

a very highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange;

(2) For futures and option contracts on a financial instrument or product or on an intangible commodity having an average month-end open interest of 50,000 and an average daily volume of 25,000 contracts and a highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange;

(3) For futures and option contracts on a tangible commodity, including but not limited to metals, energy products, or international soft agricultural products, having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange, *provided, however*, such contract markets are not exempt from the requirement of paragraphs (b) or (c) that they adopt an exchange bylaw, regulation or resolution setting a spot month speculative position limit with a level no greater than one quarter of the estimated spot month deliverable supply;

(4) For purposes of this paragraph, trading volume and open interest shall be calculated by combining the month-end futures and its related option contract, on a delta-adjusted basis, for all months listed during the most recent calendar year.

(f) *Other exemptions.* Exchange speculative position limits adopted pursuant to this section shall not apply to any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit or to a person that is registered as a futures commission merchant or as a floor broker under authority of the Act except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. In addition to the express exemptions specified in this section, a contract market may propose such other exemptions from the requirements of this section consistent with the purposes of this section and shall submit such rules Commission review under section 5a(1)(12) of the Act and § 1.41(b) of this chapter.

(g) *Aggregation.* In determining whether any person has exceeded the limits established under this section, all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.

Issued by the Commission this 27th day of April, 1999, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In Title 40 of the Code of Federal Regulations, part 60, revised as of July 1, 1998, § 60.41c is corrected by adding the following definitions:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388-77, "Standard Specification for Classification of Coals by Rank" (incorporated by reference—see § 60.17); coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

Cogeneration steam generating unit means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined cycle system means a system in which a separate source (such as a stationary gas turbine, internal

combustion engine, or kiln) provides exhaust gas to a steam generating unit.

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[FR Doc. 99-55518 Filed 5-4-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971029257-9101-02; I.D. 101097A]

RIN 0648-AG56

Designated Critical Habitat; Central California Coast and Southern Oregon/Northern California Coasts Coho Salmon

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

ACTION: Final rule and correction.

SUMMARY: NMFS is designating critical habitat for two Evolutionarily Significant Units (ESUs) of coho salmon (*Oncorhynchus kisutch*) pursuant to the Endangered Species Act of 1973 (ESA). Critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California, including two streams entering San Francisco Bay: Arroyo Corte Madera Del Presidio and Corte Madera Creek. Critical habitat for the Southern Oregon/Northern California Coasts ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in this final rule represent the current freshwater and estuarine range of the listed species. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). After considering public comments and reviewing additional scientific information, NMFS is modifying various aspects of the proposed designation, including a revised description of adjacent riparian zones and the exclusion of tribal lands from critical habitat. NMFS has identified several dams in the range of these ESUs that currently block access to habitats

historically occupied by coho salmon. However, NMFS has not designated these inaccessible areas as critical habitat because the downstream areas are believed to provide sufficient habitat for conserving the ESUs. The economic (and other) impacts resulting from this critical habitat designation are expected to be minimal.

DATES: This rule is effective June 4, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 1999.

FOR FURTHER INFORMATION CONTACT: In Oregon, contact Garth Griffin (Portland) at (503) 231-2005, or Frank Bird (Roseburg) at (541) 957-3383. In California, contact Craig Wingert (Long Beach) at (562) 980-4021, Patrick Rutten (Santa Rosa) at (707) 575-6050, or Greg Bryant (Eureka) at (707) 441-3684.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1996, NMFS published its determination to list Central California Coast coho salmon (*Oncorhynchus kisutch*) as threatened under the ESA (61 FR 56138). In a technical correction to the final listing determination (62 FR 1296, January 9, 1997), NMFS defined the Central California Coast coho salmon ESU to include all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, California, and the San Lorenzo River in Santa Cruz County, California (inclusive). Subsequently, on May 6, 1997, NMFS published its determination to list the Southern Oregon/Northern California Coasts coho salmon ESU as threatened under the ESA (62 FR 24588) and defined the ESU to include all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, Oregon, and Punta Gorda in Humboldt County, California.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. On July 25, 1995, NMFS published a **Federal Register** document (60 FR 38011) soliciting information and data regarding the biological status of West Coast coho salmon, available salmon conservation measures, and information on areas that may qualify as critical habitat. At the time of final listing for each of these two ESUs, critical habitat was not determinable, because there was not enough information to perform the required analyses. On November 25, 1997, NMFS published a proposed rule

designating critical habitat for the listed species (62 FR 62741). In that proposed rule, NMFS solicited public comments and announced public hearings on the proposed action. This final rule takes into consideration the new information and comments received in response to the proposed rule.

Use of the term "essential habitat" within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

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 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 that 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.

Benefits of Critical Habitat Designation

A designation of critical habitat provides Federal agencies with a clear indication as to when consultation under section 7 of the ESA is required, particularly in cases where the proposed action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when a migratory species is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 (i.e., activities outside critical habitat that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in an agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, tribal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas—including conservation regulations that restrict both private and Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed and, therefore, are not considered in the critical habitat designation process. Other Federal, tribal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also benefit critical habitat areas.

Summary of Comments

Three public hearings were held on the proposed action: one in Gold Beach, Oregon, on December 8, 1997, one in Eureka, California, on December 9, 1997, and one in Santa Rosa, California, on December 11, 1997. Forty-two individuals provided oral testimony at the public hearings. Approximately 5,100 written comments were submitted in response to the proposed rule. While some commenters were in favor of the proposed critical habitat designation, the vast majority of the oral and written comments opposed the proposed rule. New information and comments received in response to the proposed rule are summarized here.

Public Notification Process

Comment 1: Some commenters felt that the process for proposing critical habitat was not handled well (e.g., difficulties with public notice and time to respond) and that the proposal itself was too ill-defined to be fully evaluated.

Response: NMFS made every attempt to communicate the critical habitat proposal to the affected communities. Three public hearings were held in the range of each ESU in California and Oregon and various local newspapers were notified of the proposed action, comment deadlines, and public meetings. In response to numerous requests, NMFS twice extended the comment period (63 FR 4212, January 28, 1998 and 63 FR 23710, April 30, 1998) to allow an additional 5 months for the public to submit comments. Finally, NMFS responded to several requests for supplemental meetings with affected county and local groups to promote better understanding about the proposal and attempt to allay unwarranted fears resulting from misleading information being widely promulgated throughout northern California and southern Oregon. Such misinformation created an unnecessary rift between local citizens and fisheries managers. This is particularly troublesome because most involved generally have the same common goal: restoring threatened salmon to the point where they can once again be a prized and sustainable resource in the region. Any and all parties are encouraged to contact NMFS if they have questions or need additional information regarding this final rule (see **FOR FURTHER INFORMATION CONTACT**).

Economic Considerations

Comment 2: Numerous commenters believed that NMFS improperly minimized the proposal's economic impacts by separating the designation of critical habitat from the listing process (i.e., by considering only the incremental economic effects of designating critical habitat beyond the effects associated with listing the species). These commenters are concerned that by separating the costs associated with the various administrative actions (e.g., listing, critical habitat designation, section 7 consultations), NMFS underestimated the real economic consequences of protecting listed coho salmon. Some commenters countered that any economic costs would be offset once the coho fisheries were restored. Many commenters objected to NMFS' interpretation that the impact of critical habitat designation is subsumed by the

costs associated with protections under section 7 of the ESA.

