), the Texas State Legislature passed a bill (S.B. 1477) authorizing the creation of the Authority and granted the Authority the power to regulate groundwater withdrawal from the Edwards Aquifer. The bill limits groundwater withdrawal from the aquifer to 450,000 acre-feet per year initially, reducing it to 400,000 acre-feet per year by January 1, 2008. However, Texas Water Development Board models indicate that, at these proposed withdrawal limits, the upper-elevation spring runs at Comal Springs could go dry frequently and for significant periods of time (as happened in 1996) and significant negative impacts to the species could occur before continuous minimum springflows are in place.

One goal of the bill is to provide continuous minimum spring flow, as defined by Federal statute, at Comal and San Marcos Springs by the year 2012. This minimum flow is to protect species that are designated as threatened or endangered under Federal or State law, but does not protect unlisted species. In addition, an evaluation of the Texas Water Development Board models used to set these withdrawal limits shows that flow at Comal Springs will drop below 100 cfs and will likely go dry for extended periods in time of severe drought and probably during minor droughts (McKinney and Watkins 1993, TWDB 1992). McKinney and Watkins (1993) believe it is unlikely that spring flow in Comal Springs of at least 100 cfs for 80 percent of the time, except during severe drought, can be met with a pumping limit greater than 200,000 acre-feet per year. In addition, when the flow drops to 96 cfs, spring run 1 at Comal Springs has already dried substantially (Thornhill, deposition in *Sierra Club v. Lujan*). Finally, efforts to maintain minimum spring flow at Comal and San Marcos Springs would not necessarily be sufficient to maintain flow at Hueco and Fern Bank Springs, which lie at higher elevations.

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

The effect of natural droughts in south central Texas will increase in severity due to the large increase in human groundwater withdrawals (Wanakule 1990). These species' very limited habitat is likely to be lost through

drying or decreased volume of spring flow during minor or severe drought.

At present, competition is not known to be a significant threat to these species. However, two exotic snail species, *Thiara granifera* and *Thiara tuberculata*, are common in the spring runs and, as grazers, may compete for food. Another exotic species, the giant ramshorn snail (*Marisa cornuarietis*), is present in two of the spring runs and may colonize the other runs at low flow levels. *Marisa* can have a tremendous impact on vegetation, that in turn may affect the habitat for surface-dwelling grazers like the riffle beetle.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in making this final rule. Based on this evaluation the preferred action is to list the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*) as endangered. Endangered status is determined appropriate for these three invertebrates given that threats are significant and could result in extinction of these species throughout all or a significant portion of their range. The immediate nature of these threats precluded determining these species to be threatened species.

#### **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), require 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 Peck's cave amphipod, the Comal Springs riffle beetle, and the Comal Springs dryopid beetle. 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.

Designation of critical habitat would provide no benefits to these species beyond those provided by listing and the subsequent evaluation of activities under section 7 of the Act. Section 7 prohibits Federal agencies from jeopardizing the continued existence of listed species or destroying or adversely modifying listed species' designated critical habitat.

In the Service's section 7 regulations at 50 CFR part 402, the definition of "jeopardize the continued existence of" includes "to reduce appreciably the likelihood of both the survival and recovery of the listed species," and "destruction or adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Both of these definitions refer to actions that reduce the survival and recovery of a listed species. Any action that would appreciably diminish the value, in quality or quantity, of spring flows (habitat) on which the species depend would also reduce appreciably the likelihood of survival and recovery of the three species. Because these species are endemic to such highly localized areas, actions that affect water quality and quantity at the springs will be fully evaluated for their effects on the three species through analysis of whether the actions would be likely to jeopardize their continued existence. The analysis for possible jeopardy applied to these species would therefore be identical to the analysis for determining adverse modification or destruction of critical habitat. Therefore, there is no distinction between jeopardy and adverse modification for activities impacting the springs on which these species depend.

#### **Available Conservation Measures**

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

organizations, and individuals. The Act provides for cooperation with the States and requires that recovery actions be carried out for all species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle are likely to involve protection and conservation of the Edwards Aquifer and spring flow at Comal, Hueco, San Marcos, and Fern Bank Springs. It is also anticipated that listing will encourage research on critical aspects of the species' biology.

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 informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. 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 such 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 actions that may require consultation include projects that would affect the quality or quantity of water within the San Antonio segment of the Edwards Aquifer or otherwise significantly affect the outlets or water output of Comal Springs in New Braunfels, Texas; San Marcos Springs in San Marcos, Texas; Hueco Springs in Comal County, Texas; and Fern Bank Springs in Hays County, Texas. Examples of these types of activities include projects that would involve withdrawal of water from the aquifer; permits for municipal wastewater discharge; agricultural irrigation; use of pesticides and herbicides; Environmental Protection Agency National Discharge Elimination System permits; section 18 exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act; Corps of Engineers permits for stream crossings; and Department of Housing and Urban Development projects.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and

exceptions that apply to all endangered wildlife. These prohibitions, 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, 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 endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. 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. It is anticipated that few trade permits would ever be sought or issued because these species are not known to be in trade.

