

event that areas outside a species' current range contain unique biological features that would aid in the conservation of the species, NMFS may designate such areas as critical habitat.

Documents submitted by Meridian indicate that habitat above Napias Creek Falls is of high quality and that this habitat may therefore be desirable for recovery of listed chinook salmon. In an undated report from Idaho Department of Fish and Game (IDFG) submitted by Meridian, the State concludes that "excellent spawning areas exist in the upper half of the stream" (IDFG, undated). This conclusion is supported by a recent NMFS assessment of this habitat (NMFS, 1997c). NMFS' recent habitat assessment is summarized here.

In assessing the quality of habitat in Napias Creek, NMFS' fishery biologists conducted onsite habitat evaluations and reviewed available scientific literature regarding the area. The portion of Napias Creek above Napias Creek Falls from approximately River Mile (RM) 3 to RM 10 has a lower gradient and often meanders through a more open floodplain. This stream stretch contains a high proportion of low gradient riffles, along with glides, runs, plunge pools, main channel pools, and lateral scour pools that create important spawning and rearing habitat for anadromous fishes (Thurrow and Overton, 1993). Gravel and rubble tend to dominate the existing substrate, and occasional deep pools exist. Some portions of this stream reach may be considered pristine, although there is also some evidence of historical mining (ACZ Inc., 1990).

Napias Creek is an important source of high-quality dilution water within the Panther Creek system. Any degradation of dilution flows from Napias Creek would negatively impact efforts to reestablish anadromous fisheries in Panther Creek (ACZ Inc., 1990). According to Smith (1990), the dilution effect on Panther Creek creates a "habitat window" with natural benthic and fisheries values for about six miles downstream, to the confluence with Big Deer Creek, where Blackbird Mine drainage becomes a problem. Napias Creek water is also considered to have extremely low hardness (approximately 10 mg/l CaCO<sub>3</sub>) relative to Panther Creek water (approximately 30 mg/l CaCO<sub>3</sub>).

In most years, spring/summer chinook salmon should be able to navigate through Napias Creek Falls between late-June to mid-July when streamflows and water levels are more favorable (NMFS, 1997b). This time window will be more selective for early arriving adult chinook salmon. Historically, the

Panther Creek system likely maintained an early migration of adult spring/summer chinook salmon (Parkhurst, 1950). The early spawning run and the low hardness factor may expand the genetic variability of listed Snake River chinook salmon, thereby enhancing the survival characteristics of the entire Snake River chinook salmon ESU.

Based on its own independent scientific analysis, NMFS concludes that areas above Napias Creek Falls contain a significant amount of high quality chinook salmon habitat. Given its assessment of habitat above Napias Creek Falls, NMFS believes that habitat above Napias Creek Falls contains unique features that will aid in the conservation and recovery of listed salmonid species. Therefore, if future studies indicate areas above Napias Creek Falls are outside the current range of listed chinook salmon, it is possible that such habitat areas may be found essential for conservation and recovery of listed salmonid species.

#### Determination

NMFS has reviewed Meridian's petition to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. Based on its assessment of the best available scientific information, NMFS concludes that the petitioned action is not warranted.

#### References

A complete list of references is available upon request (see ADDRESSES).

**Authority:** 16 U.S.C. § 1531 *et seq.*

Dated: January 26, 1998.

#### Rolland A. Schmitten,

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 970527125-8016-03; I.D. 122297D]

RIN: 0648-AJ95

#### Appointment of Members to the Regional Fishery Management Councils

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would amend guidelines contained at 50 CFR 600.215 that affect the nomination of obligatory and at-large members appointed by the Secretary of Commerce (Secretary) to the eight Regional Fishery Management Councils (RFMCs).

**DATES:** Comments must be received by March 2, 1998.

**ADDRESSES:** Comments should be sent to Dr. Gary C. Matlock, F/SF, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Loretta E. Williams, F/SF5, NMFS, 301-713-2337.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 302(b)(2)(C) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) establishes procedures for the nomination and appointment of RFMC members. On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act which, in pertinent part, amended the Magnuson-Stevens Act by adding a new seat on the Pacific Fishery Management Council (Council). The seat is to be held by a representative from an Indian tribe with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho (section 302(b)(5)(A)). On September 10, 1997, NMFS issued a final rule (62 FR 47584) to revise the regulations contained at 50 CFR 600.215. The final rule introduced into § 600.215 new procedures applicable to the nomination and appointment of a tribal Indian representative to the Council. This proposed revision reorganizes text contained in the final rule into more a logical order and makes editorial changes for readability. It also reemphasizes the requirement for each RFMC constituent State Governor, tribal Indian governments, and each RFMC nominee to comply with the March 15 nomination deadline, by which time each completed nomination package is to be received by the NMFS Assistant Administrator.

Obligatory seats for which completed nomination packages are not received by March 15 will remain unfilled until the nominators and nominees have furnished all required information. If complete nomination packages for at-large seats are not received by March 15, they will be returned and will not be processed further; the appointments will be made from among nominees

whose complete packages were received by the deadline.

### Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would (1) reorganize procedures and improve readability of procedures affecting the nomination and appointment of RFMC members, and (2) clarify and emphasize guidelines that relate to the compliance by RFMC constituent State Governors, appropriate tribal Indian governments, and each RFMC nominee for the submission of complete nomination packages by the March 15 deadline identified in the section. Because this rule is procedural only, it will not have an economic impact on the fishing industry or on small entities operating in the fishery.

