

and contrary to the public interest to provide prior notice and opportunity for comment. The AA finds that unusually high densities of the bryozoan (*Bugula sp*) are creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary time frame. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii).

Pursuant to 5 U.S.C. 553(d)(1), because this rule relieves a restriction, it is not subject to a 30-day delay in effective date. NMFS is making the rule effective October 19, 1999 through November 18, 1999.

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see ADDRESSES).

Dated: October 19, 1999.

**Andrew A. Rosenberg, Ph.D.,**

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

[FR Doc. 99-27692 Filed 10-19-99; 4:59 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 990525143-9277-02; I.D. 120197A]

RIN 0648-AM41

#### Designated Critical Habitat: Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

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

**ACTION:** Final rule.

**SUMMARY:** Through this rule, NMFS revises critical habitat for Snake River

spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS determines that Napias Creek Falls constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. NMFS, therefore, excludes areas above Napias Creek Falls from designated critical habitat for this species.

**DATES:** The effective date of this determination is November 24, 1999.

**ADDRESSES:** Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. 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 at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin at (503) 231-2005 or Chris Mobley at (301) 713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

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

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that

the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that document of finding, NMFS solicited information and comments from interested parties and interested tribal governments concerning the petitioned action (62 FR 22903).

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) "Ability of Salmon and Steelhead to Pass Napias Creek Falls"; (2) "Investigation of Physical Conditions at Napias Creek Falls"; and (3) "Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho." This new information was added to the administrative record and was considered by NMFS in its 12-month determination published on January 30, 1998 (63 FR 4615).

On January 30, 1998, NMFS determined that the petitioned action was not warranted since available information indicated that the falls was likely passable to chinook salmon at some flows and that the presence of relict indicator species indicated historical usage by anadromous species (63 FR 4615). Subsequent to this determination, Meridian submitted a "petition for reconsideration," providing additional data and analyses concerning the likelihood Napias Creek Falls constitutes a naturally impassable barrier to anadromous salmonid migration (Meridian, 1998a, 1998b; Chapman, 1998). While NMFS' ESA implementing regulations do not provide a process for reconsidering findings on petitions, NMFS nonetheless agreed in a letter dated July 31, 1998, to consider Meridian's new information and provide Meridian with a written determination regarding its findings (NMFS, 1998a; Meridian, 1998d). On October 30, 1998, NMFS staff met with Meridian representatives to discuss the new technical information and its interpretations (NMFS, 1998b).

On December 29, 1998, Meridian expressed its desire to withdraw its "petition for reconsideration" stating that it interpreted NMFS' continuing treatment of the area as critical habitat as a denial of its petition (Meridian, 1998c). However, at that time, NMFS had not yet reached a conclusion regarding the additional information submitted by Meridian, nor had NMFS provided Meridian with a written determination on the matter as it had committed to do in its July 31, 1998, letter (NMFS, 1998a). NMFS ultimately

concluded this information is part of the best scientific information available regarding whether the area in question constitutes critical habitat for the species. Therefore, in accordance with section 4(b)(1)(A) of the ESA, NMFS considered this information in its review of Meridian's "petition for reconsideration."

On June 2, 1999, NMFS published a proposed rule to revise critical habitat for Snake River spring/summer chinook salmon (64 FR 29618). In the proposed rule, NMFS determined that available evidence suggests that Napias Creek Falls, while passable at some flows, constitutes an effective migrational barrier for chinook salmon. This conclusion was based on an analysis of available hydrological and biological data, as well as some ethnographical information. In reaching this conclusion, NMFS recognized that scientific uncertainty remained whether (1) chinook salmon could establish a naturally reproducing population above the falls if present in sufficient numbers in Napias Creek; and (2) whether chinook salmon historically occurred above the falls. To help resolve this uncertainty, NMFS specifically requested comments and information regarding the proposed determination. Discussion of the comments received on the proposal follow.