Response: NMFS disagrees with the assertion that it has improperly minimized the economic impacts by separating the designation of critical habitat from the listing process. Rather, the ESA is unambiguous in how it addresses economic impacts; it prohibits the consideration of economic impacts in the listing process, but requires analysis of economic impacts when designating critical habitat. Our reading of these separate requirements for each determination leads us to an incremental analysis in which only the economic impacts resulting from the designation of the critical habitat are considered.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects beyond those which already accrue from section 7 of the ESA, which is triggered by the species' listing. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat determined to be critical. The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

Most of the effect on non-Federal interests will result from the protective regulations of 4(d) of the ESA and the no-jeopardy requirement of section 7 of the ESA, both of which are a function of listing a species, not designating its critical habitat. Whether critical habitat is designated, non-Federal interests must conduct their actions in a manner consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings found in section 9 of the ESA and associated regulations. If the activity is funded, permitted, or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which also results from listing a species, not from designating its critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, pursuant to NMFS' ESA implementing regulations, any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species (See the

definitions in 50 CFR 402.02). Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Notwithstanding its lack of economic impact, the designation of critical habitat remains important because it identifies habitat that is essential for the continued existence of a species and, therefore, indicates habitat that may require special management attention. This facilitates and enhances Federal agencies' ability to comply with section 7 of the ESA by ensuring that they are aware of it when their activities may affect listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2) of the ESA, critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

Comment 3: A number of commenters were under the impression that critical habitat is equivalent to a "set-aside" or an easement and that by its nature was tantamount to an illegal and unconstitutional "taking" of private property. Some commenters felt that designating critical habitat abrogated Executive Order 12630 and the June 30, 1988, Attorney General's "Guidelines for Evaluation and Risk Avoidance of Unanticipated Takings." Many of these commenters provided estimates and analyses describing specific costs they believed they would incur as a result of the proposed critical habitat designation. These commenters suggested that they should be monetarily reimbursed for any financial hardship resulting from a designation of critical habitat.

Response: A critical habitat designation does not imply that private land would be confiscated or taken without just compensation. A critical habitat designation affects private land only when a Federal action is involved. In the overwhelming majority of cases, private landowners are not precluded from using their land as a result of the critical habitat designation. In a separate rulemaking, NMFS has adopted a regulation that prohibits the take of listed coho, which includes take by actions that destroy habitat (62 FR 38479). This regulation may have some impact on land uses that can be shown to have harmed salmon (for example, placing barriers to salmon migration in a stream). But this regulation should not be confused with the designation of critical habitat. In the course of deciding to make this final designation, the

Department of Commerce has complied with Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Compliance With National Environmental Policy Act (NEPA)

Comment 4: Some commenters believed that NMFS should prepare an environmental impact statement pursuant to NEPA on the critical habitat designation because designation is a major Federal action and will have a significant impact on the environment.

Response: Under section 4(b)(2) of the ESA, the Secretary is required to designate critical habitat on the basis of the best scientific data available after taking into account the “* * * relevant impacts of specifying any particular area as critical habitat”. In past critical habitat designations, NMFS has performed analysis of the kind requested here: Environmental analysis under NEPA. In all such cases NMFS has determined that mere designation of critical habitat has no adverse environmental impacts. In the time since these analyses were performed, it has become NMFS’ policy, as well as that of the U.S. Fish and Wildlife Service (FWS), that designating critical habitat has no impact that requires a NEPA analysis.

Scope and Extent of Critical Habitat

The majority of commenters raised issues regarding the geographic scope and extent of proposed critical habitat; in particular, the designation of adjacent riparian zones as critical habitat. Critical habitat is defined in section 3(5)(A) of the ESA as the specific areas within the geographic area occupied by the species on which are found those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. Based on commenters’ concerns and on new information received during the public comment period, NMFS has refined its designation of critical habitat for both the Southern Oregon/Northern California Coasts and Central California Coast coho salmon ESUs. The following sections, partitioned by habitat type, address these commenters’ concerns and clarify NMFS’ designation of critical habitat for these ESUs.

Freshwater and Estuarine Habitats

Comment 5: Numerous commenters felt that a far more complete scientific analysis was required before critical habitat could be designated and, as a result, requested that the agency withdraw the proposed rule. Several

commenters questioned NMFS’ delineation of critical habitat as including all areas currently accessible to the species, and requested more specificity as to which stream reaches are critical habitat. Some commenters sought designation of unoccupied streams as critical habitat, while others noted that some local creeks and streams never had coho salmon and requested designation of only those areas where species restoration is feasible. The Oregon Department of Fish and Wildlife (ODFW) requested that NMFS consider using specific “core areas” for coho salmon and sought clarification of NMFS’ interpretation that coho salmon are rare in southern Oregon. One commenter noted that coho salmon have not been documented recently in Pilarcitos Creek (San Mateo County, California), and noted that Stone Dam has blocked upstream areas for over 100 years. This commenter believed that adverse hydrologic conditions and degraded habitat would preclude this basin from playing a critical role in the species’ recovery. One commenter requested that NMFS specify that side channels and off-channel wetlands are included in critical habitat, and that beaver dams, alluvial deposits, and trees be identified as essential features of coho salmon habitat. Another commenter noted that NMFS misidentified Mill Valley Creek in San Francisco Bay; it is actually named “Arroyo Corte Madera Del Presidio” on U.S. Geological Survey (USGS) maps. The U.S. National Park Service (NPS) questioned whether Redwood Creek was identified as critical habitat for coho salmon.

Response: While the proposed rule described the lack of consistent and robust data sets with which to discern the species’ distribution at a fine scale (62 FR 62741, November 25, 1997), NMFS believes that the best available distribution information is sufficient to characterize basin-level designations of critical habitat for the listed species. The California and Oregon mapping efforts (e.g., ODFW’s core area assessment) cited in the proposed rule are nearing completion, but have yet to reach final adoption and must be viewed as good, but tentative, descriptions of areas occupied by or critical for coho salmon. NMFS believes that these mapping efforts hold great promise for focusing habitat protection and restoration efforts and will continue to use the State’s expertise to discern coho distribution when specific actions warrant (e.g., during ESA section 7 consultations). However, the limited data across the range of both ESUs, as

well as dissimilarities in data types within the Southern Oregon/Northern California Coasts ESU, continue to make it difficult to define this species’ distribution at a finer scale than the USGS hydrologic units (i.e., basins) identified in the proposed rule. Similarly, this limitation precludes NMFS from restricting critical habitat to streams where restoration may or may not be feasible.

NMFS’ preferred approach to identifying critical habitat is to designate all areas accessible to the species within the range of hydrologic units in the range of each ESU. While this may not provide the level of resolution to define the species’ presence or absence in specific local creeks and streams, NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species’ use of diverse habitats and underscores the need to account for all of the habitat types supporting the species’ freshwater and estuarine life stages, from small headwater streams to migration corridors and estuarine rearing areas; (2) takes into account the natural variability in habitat use that makes precise mapping problematic (e.g., some streams may have fish present only in years with plentiful rainfall); and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upland areas. While unoccupied streams are excluded from critical habitat, NMFS reiterates the proposed rule language that “it is important to note that habitat quality in this current range is intrinsically related to the quality of upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches.”

In the proposed rule, NMFS noted that the ODFW considered coho salmon “rare” in coastal streams draining the Siskiyou Mountains, citing a recent “Biennial Report on the Status of Wild Fish in Oregon (ODFW, 1995). In fact, this report identifies 10 Oregon coho populations in the range of the Southern Oregon/Northern California Coasts ESU (Elk, Rogue, Pistol, Chetco, and Winchuck Rivers, and Hubbard, Brush, Mussel, Euchre, and Hunter Creeks). The report noted that coho populations are currently located in the Rogue and Winchuck River basins, but are “very rare in the other coastal basins.” Subsequent discussions with ODFW biologists has yielded additional, site-specific information regarding coho salmon in several southern Oregon streams, notably the Pistol and Chetco

Rivers. These discussions have raised the issue as to whether viable populations still occur in these basins. Until this issue is resolved, NMFS will continue to consider reaches accessible to coho salmon in these and other basins as critical habitat for the species. If additional information becomes available, NMFS will revise the critical habitat designation for this ESU as appropriate.

