following the procedure outlined in Resol. Conf. 9.25 (copies available on request).

Future Actions

The next regular meeting of the Conference of the Parties (COP11) is expected to be held in November 1999 in Indonesia, and a tentative U.S. schedule has been developed to prepare for that meeting. Any proposals to amend Appendix I or II must be submitted by the United States to the CITES Secretariat 150 days prior to the start of COP11 (i.e., in June 1999). In order to fully accommodate the schedule's deadlines, the Service plans to expand its discussions with the States comprising the United States. Therefore, the Service is initiating this request for status and trade information on species earlier than in past years, because it is seeking greater involvement of the State wildlife agencies in the review process. Thus, after this initial request for species to consider, the State animal and plant conservation agencies will be asked for specific status and management information on those native species that are being considered. After review of any information received, the Service may make some preliminary decisions and may seek assistance in developing more complete proposals during the summer and fall of 1998.

The Service intends to publish a **Federal Register** notice in December 1998 to announce tentative species proposals to be submitted by the United States and to solicit further information and comments on them, as well as providing summary comment on information provided in response to this notice. In January 1999, a public meeting will be held to allow for additional input. All CITES Parties within the geographic range of species proposed for amendments to the Appendices will be consulted by March 1999, so that final proposals will have the benefit of their consideration and comments, in accord with Resol. Conf. 8.21. Another **Federal Register** notice in about June 1999 will announce the Service's final decisions and those species proposals submitted by the United States to the CITES Secretariat. The deadline for submission of the proposals to the Secretariat is expected to be in June 1999, as COP11 is currently being planned to take place in November 1999.

Through a series of additional notices in advance of COP11, the Service will solicit recommendations for possible agenda items and resolutions designed to improve the implementation of the Convention, inform the public about preliminary and final negotiating positions on resolutions and amendments to the Appendices proposed by other Parties for consideration at COP11, and explain how observer status is obtained for non-governmental organizations that plan to attend. The Service will also publish announcements of public meetings expected to be held in January 1999 and August 1999, to receive public input on its positions regarding COP11 issues.

Authors: This notice was prepared by Dr. Charles W. Dane and Dr. Bruce MacBryde, Office of Scientific Authority, under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, and Treaties.

Dated: January 23, 1998.

Jamie Rappaport Clark,

Director.

[FR Doc. 98–2388 Filed 1–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971230317-7317-01; I.D. No. 120197A]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition To Revise Critical Habitat for Snake River Spring/Summer Chinook Salmon

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

ACTION: Notice of determination.

SUMMARY: NMFS announces a 12-month determination of how it intends to proceed on a petition to revise critical habitat for Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS determines the petitioned action is not warranted.

DATES: The determination announced in this notice was signed on January 26, 1998.

ADDRESSES: Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232; internet (jim.lynch@noaa.gov).

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Protected Resources Division, Northwest Region, (503) 231–2005 or Joe Blum, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the Endangered Species Act (ESA) (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653) and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In the December 28, 1993 notice, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, USGS Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that notice of finding, NMFS solicited information and comments from interested parties concerning the petitioned action (62 FR 22903). The comment period on the petitioned action closed on June 27, 1997 (62 FR 22903).

On June 23, 1997, NMFS received a request from Meridian requesting NMFS to extend the deadline for new information and comments until September 15, 1997. In its request for extension, Meridian stated that additional time was needed to complete studies to support the petitioned action. By a letter dated July 16, 1997, NMFS declined to extend the official comment period for the petitioned action. In this letter, NMFS concluded that an extension was not warranted since the original comment period was 30 days

longer than that required by law and only one comment had been received during the original public comment period (NMFS, 1997a).

While NMFS declined to extend the public comment period for the petitioned action, NMFS stated in its July 16, 1997, response to Meridian that it would consider any pertinent information prior to making a determination (NMFS, 1997a). NMFS' willingness to consider pertinent information was communicated to the State of Idaho and to the only commenter, the Sierra Club Legal Defense Fund (SCLDF).

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) ''Ability of Salmon and Steelhead to Pass Napias Creek Falls''; (2) ''Investigation of Physical Conditions at Napias Creek Falls''; and (3) ''Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho.'' This new information was added to the administrative record and was considered by NMFS in its 12-month determination. Copies of this information are available upon request (see **ADDRESSES**).

Summary of Comments Received on the Petitioned Action

One comment was received on the petitioned action during the 60-day public comment period. The commenter, SCLDF, contends the that petitioned action is not supported by available evidence and that Meridian's studies do not address the question of historic passability of Napias Creek (SCLDF, 1997). SCLDF further states that Meridian's desire to revise the critical habitat designation is to avoid measures necessary to mitigate its adverse modification of critical habitat (SCLDF, 1997). SCLDF ultimately recommends that NMFS deny Meridian's petition (SCLDF, 1997).

NMFS believes that SCLDF's views of Meridian's motivation for pursuing this action is not relevant for the purposes of determining the merits of Meridian's petition. While SCLDF provides no new information concerning the historic accessibility of this area to listed chinook salmon, NMFS considers the merits of available scientific information below.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as ''(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species'' (see 16 U.S.C. 1532(5)(A)). The term ''conservation,'' as defined in section 3(3) of the ESA, means '' * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR § 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR § 424.12(b)).

Analysis of Available Information and Comments

Meridian presents two main arguments in support of its petition to remove areas of Napias Creek, above Napias Creek Falls, from designated Snake River chinook salmon critical habitat. First, Meridian contends that, currently, Napias Creek Falls is a complete migration barrier to listed Snake River chinook salmon as evidenced by recent hydrologic studies. Second, Meridian contends that habitat above Napias Creek Falls has historically been inaccessible to chinook salmon as evidenced by historical research. These issues are discussed here.

Current Passage Conditions at Napias Creek Falls

Meridian conducted several studies to determine the ability of chinook salmon to migrate above Napias Creek Falls. One study evaluated the geomorphology of the falls, while another study assessed the potential for fish passage using the methods of Powers and Orsborn (P&O) as described in ''Analysis of Barriers to Upstream Fish Migration'' (Bonneville Power Administration (BPA), 1984). A third study entitled ''Ability of Salmon and Steelhead to Pass Napias Creek Falls'' analyzed information and conclusions of the preceding two studies and concluded that ''Napias Creek Falls is an absolute barrier to upstream migration of salmon and steelhead in Napias Creek.'' (Meridian, 1997). NMFS has reviewed all information and studies submitted by Meridian regarding this issue. Further, NMFS conducted several on-site inspections of Napias Creek Falls to independently assess the potential for chinook salmon passage in this area. Based on an assessment of information contained in the petition, and on an independent assessment of physical conditions at Napias Creek Falls, NMFS concludes that chinook salmon can migrate past Napias Creek Falls during certain flow conditions (NMFS, 1997b). The following paragraphs summarize NMFS' analysis and conclusions.

First, conceding that the swimming capability of the anadromous fish that may have occupied Napias Creek can not be precisely determined, the swimming burst velocity (V_f) chosen for Napias Creek Falls in Meridian's petition, which is about 16.8 feet per second (fps) (5.12 meters per second (mps)) for Napias Creek Falls, was used by NMFS in its analysis. Based on a V_f of 16.8 fps (5.12 mps), Meridian uses the methods of P&O to calculate a potential jump height (H_j) of 4.3 feet(ft) (1.31 m) However, the P&O report states ''Aaserude noted that to determine the true leaping height above the water surface, the length of the fish should be added to equation (6) (clarification - the projectile motion equation) because the fish uses its full propulsive power up until the point the fish's tail leaves the water * * *'' (BPA, 1984). Therefore, the length of the fish should be added to the height of the jump. Since a small adult chinook salmon might measure 2 ft (.61 m) in length, adding this length to H_j yields a total potential jump height (H_t) of 6.3 ft (1.92 m).

Using data from Meridian's petition, the height of Napias Creek Falls is 9 ft (2.74 m) when streamflow is 49 cfs (1.37

cubic meters per second (cms)), and the water velocity at the crest of the falls is 7 fps (2.13 mps). After water drops 2.7 ft (.82 m) from the falls crest, gravity accelerates the water velocity to 11.7 fps (3.57 mps) (V_h) at the fish landing point, as calculated using the equations given in Meridian's petition. Since this velocity is below the burst velocity of a chinook salmon, the fish should be able to swim for 5 to 10 seconds at a V_f of 16.8 seconds (Bell, 1991). Swimming at a net velocity (V_f -V_h) of 5.1 fps (1.55 mps) for 5 seconds, a fish can travel a distance of 25.5 ft (7.77 m), much further than what would be required to pass the crest of the falls.

According to Meridian's petition, at 49 cfs (1.37 cms) the pool below Napias Creek Falls is 6 ft. deep (1.83 m), which is of sufficient depth for a fish to stage and leap at the falls. The P&O report states:

> From a research project the author participated in observing fish leaping over weirs at John's Creek Fish Hatchery, near Shelton, Washington (Aasrude 1984), it was concluded that two conditions should be satisfied to provide optimum leaping conditions in plunge pools: (1) depth of penetration of falling water should be less than the depth in the plunge pool, and (2) depth of the plunge pool must be on the order of, or greater than the length of the fish attempting to pass (BPA 1984).

Information from Meridian's petition shows that the pool below the uppermost falls at Napias Creek satisfies both of these conditions.

Finally, the issue of aerated two-phase (air-water) flow is discussed in Meridian's petition as a condition that further impedes the swimming and leaping ability of the fish. No data are given to reveal the extent of aeration at Napias Creek Falls and this is very difficult to measure in situ. Based on basic fluid drag equations that relate to the forces exerted by and on a moving submerged object, such as a fish, the drag force is directly proportional to the unit weight of water. Since the drag forces involved with the movement of a fish include propulsion by fins and friction drag produced by water velocity passing over the shape of a fish, the reduction of the unit weight of water due to aeration has force components that both increase and decrease the fish's swimming ability. This is an area that has not been specifically studied in bio-mechanical tests. However, it is reasonable to assume that, in the case of Napias Creek Falls, flowing at 49 cfs (1.37 cms), aeration will have an effect on the leaping ability of the fish, either positive or negative depending on the percent aeration of the flow. Data reported in the U.S. Bureau of Reclamation's Engineering Monograph No. 41, ''Air-Water Flow in Hydraulic Structures'' show that entrained air concentration decreases to near zero at the channel bottom of the receiving pool of a 15–degree slope chute to around 7 percent at mid-depth, with higher concentrations only nearer to the water surface. In the context of a fish's jumping ability, the majority of the water column produces only a slight decrease (some fraction of 0 percent to 7 percent) in the swimming speed reached before the jump commences. Noting that flow over most (if not all) falls is aerated, aeration of flow does not or did not preclude passage over Tumwater, Sherars, Celilo, and Willamette Falls. Presumably, this would also be the case at Napias Creek Falls.

Based on its analysis of data from the reports and from observation of Napias Creek Falls, NMFS concludes that chinook salmon could pass the current configuration of the falls at river flows of about 50 cfs (1.4 cms).

Historical Passage Conditions at Napias Creek Falls

Meridian conducted two studies to determine if, historically, chinook salmon were observed above Napias Creek Falls. The first study reviewed historical accounts of chinook salmon occurring above Napias Creek Falls. Meridian states that reviews of historical and independent ethnographic research document that salmon or steelhead were not observed or caught above Napias Creek Falls and, therefore, the fish were not historically present in this area. A second study reviews the genesis of Napias Creek Falls and concludes that the falls are a natural feature and, therefore, historically impassable to chinook salmon.

While the studies provided by Meridian tend to indicate that Napias Creek Falls may have been a historic barrier to salmon passage, this conclusion is called into question by comments from a United States Forest Service fishery biologist (Forest). In a report dated February 8, 1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Furthermore, Smith states that areas above Napias Creek Falls currently contain relict indicator species, specifically bull trout and rainbow trout (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmon species such as chinook (Smith, 1996b).

In its petition, Meridian provides a letter from George Matejko, Forest Supervisor, Salmon and Challis National Forests, dated April 30, 1996, to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, concerning the Smith reports. This letter states ''it is the Forest Service's opinion that the Upper Napias Creek Watershed above Napias Creek Falls is not historic chinook salmon habitat'' and ''the minority opinion submitted to your office by Bruce Smith does not reflect the official Forest position on this issue'' (Matejko, 1996).

While NMFS understands the Smith reports may not constitute the official position of the Forest on whether Upper Napias Creek is historical chinook salmon habitat, NMFS believes these reports provide relevant scientific information worthy of consideration.

Furthermore, while the Forest questions NMFS' use and interpretation of scientific information contained in the Smith reports, the Forest does not seek to refute all aspects of these reports (e.g., the presence of relict indicator species above the falls), nor does it provide new scientific information that would call into question conclusions contained in these reports.

Smith concluded that based on historical, ethnobiological, and biological evidence, it is likely chinook salmon historically occurred in Napias Creek, including areas above Napias Falls (Smith, 1996a; Smith, 1996b). Meridian attempts to prove that Napias Falls is a historic barrier to chinook salmon migration based on historic, ethnographic, and geologic studies of the area in question. NMFS concludes that the evidence contained in the Smith reports is not overcome by the evidence presented by Meridian or the Forest, and is persuasive on the question of the historical presence of chinook salmon in Upper Napias Creek.

While NMFS concludes it is likely that historically, chinook salmon and steelhead occurred above Napias Creek Falls, the issue of historical use of this area may in fact be moot since NMFS concludes chinook salmon can now migrate above Napias Creek Falls, (i.e., the area above Napias Creek Falls is within the current range of chinook salmon).

Essential Features of Habitat

NMFS' ESA implementing regulations state that it ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR § 424.12(e)). Therefore, in the

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 (Thurow 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 $CaCO_3$) relative to Panther Creek water (approximately 30 mg/l $CaCO_3$).

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.

[FR Doc. 98–2368 Filed 1–29–98; 8:45 am]

BILLING CODE 3510–22–F

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