#### 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 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)).

Defining specific river reaches that constitute critical habitat for chinook salmon, and anadromous fish species in general, is difficult to do because of our imperfect understanding of the species' freshwater distribution, both current and historical, and the lack of comprehensive sampling efforts

dedicated to monitoring these species. Given this scientific uncertainty, NMFS' approach to designating critical habitat for chinook salmon is to designate all areas currently accessible to the species within the range of the Evolutionarily Significant Unit. NMFS believes that this inclusive approach to designating critical habitat is appropriate because it (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages; and (2) takes into account the natural variability in habitat use.

#### Process for Defining Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the *Federal Register* for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within 1 year of the proposed rule. Final critical habitat designations may be revised as new information becomes available.

#### Consultation with Affected Indian Tribes

The unique and distinctive relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and 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 with respect to Indian lands, tribal trust and treaty resources, and the exercise of tribal rights.

As a means of recognizing the responsibilities and relationship previously described, the Secretary of Commerce and the Secretary of the Interior issued a Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities,

and the Endangered Species Act" on June 5, 1997. The Secretarial Order clarifies the responsibilities of NMFS and the U.S. Fish and Wildlife Service when carrying out authorities under the ESA and requires that they consult with, and seek the participation of, affected Indian tribes to the maximum extent practicable.

During the course of this rulemaking, NMFS consulted with, and solicited comments from, affected Indian tribes, including the Shoshone-Bannock Tribes (Tribes). The Tribes, in turn, provided written comments and testimony on the proposed rule a discussion as follows.

#### Summary of Comments

During the public comment period on the proposed rule, NMFS received seven written comments from a variety of sources. On August 31, 1999, NMFS held a public hearing in Boise, Idaho at which seven people provided testimony concerning the proposed rule. Of the seven parties providing comments and testimony, five supported the conclusions reached in the proposed rule and two, including the Tribes, disagreed with such conclusions. Commenters provided no additional scientific information that resolves issues raised in the proposed rule. Pertinent comments are summarized here.

*Comment 1:* Two parties commented on the historic presence of chinook salmon above the falls in question and the historic value of this area. The Tribes stated that "salmon hunting above the falls that NMFS presently concludes is a barrier to salmon, has been reported by tribal fishermen." Another commenter stated that it is possible Tribal accounts may reflect historical fishing activities (and, thus, the presence of chinook salmon) before the formation of the existing barrier.

*Response:* The question of historic Tribal usage of areas above the falls, and, thus, presence of chinook salmon in this area, is a difficult one to analyze. The Tribal oral history indicates chinook salmon historically occurred above the falls; however, NMFS does not believe, based on current scientific information, that this area has supported chinook salmon populations over any appreciable and continuous length of time. Current biological information indicates that chinook salmon have not occurred above the falls over evolutionary time periods. For example, the absence of a native fish community above the falls and the presence of non-native fish species indicate that areas above the falls have been, and continue to be, isolated from areas below the falls. Further, a number

of ethnographic studies indicate that chinook have not occurred in this area in recent times (i.e., within the last 100 years) (e.g., Larhen, 1999).

While available scientific evidence supports the conclusion that areas above the falls have not supported self-sustaining populations of chinook salmon, it is possible that this species may have periodically inhabited this area under certain environmental conditions. Such a possibility is supported by NMFS' passage analysis (a discussion follows) that indicates the falls is likely passable to chinook salmon under certain flow conditions. This intermittent habitation of chinook would likewise be consistent with Tribal accounts of fishing above the falls.

*Comment 2:* Two commenters, including the Tribes, expressed concern about potential impacts to water quality and other critical habitat elements in Napias Creek and areas downstream as a result of revising this designation. The Tribes also expressed concern that revision of critical habitat may hinder efforts to reestablish chinook salmon in Panther Creek.

*Response:* NMFS has previously stated that Napias Creek constitutes an important source of dilution water within the Panther Creek system and that any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous fisheries in Panther Creek (63 FR 4615, 4618). Recognizing this, NMFS intends to carefully evaluate proposed actions that may adversely affect salmonid habitat in this area (See Special Management Considerations).