Similarly, NMFS acknowledges that Pilarcitos Creek and other coastal drainages may have little suitable habitat for coho salmon or are rarely inhabited by the species (although information provided by the commenter indicates that Pilarcitos Creek does contain habitat for other salmonids and that the creek could be used by coho salmon straying from other coastal streams). As noted previously, the paucity of information regarding coho salmon distribution precludes NMFS from identifying specific drainages or river reaches occupied by the species. In addition, the current low abundance of the species makes it difficult to rule out any stream for recovery since the remnant populations may need whatever habitat is available in order to persist. In the case of Pilarcitos Creek it is unclear whether the basin has been monitored sufficiently that firm conclusions about the species' presence/absence can be made. Instead, NMFS believes that the most prudent approach to characterizing critical habitat is to include all areas accessible to listed coho salmon. The key issue raised by these and other commenters is whether activities in the Pilarcitos Creek watershed and other coastal drainages could have an adverse effect on the listed species. In streams where there is limited species distribution information, NMFS biologists would make their best professional judgement about the access, to and suitability of, available habitat and what, if any, impacts would occur on the listed fish as a result of a specific activity. Few if any effects would result from an activity where it is well-documented that the species makes little use of a stream reach and the existing habitat conditions are poor.

NMFS agrees with the statements by one commenter that beaver dams and their associated habitat changes (e.g., channel flooding, and flow and siltation changes) often create ideal conditions for coho salmon. Some of the beneficial habitat effects from beaver activity include improved rearing and overwintering habitat, increased water volumes during low flows, and backwater habitat refuge areas during floods (Swanston, 1991). NMFS will identify beaver removal as an activity

potentially requiring special management consideration, and encourages landowners and agencies to promote beaver habitation as one means by which to support coho salmon recovery. NMFS also agrees with this commenter's assertion that side/off-channel habitats are important for coho salmon and has retained reference to these habitats in this final rule. However, NMFS has not specifically identified trees and alluvial deposits as essential features because these habitat components are already addressed in the proposed rule's list of essential features, specifically the categories of substrate, cover/shelter, and riparian vegetation (see Critical Habitat of California and Southern Oregon Coho Salmon).

Finally, NMFS concurs that the San Francisco Bay stream "Arroyo Corte Madera Del Presidio" was misidentified as Mill Valley Creek and has corrected the error in this final rule. Also, NMFS clarifies for NPS that the basin containing Redwood Creek (hydrologic unit #18010102) is identified as containing critical habitat for the Southern Oregon/Northern California Coasts coho salmon ESU.

Adjacent Riparian Zones

Comment 6: While several commenters supported NMFS' proposal to include the adjacent riparian zone as critical habitat, the vast majority were against this approach. Many commenters noted the lack of justification for including adjacent riparian zones of 300 ft (91.4 meters (m)) from each side of a stream in the critical habitat proposal. Moreover, they felt that proposing to designate these zones was arbitrary and excessive. Several commenters offered possible lesser solutions to defining adjacent riparian zones, including: only the actual inhabited stream reaches themselves, a 50-ft or 30-m width to the riparian boundary, a site-potential tree height, and the 10-year flood plain. One commenter correctly noted that NMFS' proposal referenced a "horizontal" rather than "slope" distance, which was inconsistent with the Northwest Forest Plan's (NFP's) riparian reserve definition.

Response: NMFS agrees that the proposed rule did not adequately describe the rationale for identifying adjacent riparian zones as part of critical habitat. NMFS believes it is important to include these areas in the designation of critical habitat for several reasons. The ESA defines critical habitat to include areas "on which are found those physical or biological features * * * essential to the conservation of the

species and * * * which may require special management considerations or protection." These essential features for salmon include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR 424.12(b)). Riparian areas form the basis of healthy watersheds and affect these primary constituent elements; therefore, they are essential to the conservation of the species and need to be included as critical habitat.

NMFS' past critical habitat designations for listed anadromous salmonids have included the adjacent riparian zone as part of the designation. In the final designations for Snake River spring/summer chinook, fall chinook, and sockeye salmon (58 FR 68543, December 28, 1993), NMFS included the adjacent riparian zone as part of critical habitat and defined it in the regulation as those areas within a horizontal distance of 300 ft (91.4 m) from the normal high water line. In the critical habitat designation for Sacramento River winter run chinook (58 FR 33212, June 16, 1993), NMFS included "adjacent riparian zones" as part of the critical habitat but did not define the extent of that zone in the regulation. The preamble to that rule stated that the adjacent riparian zone was limited to "those areas that provide cover and shade."

Streams and stream functioning are inextricably linked to adjacent riparian and upland (or upslope) areas. Streams regularly submerge portions of the riparian zone via floods and channel migration, and portions of the riparian zone may contain off-channel rearing habitats used by juvenile salmonids, especially during periods of high flow. The riparian zone also provides an array of important watershed functions that directly benefit salmonids. Vegetation in the zone shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to salmonids, as well as the forage species they depend on (Reiser and Bjornn, 1979; Meehan, 1991; Federal Emergency Management Agency (FEMA), 1993; and Spence *et al.*, 1996). Human activities in the adjacent riparian zone, or in upslope areas, can harm stream function and can harm salmonids, both directly and indirectly, by interfering with the watershed functions described here. For example, timber harvest, road-building, grazing, cultivation, and other activities can increase sediment, destabilize banks,

reduce organic litter and woody debris, increase water temperatures, simplify stream channels, and increase peak flows. These adverse modifications reduce the value of habitat for salmon and, in many instances, may result in injury to, or mortality of, fish. Because human activity may adversely affect these watershed functions and habitat features, NMFS concluded the adjacent riparian zone could require special management consideration, and, therefore, was appropriate for inclusion in critical habitat.

The Snake River salmon critical habitat designation relied on analyses and conclusions reached by the Forest Ecosystem Management Assessment Team (FEMAT) 1993, regarding interim riparian reserves for fish-bearing streams on Federal lands within the range of the northern spotted owl. The interim riparian reserve recommendations in the FEMAT report were based on a systematic review of the available literature, primarily for forested habitats, concerning riparian processes as a function of distance from stream channels. The interim riparian reserves identified in the FEMAT report for fish-bearing streams on Federal forest lands are intended to (1) provide protection to salmonids, as well as riparian-dependent and associated species, through the protection of riparian processes that influence stream function, and (2) provide a high level of fish habitat and riparian protection until site-specific watershed and project analyses can be completed. The FEMAT report identified several alternative ways that interim riparian reserves providing a high level of protection could be defined, including the 300-ft (91.4 m) slope distance, a distance equivalent to two site-potential tree heights, the outer edges of riparian vegetation, the 100-year flood plain, or the area between the edge of the active stream channel to the top of the inner gorge, whichever is greatest. The U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) ultimately adopted these riparian reserve criteria as part of an Aquatic Conservation Strategy aimed at conserving fish, amphibians, and other aquatic and riparian-dependent species in the Record of Decision (ROD) for the Northwest Forest Plan (NFP) (FEMAT ROD, 1994).

While NMFS has used the findings of the FEMAT report to guide its analyses in ESA section 7 consultations with USFS and BLM regarding management of Federal lands, NMFS recognizes that the interim riparian reserves may be conservative with regard to the protection of adjacent riparian habitat for salmonids since they are designed to

protect terrestrial species that are riparian dependent or associated as well as salmonids. Moreover, NMFS' analyses have focused more on the stream functions important to salmonids and on how proposed activities will affect the riparian area's contribution to properly functioning conditions for salmonid habitat.