This rule restates collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). They have been approved under OMB Control Number 0648-0314. The total public reporting burden for nominations submitted by state Governors, tribal Indian Governments, and nominees is estimated to be 120 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these or any other aspects of the collection of information to the Office of Sustainable Fisheries (see ADDRESSES) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

This rule has been determined to be not significant for the purposes of E.O. 12866.

### List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Statistics.

Dated: January 26, 1998.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR 600 is proposed to be amended as follows:

### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et. seq.*

2. Section 600.215 is revised to read as follows:

#### § 600.215 Council nomination and appointment procedures.

(a) *General.* (1) Each year, the 3-year terms for approximately one-third of the appointed members of the Councils expire. New members will be appointed, or seated members will be reappointed to another term, by the Secretary of Commerce (Secretary) to fill the seats being vacated.

(2) There are two categories of seats to which voting members are appointed: "Obligatory" and "at-large."

(i) Obligatory seats are state-specific. Each constituent state is entitled to one seat on the Council on which it is a member, except that the State of Alaska is entitled to five seats, and the State of Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term of a state's obligatory member is expiring or when that seat becomes vacant before the expiration of its term, the Governor of that state must submit the names of at least three qualified individuals to fill that Council seat.

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

(iii) At-large seats are regional. When the term of an at-large member is

expiring or when that seat becomes vacant before the expiration of a term, the Governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill the seat.

(b) *Responsibilities of State Governors.* (1) Council members are selected by the Secretary from lists of nominees submitted by Governors of the constituent states pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act. For each applicable vacancy, a Governor must submit the names of at least three nominees who meet the qualification requirements of the Magnuson-Stevens Act. A Governor must provide a statement explaining how each of his/her nominees meet the qualification requirements, and must also provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state; and that each nominee is knowledgeable and experienced by reason of his or her occupational or other experience, scientific expertise, or training in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(i) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(ii) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(iii) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(iv) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(v) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; or

(vi) Teaching, journalism, writing, consulting, practicing law, or researching matters related to fisheries, fishery management, and marine resource conservation.

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate Governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the criteria in paragraph (b)(1)

of this section. Nominees may provide such information in any format they wish.

(3) A constituent State Governor must determine the state of residency of each of his/her nominees. A Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. A Governor may nominate residents of another constituent state of a Council for appointment to an at-large seat on that Council.

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat. The Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state, provided that the resulting total number of nominees submitted by that Governor for the expiring seats is no fewer than six. If a total of fewer than six nominees is submitted by the Governor, each of the six will be considered for the expiring obligatory seat, but not for the expiring at-large seat.

(c) *Responsibilities of eligible tribal Indian governments.* The tribal Indian representative on the Pacific Council will be selected by the Secretary from a list of no fewer than three individuals submitted by the tribal Indian governments with federally recognized fishing rights from California, Oregon, Washington, and Idaho, pursuant to section 302(b)(5) of the Magnuson-Stevens Act. To assist in assessing the qualifications of each nominee, each head of an appropriate tribal Indian government must furnish to the Assistant Administrator a current resume, or equivalent, describing the nominee's qualifications, with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Pacific Council in

a different capacity will not disqualify nominees proposed by tribal Indian governments.

(d) *Nomination deadlines.* Nomination letters and completed kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, a different deadline for receipt of nominations will be announced.

(1) *Obligatory seats.* The Governor of the state for which the term of an obligatory seat is expiring must submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Council a representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments. If the nominator fails to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) *At-large seats.* (i) If a Governor chooses to submit nominations for an at-large seat, he/she must submit lists that contain at least three different qualified nominees for each vacant seat. A nomination letter and at least three complete nomination kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator.

(ii) Nomination packages that are incomplete as of March 15 will be returned to the nominating Governor and will not be processed further. At-large members will be appointed from among the nominations submitted by the Governors who complied with the nomination requirements and the March 15 deadline.

(e) *Responsibilities of the Secretary.* (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

(2) The Secretary will review each list submitted by a Governor or the tribal Indian governments to ascertain whether the individuals on the list are qualified for the vacancy. If the Secretary determines that a nominee is not qualified, the Secretary will notify

the appropriate Governor or tribal Indian government of that determination. The Governor or tribal Indian government shall then submit a revised list of nominees or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(3) The Secretary will select the appointees from lists of qualified nominees provided by the Governors of the constituent Council states or the tribal Indian governments that are eligible to nominate candidates for that vacancy.

(i) For Governor-nominated seats, the Secretary will select an appointee for an obligatory seat from the list of qualified nominees submitted by the Governor of the state. In filling expiring at-large seats, the Secretary will select an appointee(s) for an at-large seat(s) from the list of all qualified candidates submitted. The Secretary will consider only complete slates of nominees submitted by the Governors of the Council's constituent states. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from complete nomination letters and kits that are timely and contain the required number of candidates.

(ii) For the tribal Indian seat, the Secretary will solicit nominations of individuals for the list referred to in paragraph (c) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations. Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described in paragraphs (d)(1) and (2) of this section, except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

(A) The qualifications of the individuals on the list referred to in paragraph (c) of this section;

(B) The various rights of the Indian tribes involved, and judicial cases that set out the manner in which these rights are to be exercised;

(C) The geographic area in which the tribe of the representative is located; and

(D) The limitation that no tribal Indian representative shall serve more than three consecutive terms in the Indian tribal seat.

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