*Comment 3:* Several parties commented on NMFS' conclusion that Napias Creek Falls is likely passable to chinook salmon at certain flow conditions. The Tribes concurred with NMFS' assessment, stating that such conclusions are consistent with reports from tribal fishermen of salmon above the falls during the months of May and June. One commenter disagreed with NMFS' assessment, stating that existing hydrologic studies refute this conclusion.

*Response:* Aside from providing hydrographs that simply validate assumptions made in previous modeling exercises, commenters present no additional scientific information that NMFS has not considered in its passage assessments. Furthermore, NMFS has thoroughly reviewed available technical information and analyses, and has conducted on-site investigations to verify the validity of its conclusions. In doing so, NMFS has consistently concluded that chinook salmon can

likely migrate past Napias Creek Falls under certain flow conditions (i.e., at about 49 cfs) (NMFS, 1997; NMFS, 1998; NMFS, 1999a).

Even though NMFS concludes that the falls in question are passable to chinook salmon at certain flows, NMFS recognizes that it is difficult to determine whether the falls constitutes an "effective" migrational barrier for the species, thus, precluding the species from colonizing areas above the falls (NMFS, 1999a). Since chinook salmon do not presently occur in Napias Creek, NMFS must rely on historical accounts and other biological and ecological information to infer whether Napias Creek Falls effectively constitutes a migrational barrier to the species. Such information indicates that chinook salmon have not historically colonized habitat above the falls, thus, leading to the conclusion that the falls constitute an effective migrational barrier.

#### **Analysis of Available Information**

Two lines of evidence suggest that habitat above Napias Creek Falls is not presently accessible or essential for the conservation or recovery of the listed species. This evidence includes (1) current passage conditions at the falls; and (2) surveys of salmonid presence above the falls.

On several previous occasions, NMFS analyzed the specific hydrologic conditions present at Napias Creek Falls (NMFS 1997; 1998; 1999a). NMFS also conducted on-site evaluations of the falls to verify its theoretical analysis. During the public comment period, no additional information was presented that changes NMFS' previous conclusion that chinook salmon can likely migrate past Napias Creek Falls under certain flow conditions (i.e., at about 49 cfs). However, NMFS recognizes that it is difficult to predict the likelihood that chinook salmon would in fact colonize areas above the falls if present in Napias Creek. Since chinook salmon do not presently occur in Napias Creek, NMFS must rely on historical accounts and other biological information to infer whether Napias Creek Falls effectively constitutes a migrational barrier to the species.

Studies submitted by Meridian, as well as the opinions of Federal and state resource agencies (i.e., U.S. Forest Service [USFS], Idaho Department of Fish and Game, Idaho Division of Environmental Quality) indicate that Napias Creek Falls is a historic barrier to anadromous salmonid passage. However, this conclusion is in conflict with comments from a USFS fishery biologist. In a report dated February 8,

1996, Bruce Smith, Salmon and Challis National Forest Fisheries Biologist, concludes that Napias Creek historically contained chinook salmon (Smith, 1996a). Smith also states that areas above Napias Creek Falls currently contain relict indicator species (Smith, 1996a), indicating pre-historic accessibility of this area to anadromous salmonid species (Smith, 1996b).

In its January 30, 1998, determination, NMFS found Smith's analysis persuasive on the question of the historical presence of chinook salmon above Napias Creek Falls (63 FR 4615, 4617). However, since that time, NMFS has reconsidered its reliance on this information. While such relict indicator species as rainbow trout occur above the falls, other native fish species (e.g., mountain whitefish, westslope cutthroat trout, sculpins, and dace) do not presently occur above the falls, indicating that salmonids in the area may have been the result of hatchery introductions or transfers (Chapman 1998). This explanation is supported by the presence of other nonnative fish species above the falls (i.e., brook trout), and the apparent history of fish stocking in Napias Creek (Smith 1996a).

Available ethnographic information supports the conclusion that chinook salmon have not historically used habitat above Napias Creek Falls in recent times. Furthermore, available historic literature and surveys of nearby residents indicate chinook salmon have not occurred above the falls in recent times (Larhen, 1999).

