

Southern California steelhead ESU in February 2000 that ranges from the Santa Maria River southward to and including Malibu Creek (65 FR 7764).

NMFS believes there is insufficient information at present to determine if all or some of the freshwater habitat south of Malibu Creek, whether occupied or unoccupied, is essential for the conservation of this ESU because only two coastal watersheds south of Malibu Creek are currently known to support anadromous *O. mykiss*, including San Mateo Creek which is well separated from the remainder of the populations in the listed ESU. Prior to making any determination regarding the modification of the existing critical habitat designation, NMFS intends to complete an analysis of the full range of habitat, both occupied and unoccupied, that is essential for the conservation and recovery of this ESU. NMFS expects that this effort will be conducted in conjunction with the development of biological recovery goals for this ESU by a NMFS appointed recovery team.

In conjunction with these efforts, NMFS intends to work with Federal land managers in the San Mateo Creek watershed (i.e. Camp Pendleton Marine Corps Base and Cleveland National Forest) to review and evaluate their existing land management and habitat protection programs to determine the extent to which they protect steelhead and their habitat in the San Mateo Creek watershed.

References

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

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). See NOAA Administrative Order 216-6.

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory

Flexibility Act are not applicable to the listing process. In addition this final rule is exempt from review under Executive Order 12866.

Paperwork Reduction Act

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

Executive Order 13132 - Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with state and local government agencies in the course of assessing the status of this ESU, and considered, among other things, state and local conservation measures. State and local governments have expressed support for both the conservation of this ESU and for those activities which affect it. NMFS staff have had discussions with various government agency representatives regarding the status of this ESU and have sought working relationships with them in order to promote restoration and conservation of this and other ESUs.

List of Subjects in 50 CFR Part 224

Administrative practices, and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 18, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, paragraph (a) is revised to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.* Shortnose sturgeon (*Acipenser brevirostrum*); Totoaba (*Cynoscian macdonaldi*); Snake River sockeye salmon (*Oncorhynchus nerka*); Southern California steelhead (*Oncorhynchus mykiss*), which includes all naturally spawned populations of steelhead (and their progeny) in streams from the Santa

Maria River, San Luis Obispo County, CA (inclusive) to the U.S. - Mexico Border; Upper Columbia River steelhead (*Oncorhynchus mykiss*), including the Wells Hatchery stock and all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S. - Canada Border; Upper Columbia River spring-run chinook salmon (*Oncorhynchus tshawytscha*), including all naturally spawned populations of chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), 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) upstream to Chief Joseph Dam in Washington, and the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek (spring run) hatchery stocks (and their progeny); Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 010302D]

RIN 0648-AL86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Sustainable Fishery Act Amendment to the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Notice of agency action.

SUMMARY: NMFS has disapproved the Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions of the Magnuson-Stevens Act in the Fishery Management Plans of the U.S. Caribbean (Comprehensive SFA Amendment) submitted by the Caribbean Fishery Management Council (Council). Under the procedures of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS determined that the Comprehensive SFA Amendment was inconsistent with the requirements of the Sustainable Fisheries Act of 1996 (SFA) and the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION: The SFA requires NMFS and the Councils to comply with new overfishing, rebuilding, and bycatch provisions. Fishery Management Plans (FMPs) are required to assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from each fishery. FMPs must assess and satisfy the nature and extent of scientific data, which is needed for effective implementation of the plan. Also, the SFA requires fishery managers to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in fisheries. Conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The Council subsequently developed and submitted a Comprehensive SFA Amendment that addressed SFA requirements for Caribbean FMPs. On January 25, 2002, NMFS published a notice of availability (NOA) of the Comprehensive SFA Amendment to the Caribbean FMPs and requested public comments through March 26, 2002 (67 FR 3679).

On April 25, 2002, after considering extensive comments received during the public comment period for the amendment, NMFS disapproved the Caribbean Comprehensive SFA Amendment primarily because NMFS believes that an environmental impact statement (EIS) should be developed that provides a more comprehensive set of alternatives for SFA parameters, rebuilding schedules, and bycatch reporting standards. A summary of comments received and responses is given below.

Comments and Responses

Three environmental organizations, 60 individual commenters and one petition with 548 individuals listed provided a similar set of comments on the Comprehensive SFA Amendment.

Comment 1: One environmental organization stated, "In its current state, the Comprehensive Amendment violates the SFA, fails to prevent

overfishing, fails to rebuild fish populations, and fails to address the fishery's bycatch problem. Hence, in its current state, the Comprehensive Amendment is a major federal action significantly adversely affecting the environment. On the other hand, should NMFS choose to revise the Comprehensive Amendment so as to comply with the SFA, it would be a major federal action significantly benefitting the human environment. Either, way, NMFS must develop an EIS."

Response: NMFS does not completely endorse all aspects of the comment. Nonetheless, the comment highlights the importance of the Amendment and is persuasive that additional alternatives should be considered to produce a better document. NMFS, working with the Council, intends to develop an EIS on the above issues and incorporate the findings of the EIS into a revised Comprehensive SFA Amendment that will address the concerns noted in public comments.

Comment 2: Two environmental organizations noted that the SFA mandates that fishery managers establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. The national standard guidelines also require that "[a] review and, where necessary, improvement of data collection methods, data sources, and application of data must be initiated for each fishery to determine the amount, type, disposition, and other characteristics of bycatch and bycatch mortality in each fishery." The organizations recommended that the NMFS disapprove this aspect of the Comprehensive SFA Amendment.

Response: NMFS agrees. Bycatch reporting will be addressed in the revised Amendment.

Comment 3: One environmental organization recommended that commercial landings in the U.S. Virgin Islands be reported by species rather than gear. Further, such landings should be reported similar to those in Puerto Rico.

Response: NMFS agrees that commercial landings, wherever possible, should be reported by species or species groups, but notes that this could require additional resources. This issue will be addressed in the revised Amendment.

Comment 4: All commenters objected to the way that the reef fish SFA parameters (maximum sustainable yield, optimum yield, minimum stock size threshold, and maximum fishing mortality threshold) were developed by using only the average landings for the

period 1983 through 1999. They noted that landings for many species had declined during that period and that there was reason to believe that some species were either overfished or undergoing overfishing. They believe that the assumption that the current levels of harvest are sustainable is incorrect and would continue overfishing as well as prevent rebuilding of overfished stocks. Further, they recommended that average landings developed from either a 4-year or 8-year time period would provide better results.

Response: Due to the data-poor nature of fisheries in the Caribbean, it is not clear which series of landings data would provide the best SFA proxies. Despite this, it is reasonable to consider alternative series of landings, and this will be done in the revised Amendment.

Comment 5: Commenters noted that the Comprehensive SFA Amendment did not contain regulatory measures that would immediately address overfishing or overfished species. They stated that the Amendment should have and cited this as a deficiency.

Response: Upon consideration of the public comments received, NMFS believes that it would be appropriate to consider regulatory measures, including rebuilding schedules, in the revised Amendment that would address overfishing and overfished species. It should be noted that Amendment 2 to the Queen Conch FMP, currently under development, would prohibit the possession and harvest of queen conch in the EEZ until this resource is rebuilt.

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

Dated: April 25, 2002.

William T. Hogarth,

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

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