Since the adoption of the NFP, NMFS has gained experience working with Federal and non-Federal landowners to determine the likely effects of proposed land management actions on stream functions. In freshwater and estuarine areas, these activities include, but are not limited to, agriculture; forestry; grazing; diking and bank stabilization; construction/urbanization; dam construction/operation; dredging and dredged spoil disposal; habitat restoration projects; irrigation withdrawal, storage, and management; mineral mining; road building and maintenance; sand and gravel mining; wastewater/pollutant discharge; wetland and floodplain alteration; and woody debris/structure removal from rivers and estuaries. NMFS has developed numerous tools to assist Federal agencies in analyzing the likely impacts of their activities on anadromous fish habitat. With these tools, Federal agencies are better able to judge the impacts of their actions on salmonid habitat, taking into account the location and nature of their actions. NMFS' primary tool guiding Federal agencies is a document titled "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (NMFS, 1996a). This document presents guidelines to facilitate and standardize determinations of "effect" under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented throughout northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmonid risk factors and conservation strategies throughout the West Coast.

Several recent literature reviews have addressed the effectiveness of various riparian zone widths for maintaining specific riparian functions (e.g., sediment control, large woody debris recruitment) and overall watershed processes. These reviews provide additional useful information about riparian processes as a function of distance from stream channels. For example, Castelle et al. (1994) conducted a literature review of riparian zone functions and concluded that riparian widths in the range of 30 m (98 ft) appear to be the minimum needed to

maintain biological elements of streams. They also noted that site-specific conditions may warrant substantially larger or smaller riparian management zones. Similarly, Johnson and Reba (1992) summarized the technical literature and found that available information supported a minimum 30-m riparian management zone for salmonid protection.

A recent assessment funded by NMFS and several other Federal agencies reviewed the technical basis for various riparian functions as they pertain to salmonid conservation (Spence *et al.*, 1996). These authors suggest that a functional approach to riparian protection requires a consistent definition of riparian ecosystems based on "zones of influence" for specific riparian processes. They noted that in constrained reaches where the active channel remains relatively stable through time, riparian zones of influences may be defined based on site-potential tree heights and distance from the active channel. In contrast, they note that, in unconstrained reaches (e.g., streams in broad valley floors) with braided or shifting channels, the riparian zone of influence is more difficult to define, but recommend that it is more appropriate to define the riparian zone based on some measure of the extent of the flood plain.

Spence *et al.* (1996) reviewed the functions of riparian zones that are essential to the development and maintenance of aquatic habitats favorable to salmonids and the available literature concerning the riparian distances that would protect these functional processes. Many of the studies indicate that riparian management widths designed to protect one function in particular, recruitment of large woody debris, are likely to be adequate to protect other key riparian functions. The reviewed studies concluded that the vast majority of large woody debris is obtained within one site-potential tree height from the stream channel (Murphy and Koski, 1989; McDade *et al.*, 1990; Robison and Beschta, 1990; Van Sickle and Gregory, 1990; FEMAT, 1993; and Cederholm, 1994). Based on the available literature, Spence *et al.* (1996) concluded that fully protected riparian management zones of one site-potential tree height would adequately maintain 90 to 100 percent of most key riparian functions of Pacific Northwest forests if the goal was to maintain instream processes over a time frame of years to decades.

Based on experience gained since the designation of critical habitat for Snake River salmon and after considering public comments and reviewing

additional scientific information regarding riparian habitats, NMFS is re-defining coho salmon critical habitat based on key riparian functions. Specifically, the adjacent riparian area is defined as the area adjacent to a stream that provides the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. Specific guidance on assessing the potential impacts of land use activities on riparian functions can be obtained by consulting with NMFS (see **ADDRESSES**), local foresters, conservation officers, fisheries biologists, or county extension agents.

The physical and biological features that create properly functioning salmonid habitat vary throughout the range of coho salmon and the extent of the adjacent riparian zone may change accordingly, depending on the landscape under consideration. While a site-potential tree height can serve as a reasonable benchmark in some cases, site-specific analyses provide the best means to characterize the adjacent riparian zone because such analyses are more likely to accurately capture the unique attributes of a particular landscape. Knowing what may be a limiting factor to the properly functioning condition of a stream channel on a land use or land type basis and how that may or may not affect the function of the riparian zone will significantly assist Federal agencies in assessing the potential for impacts to listed coho salmon. On Federal lands within the range of the northern spotted owl, Federal agencies should continue to rely on the Aquatic Conservation Strategy of the NFP to guide their consultations with NMFS. Where there is a Federal action on non-Federal lands, Federal agencies should consider the potential effects of the activities they fund, permit, or authorize on the riparian zone adjacent to a stream that may influence the following functions: shade, sediment delivery to the stream, nutrient or chemical regulation, streambank stability, and the input of large woody debris or organic matter. In areas where the existing riparian zone is seriously diminished (e.g., in many urban settings and agricultural settings where flood control structures are prevalent), Federal agencies should focus on maintaining any existing riparian functions and restoring others where appropriate; (e.g., by cooperating with local watershed groups and landowners). NMFS acknowledges in its description of riparian habitat function that different land use types (e.g.,

timber, urban, and agricultural) will have varying degrees of impact and that activities requiring a Federal permit will be evaluated on the basis of disturbance to the riparian zone. In many cases the evaluation of an activity may focus on a particular limiting factor for a watercourse (e.g., temperature, stream bank erosion, sediment transport) and whether that activity may or may not contribute to improving or degrading the riparian habitat.

Finally, NMFS emphasizes that a designation of critical habitat does not prohibit landowners from conducting actions that modify streams or the adjacent terrestrial habitat. Critical habitat designation serves to identify important areas and essential features within those areas, thus alerting both Federal and non-Federal entities to the importance of the area for listed salmonids. Federal agencies are required by the ESA to consult with NMFS to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat in a way that appreciably diminishes the value of critical habitat for both the survival and the recovery of the listed species. The designation of critical habitat will assist Federal agencies in evaluating how their actions on Federal or non-Federal lands may affect listed coho salmon and determining when they should consult with NMFS on the impacts of their actions. When a private landowner requires a Federal permit that may result in the modification of coho salmon habitat, Federal permitting agencies will be required to ensure that the permitted action, regardless of whether it occurs in the stream channel, adjacent riparian zone, or upland areas, does not appreciably diminish the value of critical habitat for both the survival and recovery of the listed species or jeopardize the species' continued existence. For other actions, landowners should consider the needs of the listed fish and NMFS will assist them in assessing the impacts of actions on listed fish.

Dams and Barriers

Comment 7: Several commenters requested that NMFS conduct a more detailed analysis of areas above existing dams before concluding that these areas do not constitute critical habitat. Some suggested that NMFS consider installing fish ladders and passage facilities to allow coho salmon access to areas historically occupied. Two commenters requested that NMFS add additional dams to the lists of impassable manmade structures; specifically, Phoenix Dam in the Corte Madera Creek

basin, California; and Willow Lake, Fish Lake, Agate Lake, Emigrant Lake, and Selmac Lake Dams in Oregon's Rogue River basin. One commenter provided information indicating that Matthews Dam in the Mad River basin should be excluded from the list of barriers because coho salmon historically never occupied the areas upstream. One commenter noted that Peters Dam was completed in 1953, not 1940 as stated in the proposed rule.

Response: NMFS' ESA implementing regulations specify that unoccupied areas are not to be included in critical habitat unless the present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). As the proposed rule states, dams currently block approximately 9 to 11 percent of the historic range of each ESU. The six additional dams identified by two commenters do not add significantly to these blocked percentages, and the ODFW stated that the amount of blocked historic habitat above the five Oregon dams is "thought to be low and not essential to maintaining or restoring coho salmon in the Rogue River basin." While the blocked areas are proportionally significant in certain basins, NMFS believes these areas are not currently essential for the recovery of either ESU because an array of habitat types (i.e., low and high gradient reaches) are still accessible in downstream areas historically used by coho salmon.

NMFS has reviewed, and concurs with, the information submitted by commenters requesting that six additional structures be added to the list of dams/reservoirs representing the upstream extent of critical habitat. Also, for the reasons presented by the commenter, NMFS agrees that Matthews Dam should not be included in the list of dams within the range of the Southern Oregon/Northern California Coasts ESU. NMFS also concurs with the corrections regarding the completion date for Peters Dam and the naming of Seeger Dam (previously identified as Nicasio Dam).

NMFS' intent in identifying specific dams in each ESU was to clarify the upstream extent of known occupied reaches for each ESU and to contrast these barriers with smaller, ephemeral barriers (e.g., culverts, push-up dams, etc.) that the agency does not view as impassable structures. NMFS does not intend to "write off" potential habitats above these dams, but instead will fully consider the need to include these blocked habitats in the recovery planning process and in ESA section 7 consultations. If future analyses reveal that these areas are essential for the

species' conservation or could contribute to an expedited recovery of either ESU, NMFS will revise the critical habitat designation and promote efforts to gain access to blocked habitats.

Marine Habitats

Comment 8: Numerous commenters questioned why NMFS had not designated critical habitat in marine areas. Some recommended that NMFS revise its designation based on the recent EFH recommendations which include marine areas over portions of the continental shelf.

Response: NMFS is currently re-evaluating its previous determination to exclude ocean areas as critical habitat for these ESUs, in particular the issue of whether marine areas require special management consideration or protection. If warranted, NMFS will revise this designation to include specific marine areas as part of coho salmon critical habitat.

Factors for the Species' Decline

Comment 9: Many commenters challenged the merits of the original listings and felt that the true cause of the coho declines lay in various spheres aside from freshwater habitat. Among the various causes cited were: tribal fishing, commercial fishing, sport fishing, foreign fishing, marine mammals, other protected predators, non-native species, birds, hatchery practices, dams, ocean conditions, and recent droughts and floods. Others provided evidence that mismanagement and pollution of freshwater habitats have been principal factors in the species' decline. Still others felt that extinction is a natural process and that little can (or should) be done about it.

Response: NMFS believes that the threatened extinction of these coho populations is the result of human, rather than natural factors, and will continue to encourage all efforts to protect and restore imperiled salmon and their habitat. NMFS acknowledges that a multitude of factors have contributed to the decline of coho salmon and has described these factors in more detail in the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997), in technical status reviews for the species (Bryant 1994; Weitkamp et al., 1995; NMFS 1997), and in documents detailing factors for decline for related species (NMFS 1996b and 1998). Many of the causes cited by commenters are human-controlled and NMFS believes that these can and must be addressed in the near-term to improve the salmon's chances for surviving such uncontrollable natural

events as droughts, floods, and poor ocean conditions.

ESA Definitions and Standards

Comment 10: Some commenters requested that NMFS clarify the meaning of "harm" under the ESA, and several commenters took exception to NMFS' assertion that adverse modification of critical habitat is equivalent to jeopardizing the listed species.

Response: On May 1, 1998, NMFS published a proposed rule to define the term "harm", which is contained in the definition of "take" in the ESA (63 FR 24148). Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. 1532(19)). FWS has promulgated a regulation further defining the term "harm" to eliminate confusion concerning its meaning (50 CFR 17.3). FWS' definition of "harm" with respect to habitat destruction has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened species (See *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 115 S. Ct. 2407, 2418 (1995)). With the listings of Pacific salmon and anadromous trout stocks, potentially affected parties have questioned whether NMFS also interprets "harm" to include habitat destruction. The May 1, 1998, proposed rule will, if adopted, establish NMFS' interpretation of "harm" consistent with that of FWS.

NMFS' proposed rule interprets the term "harm" in the context of habitat destruction as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, and sheltering (Compare 50 CFR 17.3). The habitat modification or degradation contained in the definition of "harm" is limited to those actions that actually kill or injure listed fish or wildlife. NMFS believes that this proposed definition is reasonable for the conservation of the habitats of listed species and is in keeping with Congress' intent under the ESA. Public input has been solicited on this proposed definition and a final rule will be published after taking all comments into account.

With regard to comments on the "adverse modification" and "jeopardy

standards", NMFS did not assert that adverse modification of critical habitat is equivalent to jeopardizing listed species. Section 7 of the ESA requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat. This requirement is in addition to the prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations define "jeopardize the continued existence of" and "destruction or adverse modification of" in similar terms. "Jeopardize the continued existence of" means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species." 50 CFR 402.02. "Destruction or adverse modification of" means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." 50 CFR 402.02. Using these definitions, Federal actions found to cause an adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect the outcome of consultation. Biological opinions which conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the species for which it is designated are extremely rare historically; none have been issued in recent years. However, a situation in which an adverse modification did not result in jeopardy could arise. Such a situation might involve a Federal action in critical habitat outside of current range of the species, where the action would not reduce the current reproduction, distribution, or numbers of the species, but would appreciably reduce the value of critical habitat for survival and recovery.

Adequacy of Existing Conservation Plans and Efforts

Comment 11: Several commenters stated that existing management plans and conservation initiatives were sufficient to protect coho salmon and its habitat, and, therefore, the proposed critical habitat designation is not warranted. Some commenters admonished NMFS to engage in local salmon conservation programs and warned that designating critical habitat could dampen these efforts.

Response: The designation of critical habitat relies on evaluating which areas are occupied and essential for the species' conservation (see Definition of

Critical Habitat). Moreover, NMFS considered existing regulatory mechanisms and conservation plans applicable to Central California Coast and Southern Oregon/Northern California Coasts coho salmon and their habitats in the final listing determinations (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). In those **Federal Register** documents, a variety of Federal and state laws and programs were found to have affected the abundance and survival of anadromous fish populations in both ESUs. NMFS concluded that available regulatory mechanisms were inadequate and that regulated activities continued to represent a potential threat to the species' existence.

NMFS agrees with commenters that state and local watershed efforts are key to the coho salmon's recovery and long-term survival. Species listings and critical habitat designations under the ESA should in no way hamper efforts to help coho salmon and other imperiled species in the Pacific Northwest and California. NMFS encourages such efforts, as evidenced by our involvement with an array of programs in the range of both ESUs, including: helping to fund watershed coordinators through the Oregon Governor's Watershed Enhancement Board, working with numerous Resource Conservation Districts and watershed restoration efforts (including the Mattole River Restoration Council, and the Salmon, South Fork Trinity, Shasta, and Scott River Coordinated Resource Management Plans), participating in the development of California's recovery and strategic management plans for coastal salmonids, working with the California Governor's Biodiversity Councils and assisting with implementation of the Oregon Plan for Salmon and Watersheds (OPSW). NMFS recognizes the significant benefits that will accrue to salmon as a result of these efforts. In fact, NMFS has promulgated interim protection regulations (i.e., ESA 4(d) rule) that provide specific exceptions for the significant harvest, hatchery, habitat restoration, and monitoring efforts contained in the OPSW and other efforts currently underway in the range of the Southern Oregon/Northern California Coasts ESU (62 FR 38479). All parties interested in obtaining technical assistance in support of salmon conservation (or other information related to NMFS' ESA activities) are encouraged to contact NMFS field office personnel in Roseburg, Oregon, and in Eureka, Long Beach, and Santa Rosa, California (see **FOR FURTHER INFORMATION CONTACT**).

Tribal Lands

Comment 12: On June 3, 1998, the Hoopa Valley Tribe (HVT) specifically requested that NMFS not designate critical habitat on their reservation and that NMFS waive ESA section 7 consultation requirements when the tribe has a plan in place which protects fish habitat and meets the requirements of the Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997 (Secretarial Order).

Response: The unique and distinctive relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, that differentiates tribes from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to the treaties, statutes, judicial decisions, executive orders and other agreements that define the relationship between the United States and tribes, lands have been retained by Indian tribes or have been set aside for tribal use. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

As a means of recognizing the responsibilities and relationship between the United States and Indian tribes, the Secretaries of Commerce and Interior issued the Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997 (Secretarial Order). The Secretarial Order clarifies the responsibilities of NMFS and FWS when carrying out authorities under the ESA and requires that they consult with, and seek participation of, the affected Indian tribes to the maximum extent practicable. The Secretarial Order further provides that the Services * * * "shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species."