After considering comments received on the proposed rule, NMFS concludes that habitat above Napias Creek Falls is outside the current range of listed spring/summer chinook salmon and that habitat in this area is not now essential for the conservation of the species. This conclusion is based on several considerations. First, while NMFS concludes the falls is likely passable to chinook salmon at certain flows, historic evidence suggests that chinook salmon have not used areas above the falls with any frequency in recorded history. Second, while relict indicator species occur above the falls suggesting historic use, the origin of these indicator species is uncertain.

Even though uncertainty remains regarding NMFS' conclusions, chinook salmon do not presently occur in Napias Creek, and therefore, habitat above the falls would not likely be used by the species in the near-term even if it were accessible. Furthermore, any potential long-term risk of harm to the species is lessened by the fact NMFS may revise its determination if in the future additional information indicates that

habitat above Napias Creek Falls constitutes critical habitat for the species.

### Special Management Considerations

Section 424.12(b) of NMFS' ESA implementing regulations states that in determining what areas constitute critical habitat, NMFS shall consider "physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." (Emphasis added). As discussed earlier, NMFS concludes that areas above the falls are outside the current range of chinook salmon, and are not now essential for conservation of the species. While these conclusions essentially end NMFS' inquiry into whether areas above the falls constitute critical habitat, in this case it is useful to consider the management implications of this conclusion.

NMFS believes that Napias Creek constitutes an important source of dilution water within the Panther Creek system and that any degradation of dilution flows from Napias Creek would likely hinder efforts to reestablish anadromous fisheries in Panther Creek (63 FR 4615, 4618; January 30, 1998). NMFS recently completed a section 7 biological opinion (BO) concerning the operation of the Beartrack Gold Project owned by Meridian Gold Company (NMFS, 1999b). In this BO, NMFS concluded that the proposed operation of the mine would jeopardize listed chinook, and recommended a reasonable and prudent alternative that requires Meridian to monitor and protect water quality in Napias Creek over the long-term. It is NMFS' belief that while mitigative measures contained in this BO will change as a result of this revision, such changes will not result in substantial impacts to salmonid habitat below the falls.

In addition to the presence of listed steelhead and chinook salmon in Napias Creek, bull trout also occur above Napias Creek Falls (Smith, 1996a). On June 10, 1998, the U.S. Fish and Wildlife Service (FWS) listed the Columbia River distinct population segment of bull trout (including populations in Panther Creek) as a threatened species (63 FR 31647). Consequently, the practical significance of excluding areas above Napias Creek Falls from chinook salmon critical habitat is debatable because federal agencies must ensure their actions do not jeopardize bull trout located in this area.

### Expected Economic Impacts

Section 4(b)(2) of the ESA requires NMFS to consider the economic impact of specifying any particular areas as critical habitat. However, section 4(b)(1)(A) of the ESA prohibits NMFS from considering economic impacts associated with species listings. Consequently, when designating critical habitat, NMFS considers only the incremental economic impacts associated with the designation above the economic impacts attributable to the listing of the species or authorities other than the ESA. 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 for the conservation of the species.

In this particular case, positive economic impacts will likely result to parties in the subject area. Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. Meridian is subject to a BO that contains measures to protect designated critical habitat in Napias Creek. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. This action would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. In turn, measures contained in the BO that relate to this designate are no longer applicable. Therefore, the reduction of critical habitat would lessen Meridian's economic burden resulting from measures contained in the BO.

### Determination

After considering the best available scientific and commercial information, NMFS concludes that Napias Creek Falls likely constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. While the falls may be passable to chinook salmon at certain flows, available evidence suggests this species has not mounted this falls with any regularity in the recent past, nor is it likely to do so in the future. NMFS will reevaluate this conclusion in the future if information indicates areas above the falls are essential for conservation of chinook salmon in the Panther Creek drainage.

### References

A complete list of all references cited herein and maps describing the range of proposed Snake River spring/summer

chinook salmon are available upon request (see ADDRESSES).

### Classification

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

Through this rule, NMFS designates only the current range of this chinook salmon ESU as critical habitat. Given the affinity of this species to spawn in small tributaries, this current range encompasses a wide range of habitat, including headwater streams, as well as mainstem, off-channel and estuarine areas. Areas excluded from this proposed designation include marine habitats in the Pacific Ocean and any historically occupied areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS concludes that the currently inhabited areas within the range of this ESU are the minimum habitat necessary to ensure the species' conservation and recovery.