It is the policy of the Service (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 effect of listing on proposed and ongoing activities within a species' range. The purpose of this guidance is not only to identify activities that would or would not likely result in take of individuals, but activities that in combination will ultimately affect the long-term survival of these species. This guidance should not be used to substitute for local efforts to develop and implement comprehensive management programs.

The Service believes that, based on the best available information, activities that could potentially harm these invertebrates and result in "take" include, but are not limited to:

- (1) Collecting or handling of the species;
- (2) Activities that may result in destruction or alteration of the species' habitat including, but not limited to, withdrawal of water from the aquifer to the point at which habitat becomes unsuitable for the species, alteration of the physical habitat within the spring runs, or physical alteration of the spring orifices or of the subsurface pathways providing water to the springs;
- (3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other material into

the springs or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality;

(4) Herbicide, pesticide, or fertilizer application in or near the springs containing the species; and

(5) Introduction of non-native species (fish, plants, other) into these spring ecosystems.

The Service believes that a wide variety of activities would not harm these species if undertaken in the vicinity of their habitats and thus would not constitute taking. In general, any activity in the contributing, recharge, or artesian zones of the Edwards aquifer that would not have potential for the cumulative or acute/catastrophic negative effects on water quantity or quality within the aquifer should not harm these species. Inquiries concerning the possible effects of specific activities, copies of regulations regarding listed wildlife, or inquiries regarding prohibitions and permits should be directed to the Service's Austin Field Office (see ADDRESSES section).

#### 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.

#### References Cited

- Aller, L., T. Bennett, J.H. Lehr, R.J. Petty, and G. Hackett. 1987. DRATIC: a standardized system for evaluating groundwater pollution potential using hydrogeologic settings. U.S. Environmental Protection Agency. EPA/600/2-87/035. 622 pp.
- Arsuffi, Thomas L. 1993. Status of the Comal Springs Riffle Beetle (*Heterelmis comalensis* Bosse, Tuff, and Brown), Peck's Cave Amphipod (*Stygobromus pecki* Holsinger), and the Comal Springs Dryopid Beetle (*Stygoparnus comalensis* Barr and Spangler). Prepared for the U.S. Fish and Wildlife Service. 25 pp.



Dated: October 21, 1997.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 97-33041 Filed 12-17-97; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 961204340-7087-02; I.D. 121297A]

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

**ACTION:** Trip limit reduction.

**SUMMARY:** NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to protect the Atlantic migratory group Spanish mackerel resource.

**DATES:** Effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Councils recommended and NMFS implemented an adjusted quota and commercial trip limits for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 622.44(b)(2), the adjusted quota is 3.25 million lb (1.47 million kg). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic migratory group Spanish mackerel from the

southern zone is taken until 100 percent of the adjusted quota is taken, Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,500 lb (680 kg). The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6" N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic migratory group Spanish mackerel from the southern zone was taken by December 15, 1997. Accordingly, the 1,500-lb (680-kg) per day commercial trip limit applies to Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

#### Classification

This action is taken under 50 CFR 622.44(b)(2) and is exempt from review under E.O. 12866.

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

Dated: December 15, 1997.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97-33099 Filed 12-15-97; 3:12 pm]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 971015246-7293-02; I.D. 100897D]

RIN 0648-AK44

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries

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

**ACTION:** Final specifications for the 1998 summer flounder, scup, and black sea bass fisheries; final rule, technical amendment; notifications of commercial quota harvest.

**SUMMARY:** NMFS issues the final specifications for the 1998 summer flounder, scup, and black sea bass fisheries. The intent of this document is

to comply with implementing regulations for the summer flounder, scup, and black sea bass fisheries that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these species. NMFS announces that no quota is available in several states for specified 1998 fisheries as follows: the State of Delaware is notified that no commercial summer flounder or Summer period commercial scup quotas are available in 1998; the State of New Hampshire is notified that no Summer period commercial scup quota is available for 1998. NMFS advises vessel and dealer permit holders that no commercial quotas are available for landing those species in those States during the specified time periods.

**DATES:** The amendments to §§ 648.14(u)(1), 648.100(a), 648.143(a), and § 648.144(a)(1)(i) are effective January 1, 1998. The final specifications for the 1998 summer flounder, scup, and black sea bass fisheries and notifications of commercial quota harvest are effective January 1, 1998, through December 31, 1998.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment (EA), Regulatory Impact Review, and the Final Regulatory Flexibility Analysis (FRFA) are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, (978) 281-9221.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°15.3' N. latitude, the latitude of Cape Hatteras Light, NC, northward to the U.S./Canada border. Implementing