Pursuant to the requirements of the Secretarial Order and in response to

written and verbal comments provided by the Hoopa Valley Tribe (HVT) and other tribes in California, as well as the Bureau of Indian Affairs (BIA), NMFS engaged several tribes in government-to-government consultation concerning the inclusion of tribal lands in the final critical habitat designation for coho salmon. Prior to initiating government-to-government consultation, NMFS reviewed available information from the BIA and concluded that the tribal lands most likely to be affected by a final critical habitat designation for coho salmon were the Yurok Reservation, Hoopa Valley Reservation, Karuk Reservation, and the Round Valley Reservation, all of which are located in the Southern Oregon/Northern California Coasts ESU. The major river basins containing these reservation lands and listed coho salmon populations are the Klamath, Trinity, and Eel River basins. Accordingly, NMFS' government-to-government consultation efforts concerning coho salmon critical habitat were focused on these tribes. In addition to these larger tribal reservations, there are a large number of smaller Indian rancherias located in both the Southern Oregon/Northern California Coasts and Central California Coast ESUs which could potentially be affected, depending on their specific locations.

As part of the government-to-government consultation process called for in the Secretarial Order, NMFS solicited written comments from the Yurok Tribe, Karuk Tribe of California, HVT, and the Round Valley Tribe regarding the inclusion of tribal lands in the final critical habitat designation, and also met with representatives from each tribe to discuss the issue and their concerns in greater detail. In the course of these discussions, each tribe expressed its opposition to the inclusion of tribal lands in the final critical habitat designation. The Yurok Tribe expressed its support for the recovery of coho salmon and other non-listed species, but felt that its current resource management plans and practices already promoted the conservation and recovery of these species. They were also concerned that designating tribal lands as critical habitat would place an additional burden upon the Tribe, but recognized that impacts to critical habitat would only be considered in the course of section 7 consultations. Similarly, HVT expressed its support for coho salmon recovery, but argued that its existing resource management plans and other efforts already contribute to the recovery of coho salmon and other species on the reservation, and more

than compensate for the small impact that tribal activities have on the listed species when compared with non-tribal activities in the Trinity River basin (e.g., Federal water project operations, timber harvest, etc). In its view, NMFS should give deference to tribal management efforts in accordance with the Secretarial Order and thereby recognize the contribution that tribal management makes for the recovery of listed coho salmon. In addition, the tribe asserted that including tribal lands in the critical habitat designation would infringe on its sovereignty and was inconsistent with the approach taken by FWS when it excluded HVT lands from the critical habitat designation for the marbled murrelet.

Based on a consideration of the Federal Government's trust responsibilities to Indian tribes, particularly as addressed in the Secretarial Order, and following government-to-government consultation with affected Indian tribes, NMFS has determined that tribal lands should be excluded from the final critical habitat designation for coho salmon. Although NMFS continues to believe that habitat on tribal lands which is currently accessible to coho salmon is important for the long-term survival and recovery of the species, we believe that ESA section 7 consultations through BIA and other Federal agencies, in combination with the continued development and implementation of tribal resource management programs that support coho salmon conservation represent an alternative to designating critical habitat that will result in a proportionate and essential contribution to coho salmon conservation that is also consistent with the goals of the Secretarial Order.

The tribal lands (reservations or rancherias) which are excluded from the final critical habitat designation for coho salmon are identified in Tables 5 (Central California Coast ESU) and 6 (Southern Oregon/Northern California Coasts ESU) by individual USGS hydrologic unit. Excluded tribal lands in the Central California Coast ESU include: the Cloverdale Rancheria, Coyote Valley Rancheria, Dry Creek Rancheria, Guidiville Rancheria, Hopland Rancheria, Lytton Rancheria, Manchester/Point Arena Rancheria, Pinoleville Rancheria, and Stewarts Point Rancheria. Excluded tribal lands in the Southern Oregon/Northern California Coast ESU include: the Big Lagoon Rancheria, Blue Lake Rancheria, Elk Valley Rancheria, Hoopa Valley Reservation, Karuk Reservation, Laytonville Rancheria, Quartz Valley Reservation, Resighini Rancheria, Round Valley Reservation, Sherwood

Valley Rancheria, Smith River Rancheria, and Yurok Reservation.

Consistent with the provisions of the Secretarial Order, NMFS will respect the exercise of tribal sovereignty over the management of Indian lands and tribal trust resources, and give deference to tribal conservation and management plans for tribal trust resources to the extent that they address the conservation needs of coho salmon or other listed species. NMFS is currently engaged in a programmatic ESA section 7 consultation with BIA and a government-to-government consultation with HVT regarding its Forest Management Plan (FMP) and its associated standards and guidelines. Through these consultation processes, NMFS is working with HVT and BIA to determine the effects of FMP implementation on coho salmon and its habitat, including adjacent riparian and upslope habitat, as well as to ensure that FMP implementation on tribal lands supports the conservation of coho salmon.

Agencies Affected by Critical Habitat Designation

Comment 13: NPS requested that NMFS include them as an agency affected by the critical habitat designation due to the fact that they manage and fund salmonid restoration projects at Golden Gate National Recreation Area, Muir Woods National Monument, and Redwood National and State Parks. The U.S. Department of Interior requested that the Natural Resource Conservation Service (NRCS) and FEMA be identified as well, because both agencies can conduct or authorize activities that alter coho salmon critical habitat. In addition, they requested that NMFS identify an "emergency communications network" which would allow NMFS to provide these agencies with fisheries technical expertise during cleanups associated with floods and other emergencies.

Response: NMFS has reviewed, and concurs with, the information submitted by both commenters and will add the NPS, NRCS, and FEMA to the list of affected agencies.

NMFS agrees with the commenters requesting that guidelines be established so that emergency response agencies (e.g., FEMA) can avoid adversely modifying critical habitat during their mitigation actions after a natural disaster. To that end, NMFS is in contact with the NRCS and is giving input on their Programmatic Environmental Impact Statement on Emergency Watershed Protection actions. NMFS hopes that through such input it will be able to help establish a

strong set of guidelines for protecting critical habitat when a natural disaster strikes and immediate action must be taken to protect human life and property. Further, it is NMFS' position that with such a set of guidelines in place, there will be no reason for NMFS to become involved in making on-the-ground decisions regarding disaster mitigation actions. The guidelines will protect critical habitat in advance and, in most cases, thereby take the place of the difficult and potentially time-consuming process of emergency consultation. Thus, the guidelines themselves will largely obviate the need for an emergency communications network.

Changes to the Proposed Rule

Based on comments and new information received on the proposed rule, NMFS is modifying the final critical habitat designation for these two ESUs as follows:

(1) Phoenix, Willow Lake, Fish Lake, Agate Lake, Emigrant Lake, and Selmac Lake Dams have been added to the list of dams/reservoirs representing the upstream extent of critical habitat for these ESUs.

(2) Matthews Dam is removed from the list of dams/reservoirs representing the upstream extent of critical habitat for the Southern Oregon/Northern California Coasts ESU.

(3) Nicasio Dam is corrected to "Seeger Dam."

(4) Mill Valley Creek is corrected to "Arroyo Corte Madera Del Presidio."

(5) Adjacent riparian zones have been re-defined and are now based on a functional (rather than quantitative) description.

(6) NPS, Environmental Protection Agency (EPA), NRCS, FEMA, and BIA have been included as agencies affected by the critical habitat designation.

(7) Beaver removal, diking, and streambank stabilization have been identified as activities that may require special management consideration.

(8) Tribal lands in northern California are excluded from the critical habitat designations.

Critical Habitat of California and Southern Oregon Coho Salmon

Biological information for listed coho salmon can be found in NMFS' species status reviews (Bryant, 1994; Weitkamp *et al.*, 1995; NMFS, 1997), species life history summaries (Shapavalov and Taft, 1954; Laufle *et al.*, 1986; Hassler, 1987; Anderson, 1995; Sandercock, 1991), and in **Federal Register** notices of proposed and final listing determinations (59 FR 21744, April 26, 1994; 60 FR 38011, July 25, 1995; 61 FR

56138, October 31, 1996; 62 FR 24588, May 6, 1997).

The current geographic range of coho salmon from the Oregon and California coasts includes vast areas of the North Pacific ocean, nearshore marine zone, and extensive estuarine and riverine areas. The marine distribution south of Punta Gorda, California, appears to encompass a relatively narrow, nearshore strip approximately 100 km wide (Taft, 1937; Shapovalov and Taft, 1954; Lauffle *et al.*, 1986; NOAA, 1990; Weitkamp *et al.*, 1995). North of Punta Gorda, the distribution widens to encompass nearly all marine areas north of 41° latitude (Wright, 1968; Godfrey *et al.*, 1975; NOAA, 1990). Major rivers, estuaries, and bays known to support coho salmon within the Southern Oregon/Northern California Coasts ESU include the Rogue River, Smith River, Klamath River, Mad River, Humboldt Bay, Eel River, and Mattole River. Within the range of the Central California Coast ESU, major rivers, estuaries, and bays include the Ten Mile, Noyo, Big, Navarro, Garcia, Gualala, and Russian Rivers, and Tomales and San Francisco Bays (Emmett *et al.*, 1991; Nickelson *et al.*, 1992; Brown and Moyle, 1991; Bryant, 1994; California Department of Fish and Game (CDFG), 1994; Weitkamp *et al.*, 1995). Many smaller coastal rivers and streams in each ESU also provide essential estuarine habitat for coho salmon, but access is often constrained by seasonal fluctuations in hydrologic conditions.

Any attempt to describe the current distribution of coho salmon must take into account the fact that extant populations and densities are a small fraction of historical levels. All coho salmon stocks in the Central California Coast ESU are extremely depressed relative to past abundance and there are limited data to assess population numbers or trends. The main coho salmon stocks in this region are from the Ten Mile River, Big River, Nolo River, Navarro River, Garcia River, Gualala River, Russian River, Lagunitas Creek, Waddell Creek, and Scott Creek. Several of these stocks are heavily influenced by hatcheries and, apparently, have little natural production in mainstem reaches. Historically, coho salmon abundance within this region was estimated from 50,000 to 125,000 native coho salmon. Presently, coho salmon abundance within this region is estimated to be less than 5,000 naturally reproducing fish, and a vast majority of these are considered to be hatchery origin fish (Brown and Moyle, 1991; Bryant, 1994; CDFG, 1994).

All coho salmon stocks between Punta Gorda and Cape Blanco in the Southern Oregon/Northern California Coasts ESU are also depressed relative to past abundance, and there are limited data to assess population numbers or trends currently. The main coho salmon stocks in this region are from the Rogue, Klamath, and Trinity Rivers, and the latter two are heavily influenced by hatcheries and have little natural production in mainstem reaches. Other important stocks within this ESU include the Winchuck, Chetco, Smith, Mad, Elk, Eel, and the Mattole Rivers. Historically, coho salmon abundance within this region was estimated from 150,000 to 400,000 native fish. Presently, abundance is estimated to be less than 30,000 naturally reproducing coho salmon, and a vast majority of these (roughly 20,000) are considered to be hatchery origin fish (Brown and Moyle, 1991; Bryant, 1994; CDFG, 1994; Weitkamp *et al.*, 1995).

Within the range of both ESUs, the species' life cycle can be separated into five essential habitat types: (1) Juvenile summer and winter rearing areas; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; (4) adult migration corridors; and (5) spawning areas. Areas 1 and 5 are often located in small headwater streams and side channels, while areas 2 and 4 include these tributaries as well as mainstem reaches and estuarine zones. Growth and development to adulthood (area 3) occurs primarily in near-and off-shore marine waters, although final maturation takes place in freshwater tributaries when the adults return to spawn. Within these areas, essential features of coho salmon critical habitat include adequate; (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by each of these coho salmon ESUs and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by CDFG, 1965; California Advisory Committee on Salmon and Steelhead Trout, 1988; Brown and Moyle, 1991; Bjornn and Reiser, 1991; Nehlsen *et al.*, 1991; Higgins *et al.*, 1992; California State Lands Commission, 1993; Botkin

et al., 1995; NMFS, 1996b; and Spence *et al.*, 1996.

NMFS believes that the current range of the species encompasses all essential habitat features and is adequate to ensure the species' conservation. Therefore, designation of habitat areas outside the species' current range (i.e., historical habitats above the 17 dams identified in Tables 5 and 6) is not necessary. For reasons described earlier in this document, NMFS has revised its designation of freshwater and estuarine critical habitat to include riparian areas that provide the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. It is important to note that habitat quality in this range is intrinsically related to the quality of riparian and upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions are believed to have a major influence on coho salmon survival (see review in Percy, 1992). Although NMFS has not included the ocean as critical habitat in this final rule, the agency will be re-evaluating this issue and may propose including specific marine zones for each ESU in a separate **Federal Register** document.

The regulatory descriptions of critical habitat for each ESU can be found at the end of this **Federal Register** document.

Need for Special Management Considerations or Protection

To ensure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for freshwater and estuarine life stages of listed coho salmon include, but are not limited to (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) beaver removal; (7) irrigation water withdrawals and returns; (8) mining; (9) road construction; (10) dam operation and maintenance; (11) diking and streambank stabilization; and (12) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed; however, they indicate the potential types of activities that will require consultation in the future. No special management considerations have been identified for listed coho salmon while

they are residing in the ocean environment.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of listed coho salmon in freshwater and estuarine habitats. More in-depth discussions are contained in the response to comments under "Scope and Extent of Critical Habitat" and in **Federal Register** documents announcing the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). These activities include water and land management actions of Federal agencies (i.e., USFS, U.S. Bureau of Land Management (BLM), U.S. Army Corps of Engineers (COE), U.S. Bureau of Reclamation (BOR), the Federal Highway Administration (FHA), NRCS, NPS, BIA, and the Federal Energy Regulatory Commission (FERC)) and related or similar actions of other federally regulated projects and lands, including livestock grazing allocations by the USFS and BLM; hydropower sites licensed by the FERC; dams built or operated by COE or BOR; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, BLM, and NPS; and mining and road building activities authorized by the states of California and Oregon. Other actions of concern include dredge and fill, mining, diking, and bank stabilization activities authorized or conducted by COE, habitat modifications authorized by the FEMA, and approval of water quality standards and pesticide labeling and use restrictions administered by EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, BOR, COE, FHA, NRCS, NPS, BIA, FEMA, EPA, and FERC. This designation will provide these agencies, private entities, and the public with clear notification of critical habitat designated for listed coho salmon and the boundaries of the habitat and protection provided for that habitat by the ESA section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed coho salmon and their critical habitat and in determining if consultation with NMFS is needed.

Expected Economic Impacts of Designating Critical Habitat

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the

economic impacts attributable to listing or attributable to authorities other than the ESA (see response to comments under Economic Considerations). Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential to the conservation of the species. For these coho salmon ESUs NMFS has determined that the present geographic extent of their freshwater and estuarine range is likely sufficient to provide for conservation of the species, although the quality of that habitat needs improvement on many fronts. Because NMFS is not designating any areas beyond the current range of these coho ESUs as critical habitat, the designation will result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

Change in Designation of Critical Habitat and Need for Correction

In the proposed rule issued on November 25, 1997, (62 FR 62741), Central California Coast and Southern Oregon/Northern California Coasts coho salmon ESUs were added to part 226, subpart C as §§ 226.24 and 226.25 respectively. Since November 25, NMFS has issued a final rule (64 FR 140525, March 23, 1999) consolidating and reorganizing existing regulations regarding implementation of the ESA. In this final rule, critical habitat designations for the Central California Coast and Southern Oregon/Northern California Coasts ESUs have been added as § 226.210 paragraphs (a) and (b), respectively.

This document also corrects the date for the USGS citation for Hydrologic units as defined by the Department of the Interior (DOI), U.S. Geological Survey contained in § 226.23. The final rule consolidating and reorganizing existing regulations regarding implementation of the ESA (64 FR 14052, March 23, 1999) also redesignated § 226.23 as § 226.206.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Classification

NMFS 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 for critical

habitat designations made pursuant to the ESA. See *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS is designating only the current range of these coho salmon ESUs as critical habitat. Given the affinity of this species to spawn in small streams, this current range encompasses a wide range of habitat, including small tributary reaches, as well as mainstem, off-channel and estuarine areas. Areas excluded from this designation include historically-occupied areas above 17 impassable dams and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 of the ESA are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the action on local businesses, organizations, and governments.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration with the proposed rule that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. NMFS received two comments, addressed above, concerning this certification. These comments did not result in any change regarding the certification. As a result, no final Regulatory Flexibility Act analysis was prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: April 28, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§ 226.206 [Corrected]

2. In § 226.206(a), in the fourth sentence, remove “1986” and add in its place, “1987”.

3. Section 226.210 is added to read as follows:

§ 226.210 Central California Coast Coho Salmon (*Oncorhynchus kisutch*), Southern Oregon/Northern California Coasts Coho Salmon (*Oncorhynchus kisutch*).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section.

Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 5 and 6 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, “Hydrologic Unit Maps,” Water Supply Paper 2294, 1987, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974 and State of California, 1978 which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Central California Coast Coho Salmon (*Oncorhynchus kisutch*)*. Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Arroyo Corte Madera Del Presidio and Corte Madera Creek, tributaries to San Francisco Bay. Critical

habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) *Southern Oregon/Northern California Coasts Coho Salmon (*Oncorhynchus kisutch*)*. Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

3. Tables 5 and 6 are added to part 226 to read as follows: Table 5 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Central California Coast Coho Salmon, Tribal Lands within the Range of the ESU, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU ^{1 2}	Dams (reservoirs)
San Lorenzo-Soquel	18060001	Santa Cruz (CA), San Mateo (CA)	Newell Dam (Loch Lomond).
San Francisco Coastal South.	18050006	San Mateo (CA).	
San Pablo Bay	18050002	Marin (CA), Napa (CA)	Phoenix Dam (Phoenix Lake). Peters Dam (Kent Lake); Seeger Dam (Nicasio Reservoir).
Tomas-Drake Bays	18050005	Marin (CA), Sonoma (CA)	
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).
Russian	18010110	Sonoma (CA), Mendocino (CA)— <i>Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guidiville Rancheria; Hopland Rancheria; Lytton Rancheria; Pinoleville Rancheria; Stewarts Point Rancheria.</i>	
Gualala-Salmon	18010109	Sonoma (CA), Mendocino (CA).	
Big-Navarro-Garcia	18010108	Mendocino (CA)— <i>Manchester/Point Arena Rancheria;</i>	

¹ Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

² Tribal lands are specifically excluded from critical habitat for this ESU.

Table 6 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Southern Oregon/Northern California Coasts Coho Salmon, Tribal Lands within the Range of the ESU, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU ^{1,2}	Dams (reservoirs)
Mattole	18010107	Humboldt (CA), Mendocino (CA).	
South Fork Eel	18010106	Mendocino (CA), Humboldt (CA)— <i>Laytonville Rancheria; Sherwood Valley Rancheria.</i>	
Lower Eel	18010105	Mendocino (CA), Humboldt (CA), Trinity (CA).	
Middle Fork Eel	18010104	Mendocino (CA), Trinity (CA), Glenn (CA), Lake (CA)— <i>Round Valley Reservation.</i>	
Upper Eel	18010103	Mendocino (CA), Glenn (CA), Lake (CA)	Scott Dam (Lake Pillsbury).
Mad-Redwood	18010102	Humboldt (CA), Trinity (CA)— <i>Big Lagoon Rancheria; Blue Lake Rancheria.</i>	
Smith	18010101	Del Norte (CA), Curry (OR)— <i>Elk Valley Rancheria; Smith River Rancheria.</i>	
South Fork Trinity	18010212	Humboldt (CA), Trinity (CA).	
Trinity	18010211	Humboldt (CA), Trinity (CA)— <i>Hoopa Valley Reservation.</i>	Lewiston Dam (Lewiston Reservoir).
Salmon	18010210	Siskiyou (CA).	
Lower Klamath	18010209	Del Norte (CA), Humboldt (CA), Siskiyou (CA)— <i>Karuk Reservation; Resighini Rancheria; Yurok Reservation.</i>	
Scott	18010208	Siskiyou (CA)— <i>Quartz Valley Reservation.</i>	
Shasta	18010207	Siskiyou (CA)	Dwinnell Dam (Dwinnell Reservoir).
Upper Klamath	18010206	Siskiyou (CA), Jackson (OR)	Irongate Dam (Irongate Reservoir).
Chetco	17100312	Curry (OR), Del Norte (CA).	
Illinois	17100311	Curry (OR), Josephine (OR), Del Norte (CA)	Selmac Lake Dam (Lake Selmac).
Lower Rogue	17100310	Curry (OR), Josephine (OR), Jackson (OR).	
Applegate	17100309	Josephine (OR), Jackson (OR), Siskiyou (CA)	Applegate Dam (Applegate Reservoir).
Middle Rogue	17100308	Josephine (OR), Jackson (OR)	Emigrant Lake Dam (Emigrant Lake).
Upper Rogue	17100307	Jackson (OR), Klamath (OR), Douglas (OR)	Agate Lake Dam (Agate Lake); Fish Lake Dam (Fish Lake); Willow Lake Dam (Willow Lake); Lost Creek Dam (Lost Creek Reservoir).
Sixes	17100306	Curry (OR).	

¹ Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
² Tribal lands are specifically excluded from critical habitat for this ESU.

[FR Doc. 99-11187 Filed 5-4-99; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333-8333-01; I.D. 042299A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions to the Pacific Coast groundfish limited entry fisheries for Dover sole and trawl-caught sablefish in the April-May cumulative limit period, and for *Sebastes* complex species (including bocaccio, canary rockfish, and yellowtail rockfish) and for widow rockfish in the June-July, and August-September cumulative limit periods. NMFS announces changes to the

restrictions on open access landings of groundfish by vessels fishing with exempted trawl gear. NMFS also announces the season start and end dates, and the tier limits for the 1999 limited entry, regular sablefish fishery. These restrictions are intended to extend the fisheries as long as possible during the year while keeping landings within the 1999 optimum yields (OYs) for these species and allocations.

DATES: Effective from 0001 hours local time (l.t.) May 1, 1999, for changes to limited entry Dover sole and trawl-caught sablefish limits, for changes to open access exempted trawl groundfish limits, and for the announcement of the limited entry, fixed gear regular sablefish fishery; effective from 0001 hours l.t. June 1, 1999, for changes to limited entry widow rockfish, *Sebastes* complex, yellowtail rockfish, canary rockfish, and bocaccio. For vessels operating in the B platoon, effective from 0001 hours l.t. May 16, 1999, for changes to limited entry Dover sole and trawl-caught sablefish limits; effective from 0001 hours l.t. June 16, 1999, for changes to limited entry widow rockfish, *Sebastes* complex, yellowtail rockfish, canary rockfish, and bocaccio.

These changes are in effect, unless modified, superseded or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through May 20, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206-526-6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its April 5 through 9, 1999, meeting in Sacramento, CA.