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 to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). 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.

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 proposed action on local businesses, organizations, and governments.

Meridian owns and operates Beartrack Mine, which is adjacent to Upper Napias Creek (Napias Creek above the Falls), within the Salmon National Forest. NMFS is not aware of any other business operating in Upper Napias Creek whose operations might adversely modify potential salmon habitat. This

revision would reduce the ESU's critical habitat, by eliminating Upper Napias Creek from critical habitat. To the extent that Meridian may be impacted by the current designation of Upper Napias Creek as critical habitat, the reduction of critical habitat would lessen Meridian's economic burden, if any, from that impact.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

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

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S. Ct. 698 (1996).

#### List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: October 15, 1999.

**Andrew A. Rosenberg,**

*Deputy 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. 1531 *et seq.*

2. In § 226.205, paragraph (b) is revised to read as follows:

**§ 226.205 Critical habitat for Snake River sockeye salmon, Snake River fall chinook salmon, and Snake River spring/summer chinook salmon.**

\* \* \* \* \*

(b) *SNAKE RIVER Spring/Summer Chinook Salmon* (*Oncorhynchus tshawytscha*). Geographic Boundaries. Critical habitat is designated to include the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) and including all Columbia River estuarine areas and river reaches proceeding upstream to

the confluence of the Columbia and Snake Rivers; all Snake River reaches from the confluence of the Columbia River upstream to Hells Canyon Dam. Critical habitat also includes river reaches presently or historically accessible (except reaches above impassable natural falls (including Napias Creek Falls) and Dworshak and Hells Canyon Dams) to Snake River spring/summer chinook salmon in the following hydrologic units: Hells Canyon, Imnaha, Lemhi, Little Salmon, Lower Grande Ronde, Lower Middle Fork Salmon, Lower Salmon, Lower Snake-Asotin, Lower Snake-Tucannon, Middle Salmon-Chamberlain, Middle Salmon-Panther, Pahsimeroi, South Fork Salmon, Upper Middle Fork Salmon, Upper Grande Ronde, Upper Salmon, Wallowa. Critical habitat borders on or passes through the following counties in Oregon: Baker, Clatsop, Columbia, Gilliam, Hood River, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco; the following counties in Washington: Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla, Whitman; and the following counties in Idaho: Adams, Blaine, Custer, Idaho, Lemhi, Lewis, Nez Perce, Valley.

\* \* \* \* \*

[FR Doc. 99-27585 Filed 10-22-99; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 622

[Docket No. 990625173-9274-02; I.D. 033199C]

RIN 0648-AL57

##### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 16B

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 16B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule establishes size limits for banded rudderfish, lesser amberjack, cubera snapper, dog snapper, mahogany snapper, mutton snapper, schoolmaster, scamp, gray triggerfish,

and hogfish; excludes banded rudderfish, lesser amberjack, and hogfish from the 20-fish aggregate (combined) reef fish bag limit; establishes new bag limits for hogfish, speckled hind, warsaw grouper, and for banded rudderfish and lesser amberjack combined; and removes queen triggerfish from the listing of Gulf reef fish and from the applicable regulations. The intended effect of this rule is to conserve and manage the reef fish resources of the Gulf of Mexico.

**DATES:** This final rule is effective November 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roy E. Crabtree at 727-570-5305; Fax: 727-570-5583.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 14, 1999, NMFS announced the availability of Amendment 16B and requested comments on the amendment (64 FR 18395). On July 2, 1999, NMFS published a proposed rule to implement the measures in Amendment 16B and requested comments on the rule (64 FR 35981). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. No comments were received on Amendment 16B or on the proposed rule. On July 14, 1999, NMFS approved Amendment 16B. The proposed rule has been adopted as final without change.

#### Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that Amendment 16B is necessary for the conservation and management of the reef fish fishery of the Gulf of Mexico and that Amendment 16B is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding