Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

Classification

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

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area so long as fishermen make the required gear modifications.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. As a sizeable concentration of leatherback turtles has been observed in an area fished by shrimp trawlers, it is extremely likely that interactions will occur. It would be impracticable to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this rule for 30 days. Such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making this temporary rule effective April 26, 2002 through May 10, 2002. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570–5312 for updated area closure information.

As prior notice and an opportunity for public comment are not required to be provided for this notification 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 requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: April 26, 2002.

William T. Hogarth

Assistant Administrator for Fisheries, National Marine Fisheries.

[FR Doc. 02–10758 Filed 4–26–02; 4:30 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 001025296-2079-02; I.D. 072600A]

RIN 0648-AO05

Endangered and Threatened Species: Range Extension for Endangered Steelhead in Southern California

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

ACTION: Final rule.

SUMMARY: NMFS has received new evidence of steelhead (*anadromous Oncorhynchus mykiss*) presence in two locations and spawning in one location south of the current range of the listed southern California steelhead Evolutionarily Significant Unit (ESU) which is currently Malibu Creek. Based upon this new information, and the possibility that anadromous *O. mykiss* may occur in other streams south of Malibu Creek if hydrologic and other habitat conditions are favorable, NMFS is now issuing a final rule under the Endangered Species Act (ESA) that redefines the geographic range of the listed anadromous *O. mykiss* population to include all steelhead and their progeny that occur in coastal river basins from the Santa Maria River (inclusive) to the U.S. - Mexico Border. NMFS has reassessed the status of anadromous *O. mykiss* throughout its redefined range in Southern California and concludes that the listed population continues to be endangered.

Within the redefined geographic range of *O. mykiss*, only anadromous, naturally spawned populations, and their progeny, which reside below naturally occurring and man-made impassable barriers (e.g., impassable waterfalls and dams) are listed.

DATES: Effective July 1, 2002.

ADDRESSES: Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, 562–980–4021, or Chris Mobley, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to the Southern California Steelhead ESU

In 1994, NMFS received a petition from the Oregon Natural Resources Council and numerous co-petitioners to list west coast steelhead (*Oncorhynchus mykiss*) populations under the ESA. In response to the petition, NMFS conducted a status review of west coast steelhead (Busby *et al.*, 1996) which identified 15 Evolutionarily Significant Units (ESUs) of steelhead in Washington, Oregon, Idaho, and California, and assessed their risk of extinction. One of these 15 ESUs was the Southern California steelhead ESU which was found to be at a high risk of extinction.

Based on this status review and a consideration of the listing factors in section 4(a)(1) of the ESA, NMFS proposed to list the Southern California steelhead as an endangered species in August 1996 (61 FR 41541). In August 1997, NMFS published a final rule listing this ESU as an endangered species (62 FR 43937). In the final rule, NMFS listed only the anadromous life form of *O. mykiss*, and, therefore, defined the listed Southern California steelhead population to include all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River in San Luis Obispo County (inclusive) to and including Malibu Creek in Los Angeles County. At the time of listing, NMFS believed Malibu Creek represented the southernmost extent of the range of anadromous *O. mykiss* in southern California.

On February 5, 1999, NMFS published a proposed critical habitat designation for 19 ESUs of threatened and endangered salmon and steelhead distributed throughout Washington, Oregon, Idaho, and California, including the endangered Southern California steelhead ESU (64 FR 5740). A final rule designating critical habitat for these 19 ESUs, including the Southern California steelhead ESU, was published on February 16, 2000 (65 FR 7764).

Although the critical habitat designation for Southern California steelhead is presently in effect, NMFS has recently sought approval from the U.S. District Court in the District of Columbia for a consent decree that would vacate critical habitat designations for Southern California steelhead and 18 other salmon/steelhead ESUs as a result of litigation

filed against the agency by the National Association of Homebuilders. In conjunction with this action, NMFS also intends to undertake a new and more thorough analysis of critical habitat for these ESUs, including the economic impacts of any designation, that is consistent with the ESA and other recent Court decisions. Following completion of this analysis, NMFS intends to proceed with re-proposing critical habitat designations for these ESUs including the Southern California steelhead.

New Information on Steelhead Distribution South of Malibu Creek in Southern California

In 1999 and 2000, new information became available which indicated that the anadromous life form of *O. mykiss* (i.e. steelhead) or their progeny occurred in at least two coastal streams south of Malibu Creek (Topanga Creek and San Mateo Creek). This new information included observations of juvenile *O. mykiss* in Topanga Creek by a NMFS biologist and field and laboratory investigations conducted by the California Department of Fish and Game (CDFG) which demonstrated the presence and spawning of anadromous *O. mykiss* in San Mateo Creek (DFG, 2000). Based on this new information, NMFS published a **Federal Register** notice in December 2000 proposing to formally recognize that anadromous *O. mykiss* (or steelhead) ranged further southward in Southern California than was previously believed to be the case by extending the range of the listed population to San Mateo Creek (65 FR 79328). A detailed discussion of the new information upon which the range extension proposal was based is contained in the December 2000 **Federal Register** notice.

Since the range extension was proposed in December 2000, NMFS has obtained some additional new information on *O. mykiss* in San Mateo Creek which was considered in this final determination. Additional microsatellite and mitochondrial DNA (mtDNA) analyses were conducted by Jennifer Nielsen (U.S. Geological Service, Alaska Science Center in Anchorage, AK.) on tissue samples taken from 16 *O. mykiss* collected in San Mateo Creek in 1999 and 2000 (Nielson and Sage, 2002). All 16 fish that were analyzed shared the MYS5 haplotype that is found throughout the range of *O. mykiss* in California, but which is most commonly found in Southern California populations (Nielsen *et al.* 1994). This finding is consistent with previous genetic analysis reported for *O. mykiss* in San Mateo Creek (DFG, 2000) and cited in NMFS' proposed range extension (65 FR 79328). According to Nielsen and Sage (2002), this haplotype has not been found in their previous survey of hatchery *O. mykiss* strains in California, and, therefore, suggests an endemic population structure in San Mateo Creek. Secondly, the DFG has undertaken periodic field surveys in upper San Mateo Creek and Devil's Canyon since May 2000 which have documented the continued presence of *O. mykiss* in the watershed. In many instances, these surveys were carried out in conjunction with efforts to remove exotic species that might prey upon or compete with *O. mykiss*. Although these surveys were limited in scope and methodology, they documented the presence of *O. mykiss* through at least August 2001 in Devil's Canyon. Summaries of the DFG field surveys for *O. mykiss* and exotic species removal are contained in a series of file memoranda prepared by DFG staff.

NMFS has completed its review and analysis of all available information, including public comments that were received on the proposal. This final rule formally extends the range of the Southern California steelhead ESU and reaffirms that it continues to be an endangered species.

Summary of Comments Received in Response to the Proposed Range Extension Notice

The proposed range extension was published on December 19, 2000, with a 60-day comment period that closed on February 20, 2001. During this period, NMFS received numerous requests for a public hearing, as well as requests for additional time to comment on the proposal. As a result, NMFS re-opened the public comment period for 30 days on February 21, 2001, and held a public hearing in San Clemente, CA, on March 12, 2001. The re-opened public comment period closed on March 22, 2001.

Excluding hearing requests, a total of 63 written comments were received on the proposal from a broad range of agencies, non-governmental organizations, other groups, and private citizens. A total of 37 individuals provided oral comments at the public hearing. The vast majority of comments supported the proposal, although many urged NMFS to expand or modify its proposal. A limited number of comments were opposed to or neutral about the proposal. A summary of the comments on the proposal and NMFS' responses to those comments are presented below by specific issue.

Comments and Responses

Issue: Southern Boundary of Southern California Steelhead ESU

Comment 1: Many commenters argued that the southern boundary of the listed Southern California steelhead population (i.e. anadromous *O. mykiss*) should be extended to the southernmost extent of the species historical range rather than to just San Mateo Creek. Most argued this boundary should be the U.S.- Mexico border.

Response: NMFS has previously recognized that steelhead historically occurred naturally at least as far south as northern Baja California (NMFS, 1996; and 62 FR 43937). However, at the time the Southern California steelhead ESU was listed as an endangered species in 1997 the best available information indicated that persistent populations of anadromous *O. mykiss* did not occur in rivers or streams further south than Malibu Creek. As described in NMFS' proposed range extension (65 FR 79328) new information became available in 1999 and 2000 indicating that anadromous *O. mykiss* were occupying San Mateo Creek which is in northern San Diego County. Limited observational information also suggested that *O. mykiss* occurred in Topanga Creek.

NMFS' main objectives in proposing the range extension for Southern California steelhead were three-fold: First, to seek public comment on new information showing that the freshwater geographic range of anadromous *O. mykiss* extended south of Malibu Creek to at least San Mateo Creek; second, to seek public comment on NMFS proposal to consider the *O. mykiss* found south of Malibu Creek to be part of the listed Southern California steelhead ESU; and third, to ensure that anadromous *O. mykiss* occurring south of Malibu Creek, either as isolated individuals (e.g. Topanga Creek) or as populations (i.e. San Mateo Creek) would be protected under the ESA.

NMFS recognizes that habitat suitable for anadromous *O. mykiss* may occur in watersheds south of San Mateo Creek (e.g. San Onofre Creek and perhaps elsewhere) and that anadromous *O. mykiss* historically occurred further south than San Mateo Creek. For these reasons, and because anadromous *O. mykiss* may stray to streams south of San Mateo Creek just as they did to San Mateo Creek in 1997, NMFS intends to consider any anadromous *O. mykiss* that are found to occur in coastal streams and estuaries between the Santa Maria River and the U.S.- Mexico border to be part of the listed Southern California steelhead population unless there is

evidence indicating they are unlisted resident forms or derived from hatchery rainbow trout populations.

As discussed elsewhere in this document, NMFS believes that anadromous *O. mykiss* do not presently occur further south than San Mateo Creek, and in only two locations between Malibu Creek and San Mateo Creek. However, the southern boundary of anadromous *O. mykiss* in Southern California is likely to vary over time as a result of variable and unpredictable rainfall patterns and freshwater habitat conditions, and the ability of the anadromous form to stray or colonize new habitats. As information becomes available in the future that a persistent population of anadromous *O. mykiss* occurs in any other streams south of Malibu Creek, NMFS will promptly inform the public by means of notification in the **Federal Register**.

Comment 2: A few commenters asserted that the proposed range extension was not justified and or was inappropriate because there is no information indicating that steelhead occur in those streams located between Malibu Creek and San Mateo Creek.

Response: NMFS disagrees. NMFS believes the best available information indicates that the *O. mykiss* in San Mateo Creek are the progeny of steelhead that originated from some other stream located within the geographic range of the Southern California steelhead ESU and spawned in that watershed in 1997. As noted elsewhere in this final notice, the best available information NMFS possessed at the time of listing in 1997 suggested that anadromous *O. mykiss* did not occur further south than Malibu Creek. Therefore, the new evidence indicating that anadromous *O. mykiss* now occupy San Mateo Creek constitutes a southern extension of the range for this listed life history form. The fact that anadromous *O. mykiss* do not generally occur in streams between Malibu Creek and San Mateo Creek has no bearing on whether or not the fish in San Mateo Creek are part of the listed Southern California steelhead ESU. As NMFS emphasized in the proposed range extension, the habitat conditions in virtually all of the streams located between Malibu Creek and San Mateo Creek (e.g. Los Angeles River, San Gabriel River, Santa Ana River, San Juan Creek, etc.) are highly modified, and, therefore, are not presently suitable for utilization by steelhead. Absent significant habitat restoration efforts, NMFS does not expect these rivers or streams to support steelhead in the future.

Issue: Critical Habitat

Comment 3: One commenter argued that unoccupied or highly modified habitat (specifically the Los Angeles, San Gabriel, and Santa Ana Rivers) would be very costly to restore, and, therefore, should be excluded from any future modification of the existing critical habitat designation for this ESU.

Response: The ESA requires NMFS to designate critical habitat or make revisions to critical habitat on the basis of the best scientific data available, but only after taking into consideration the economic impacts of specifying any particular area as critical habitat. Therefore, in making any future revisions to the existing critical habitat designation for the Southern California steelhead ESU, NMFS will consider the economic impacts of designating any additional habitat whether it is occupied by steelhead or not.

Unless NMFS' failure to designate specific areas as critical habitat will result in the extinction of a listed species, the ESA allows the agency to exclude areas from critical habitat if it is determined that the benefits of such an exclusion outweigh the benefits of specifying such an area as part of the critical habitat. Because virtually all of the freshwater habitat available to steelhead south of Malibu Creek (the current southern extent of critical habitat for this ESU) to at least San Mateo Creek is highly modified, and, therefore, unlikely to support steelhead without substantial habitat restoration, NMFS intends to carefully evaluate and weigh the benefits of designating these habitats as critical habitat or excluding them from any revised designation.

Comment 4: Many commenters argued that in conjunction with the range extension for this ESU, NMFS should be designating critical habitat for steelhead in all watersheds south of Malibu Creek, including San Mateo Creek, that are within the historic range of steelhead whether the habitat is occupied or not.

Response: In making its critical habitat designation for the endangered Southern California steelhead ESU in February 2000 (65 FR 7764), the agency concluded that all occupied and accessible river reaches and estuarine areas in coastal river basins ranging from the Santa Maria River southward to and including Malibu Creek were essential for the recovery of the ESU. This determination was made, in part, because these basins were thought to provide essential habitat features such as spawning, rearing, and migration habitat, food resources, sufficient water quality and quantity, and riparian vegetation. Also contributing to NMFS' determination was the fact that the coastal river basins in this geographic area were historically important for the ESU (e.g. Santa Ynez, Ventura, and Santa Clara Rivers), and many of the river basins, both large and small and in relatively close proximity to one another, continued to support anadromous *O. mykiss* though at low levels of abundance on the scale of both individual river basins and the entire ESU.

In contrast, the situation that currently exists for coastal river basins south of Malibu Creek is quite different. Recent information, as discussed elsewhere in this document, does demonstrate that anadromous *O. mykiss* occur in at least two coastal river basins south of Malibu Creek (i.e. San Mateo Creek and Topanga Creek). The population in San Mateo Creek was only re-established recently as a result of adults that strayed into the watershed and spawned in 1997, and the presence of *O. mykiss* in Topanga Creek may be transitory. There is no evidence that anadromous *O. mykiss* occupy any of the other coastal river basins between Malibu Creek and San Mateo Creek, and many of these basins are so highly modified that they can not support anadromous *O. mykiss*. Further, there is no evidence that any other coastal river basins south of San Mateo Creek, within the historic range of steelhead, currently support the anadromous life form of *O. mykiss*. Because only two coastal watersheds south of Malibu Creek support anadromous *O. mykiss*, including San Mateo Creek which is well separated from the remainder of the populations in the listed ESU, and virtually all other coastal watersheds south of Malibu Creek do not support this anadromous life history form, 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.

NMFS believes that a determination of how much habitat south of Malibu Creek is essential for the conservation of this ESU is best left to NMFS' technical recovery planning process because it will be closely linked to the development of biological recovery goals for this ESU. The development of biological recovery goals will be the first task of the NMFS' appointed technical recovery team that will be responsible for addressing the Southern California steelhead ESU, and this task will require an assessment of the population structure of the ESU, as well as an evaluation of how many populations of

O. mykiss, including both their geographic distribution and size, are necessary to achieve recovery of the entire ESU. If NMFS' recovery team concludes through this assessment process that recovery of this ESU will require anadromous *O. mykiss* populations and the habitat to support them in coastal river basins south of Malibu Creek, then NMFS will conduct the requisite economic analysis to determine if these areas should be incorporated into the existing critical habitat designation for this ESU.

Comment 5: Many commenters argued that NMFS should designate critical habitat above manmade barriers throughout the current and historic range of steelhead in this ESU in conjunction with the range extension.

Response: In February 2000, NMFS designated critical habitat for the Southern California steelhead ESU, which included all occupied and accessible freshwater habitat in watersheds ranging from the Santa Maria River southward to Malibu Creek, which was considered to be the current range of listed anadromous *O. mykiss* at that time. River reaches that were inaccessible to anadromous *O. mykiss* above specific manmade barriers (e.g. dams), however, were not included in the critical habitat designation. This approach was consistent with NMFS' previous determination to list only the anadromous life form of *O. mykiss* below manmade barriers.

While substantial amounts of habitat historically occupied by anadromous *O. mykiss* may occur above manmade barriers in some watersheds in the Southern California steelhead ESU (e.g. the Santa Ynez River, Ventura River, Santa Clara River), NMFS has not conducted an assessment to determine if all or some of these blocked habitat areas are currently essential for the recovery of this steelhead ESU. In addition, the agency has not performed the requisite economic analyses needed to designate blocked habitat areas that are unoccupied as critical habitat.

Comment 6: Several commenters argued that critical habitat should be designated for steelhead on Camp Pendleton Marine Corps Base and that NMFS should not exclude this habitat from any designation because of concerns about impacts to the military mission of the Base.

Response: As discussed previously, NMFS believes that any assessment of whether or not freshwater and estuarine habitat south of Malibu Creek is essential for recovery of this ESU, including San Mateo Creek which occurs in large part on Camp Pendleton, needs to be made in conjunction with the development of biological recovery goals for this ESU. If NMFS' recovery planning process concludes that specific freshwater and estuarine habitats south of Malibu Creek, including San Mateo Creek, are essential for recovery of the ESU, then NMFS will do the requisite economic analyses necessary to revise the existing critical habitat designation.

As specified in Section 4(b)(2) of the ESA, however, NMFS may exclude an area from a critical habitat designation if the benefits of such an exclusion outweigh the benefits of specifying the area as part of the designation, provided that excluding the area will not result in the extinction of the listed species for which the habitat is being designated. In making any future determination about designating critical habitat south of Malibu Creek, including the San Mateo Creek watershed on Camp Pendleton, NMFS will thoroughly evaluate whether or not any potentially designated areas may be excluded from the designation based on this weighing of benefits.

Comment 7: One commenter argued that NMFS failed to comply with the National Environmental Policy Act (NEPA) and prepare an economic analysis.

Response: The main objectives of NMFS' proposal were to recognize that the freshwater geographic range of anadromous *O. mykiss* extended further south than was previously thought to be the case, and to ensure that any anadromous *O. mykiss* occurring south of Malibu Creek were protected under the ESA. In effect, the proposal was intended to aimed at clarifying the geographic range of a previously listed population. Because NMFS' proposal dealt with the geographic revision of a presently listed ESU and did not propose any modification to the existing critical habitat designation, there was no statutory requirement for NMFS to prepare any economic analyses. If NMFS concludes that the existing critical habitat designation for this ESU should be revised in the future to include freshwater and estuarine habitats south of Malibu Creek, then the requisite economic analyses required by the ESA and our implementing regulations will be prepared. NMFS has previously determined that it is not necessary to prepare NEPA analyses for listing decisions or critical habitat designations made pursuant to the ESA (See NOAA Administrative Order 216-6).

Issue: Biology and Ecology of Steelhead

Comment 8: Many commenters asserted that ''resident'' rainbow trout (resident *O. mykiss*) occurring both above and below dams or other barriers within the ''historic range'' of the species should be part of the listed Southern California steelhead ESU.

Response: NMFS' December 2000 proposed range extension dealt only with the anadromous form of *O. mykiss*, for which new distributional information was available, and did not address the status of resident forms above and below barriers. The relationship of resident forms to the anadromous form and the status of resident forms under the ESA is the subject of pending litigation.

Comment 9: Camp Pendleton questioned the long-term sustainability or viability of the steelhead population in San Mateo Creek in light of the variable rainfall, streamflow, and other habitat conditions for steelhead in Southern California. They also expressed concerns about the costs of maintaining habitat for a population that might not be viable in the long-term.

Response: The long-term persistence of steelhead in San Mateo Creek may be uncertain given its distance from potential source populations, the highly variable rainfall conditions in southern California that influence access to this watershed, and other factors affecting *O. mykiss* within the watershed. However, the steelhead in San Mateo Creek should not be viewed as an independent population or subpopulation that is unconnected to other steelhead populations or subpopulations in southern California. In contrast, the steelhead in San Mateo Creek should be viewed as part of a larger meta-population unit that is comprised of many other populations or subpopulations occupying other streams in the ESU, and it is the viability of this larger population unit that is most important. Individually, the production capability of small coastal streams in this ESU such as San Mateo Creek may be relatively small compared to larger, perennial river systems that are more productive and can support larger populations, but collectively both the small and large systems in the ESU provide a means to ensure a greater diversity of populations and/or subpopulations in the larger meta-population unit. In addition, the smaller systems provide for range expansion and recovery after drought or other perturbations that reduce population numbers. The utilization of larger numbers of both small and large scale habitats by anadromous *O. mykiss* increases the likelihood of the long-term persistence of the ESU. The fact that the *O. mykiss* population in San Mateo Creek is derived from anadromous parents that entered the watershed and

spawned indicates that adult steelhead can still utilize this system when conditions allow them to do so, and this underscores the need to protect the habitat values that still exist and provide for steelhead utilization of the system.

Comment 10: One commenter questioned whether specific populations of landlocked *O. mykiss* (i.e. Pauma Creek and Sweetwater Creek) would be part of the listed Southern California steelhead ESU, and, therefore, protected under the ESA as a result of this proposal.

Response: NMFS' December 2000 proposed range extension dealt only with the anadromous form of *O. mykiss*, for which new distributional information was available, and did not address the status of landlocked populations of resident forms. NMFS and FWS are currently engaged in discussions regarding this issue.

Comment 11: One commenter questioned why San Onofre Creek, which has steelhead habitat but does not currently support a steelhead population, was not specifically included in the range extension.

Response: The main objectives of NMFS' proposed range extension were three-fold: First, to notify the public that there was new information showing that the freshwater geographic range of anadromous *O. mykiss* extended south of Malibu Creek to at least San Mateo Creek; second, to notify the public that NMFS considered the *O. mykiss* found south of Malibu Creek to be part of the listed Southern California steelhead population; and third, to ensure that anadromous *O. mykiss* occurring south of Malibu Creek, either as isolated individuals or as populations would be protected under the ESA.

As discussed in the proposed rule, the new information that is available suggests that anadromous *O. mykiss* only occur as far south as San Mateo Creek. Although San Onofre Creek is located in close proximity to San Mateo Creek and does have habitat that could be utilized by anadromous *O. mykiss*, there is no evidence indicating that anadromous *O. mykiss* currently inhabit the San Onofre Creek watershed. Since the proposed range extension addressed only the distribution of listed anadromous *O. mykiss* rather than habitat that may potentially be utilized by this life history form, San Onofre Creek was not specifically included in the proposed range extension.

However, NMFS recognizes that suitable habitat may occur in watersheds south of San Mateo Creek (e.g. San Onofre Creek) and that anadromous *O. mykiss* historically occurred further south than San Mateo Creek. For these reasons, and because anadromous *O. mykiss* may stray to streams south of San Mateo Creek and occupy them when habitat conditions allow them to do so, NMFS will consider any anadromous *O. mykiss* found south of San Mateo Creek to be part of the listed ESU unless there is evidence indicating they are non-listed resident forms or are derived from hatchery rainbow trout populations. Because the southern extent of the range of anadromous *O. mykiss* may vary over time rather than remain fixed as a result of variable rainfall and other habitat conditions and the ability of the life form to stray from natal streams, NMFS has decided not to delineate a specified southern boundary for this ESU in this final determination.

Issue: Recovery and Management of Southern California Steelhead

Comment 12: One commenter indicated that a recovery plan is needed for the Southern California steelhead ESU and that any such plan must include the recently discovered San Mateo Creek population and any other steelhead populations that occur south of Malibu Creek.

Response: NMFS agrees that a recovery plan is needed for the endangered Southern California steelhead ESU. Within the next 6 months, NMFS is committed to establishing a recovery team to develop biological recovery goals that will provide the framework for identifying and evaluating the management and other measures that need to be implemented to achieve recovery of the ESU. As part of developing the biological recovery goals for this ESU, the recovery team will investigate the population structure of this ESU and then identify the number, size, and spatial distribution of populations and subpopulations that are needed over the geographic range of the ESU to achieve recovery. In making this assessment, the recovery team will take into consideration all steelhead populations within the ESU including the San Mateo Creek population, as well as fish that may occur further south. As discussed elsewhere in this notice, NMFS expects the recovery team to also evaluate whether or not *O. mykiss* populations above barriers, as well as the habitat that supports these populations, are necessary for recovery.

Comment 13: One commenter urged formulation of a recovery plan that restores historically occupied streams in Orange and San Diego Counties.

Response: It is premature to conclude that all historically occupied streams south of Malibu Creek in Orange and San Diego counties will need to be restored to achieve recovery of the Southern California steelhead ESU. The determination of how much historically occupied habitat, if any, must be restored to achieve recovery of this ESU is closely related to the development of biological recovery goals for this ESU. As discussed elsewhere in this document, the development of biological recovery goals will require an assessment of the population structure of the ESU and an evaluation of how many populations, including their size and spatial distribution, are necessary to achieve recovery. If the recovery planning process determines that recovery of this ESU will require the restoration of habitat and establishment of populations in currently unoccupied areas south of Malibu Creek, then a key component of the recovery planning effort will be to identify specific unoccupied streams that need to be restored and to lay out the measures needed to achieve that restoration.

Comment 14: One commenter advocated the development and implementation of a comprehensive restoration plan for steelhead and its habitat in San Mateo and San Onofre Creeks, both of which are located on Camp Pendleton.

Response: NMFS supports the development of a restoration plan for San Mateo and San Onofre Creeks. As discussed in the proposed rule, California voters passed a State-wide initiative that provided $800,000 for the restoration of these two creeks to support native fish species such as steelhead, three-spine stickleback, and arroyo chub. The California Coastal Conservancy controls these funds and is in the process of working with a wide range of agencies and organizations including the Cleveland National Forest, Camp Pendleton Marine Corps Base, FWS, DFG, NMFS, and environmental groups to develop and implement a restoration plan for these watersheds which focuses on key limiting factors. NMFS anticipates that this plan will focus on addressing the control of exotic plants, the control of exotic fish species which compete with and/or prey upon steelhead and other native species, and the possible restoration of habitat. In addition to this larger planning and restoration effort, NMFS expects to work closely with Camp Pendleton through section 7 of the ESA to evaluate, and if necessary to modify, its programs for protecting and managing these watersheds.

Comment 15: Camp Pendleton commented that it has been a good steward and manager of the San Mateo

Creek watershed, which functions principally as a migratory corridor, and that they are implementing management measures to protect this watershed and its associated riparian habitat.

Response: NMFS recognizes that the lower portion of San Mateo Creek which passes through Camp Pendleton serves mainly as a migration corridor. NMFS also recognizes that Camp Pendleton has worked closely with the FWS to develop and implement a riparian management program to protect FWS-listed species that are riparian dependent. Although this riparian management program was developed for FWS-listed species, the program likely provides benefits to steelhead and its habitat as well. As discussed previously, NMFS expects to engage Camp Pendleton in an ESA section 7 consultation that will evaluate the effects of its activities, including implementation of its riparian management strategy for San Mateo Creek, on steelhead and its habitat. If new or modified management measures are needed to protect and conserve steelhead and its habitat on Camp Pendleton, they will be developed through this section 7 process.

Comment 16: Camp Pendleton raised concerns about possible conflicts between steelhead protection and management on the Base and its ability to carry out the Base's training and national security mission.

Response: NMFS is sensitive to the need for Camp Pendleton to be able to carry out its military and national security missions. Nevertheless, it is important for Camp Pendleton, as a Federal agency, to fulfill its obligations under the ESA and ensure that their operations and activities do not jeopardize the continued existence of Southern California steelhead. NMFS is committed to working closely with Camp Pendleton through section 7 of the ESA to ensure that both goals can be met: the military and national security missions of Camp Pendleton and the conservation of steelhead and its habitat. Camp Pendleton has considerable experience dealing with the management of FWS-listed species that occupy habitat on the Base, including the development of a riparian management strategy and program for riparian dependent species in the San Mateo Creek watershed which is used by steelhead. This past experience demonstrates that the protection and conservation of ESA-listed species can be achieved in a manner that is compatible with the military mission of the Base. NMFS is confident that the protection and conservation of steelhead and its habitat on Camp Pendleton can also be achieved in a manner that is compatible with the military and national security missions of the Base.

Comment 17: Camp Pendleton committed to fulfilling all of its obligations under the ESA for the management of steelhead if further genetic testing demonstrated that the *O. mykiss* found in San Mateo Creek were steelhead and not hatchery trout plants.

Response: NMFS is confident that Camp Pendleton will fulfill its ESA section 7 obligations to ensure that the Southern California steelhead ESU is not jeopardized, as well as its further obligations under the ESA to promote steelhead conservation. As discussed elsewhere in this document, the results of additional genetic analysis (mtDNA) conducted on 16 tissue specimens by Dr. Jennifer Nielson demonstrated that all the sampled juvenile fish had the MYS5 haplotype carried by native coastal *O. mykiss* and were not of hatchery origin.

Issue: Sufficiency of Available Data

Comment 18: Several commenters opposed the proposed range extension and argued that there was insufficient data to conclude that the *O. mykiss* in San Mateo Creek are steelhead and part of the Southern California ESU. Some commenters argued that additional data needs to be collected to confirm NMFS's proposal and that in the interim any final determination should be delayed.

Response: NMFS recognizes that the proposed range extension was based on a limited amount of information; however, section 4(b)(1)(A) of the ESA requires that NMFS make any determinations about listing solely on the basis of the best available scientific and commercial data. At the time of the range extension proposal, NMFS believed it had the best available information and that the available information supported a conclusion that the juvenile *O. mykiss* in San Mateo Creek were the progeny of anadromous *O. mykiss* that had strayed from another stream in the Southern California steelhead ESU. In addition, NMFS believed it was important to formally recognize that the range of anadromous *O. mykiss* extended further south than was thought to be the case so that the public and potentially affected parties were aware that this life history form occurred south of Malibu Creek, at least to San Mateo Creek, and so that fish south of Malibu Creek would be protected under the ESA. Since NMFS proposed the range extension for anadromous *O. mykiss*, further genetic analysis has been conducted by Dr. Jennifer Nielsen on tissues samples from an additional 16 juvenile fish collected in 1999 and 2000. The results of this analysis demonstrate that all tested fish carried the mtDNA haplotype (MYS5) which is found most commonly in steelhead from southern California. This finding is consistent with the results of the more limited genetic analysis conducted originally by DFG and upon which the proposed range extension was in part based. NMFS believes it has used the best available information to make its determination, and that any further delay in protecting anadromous *O. mykiss* found south of Malibu Creek under the ESA is not consistent with the agency's obligation to protect and conserve this endangered population.

Comment 19: A few commenters speculated that the *O. mykiss* found in San Mateo Creek were actually hatchery trout planted by DFG or trout that had escaped from ponds stocked by private landowners with in-holdings in Cleveland National Forest.

Response: As discussed elsewhere in the response to comments, the available mtDNA data for all fish that have been tested to date (2 prior to NMFS' proposal and 16 after the proposal) shows that they carried the mtDNA haplotype (MYS5) which is most commonly found in southern California steelhead populations. This haplotype has not been found in any hatchery or domestic trout populations; thus, NMFS concludes that the juvenile *O. mykiss* found in San Mateo Creek are derived from native southern California steelhead and are not the result of domestic trout planting.

Comment 20: One commenter questioned whether the *O. mykiss* in San Mateo Creek are part of the Southern California ESU.

Response: As discussed in the proposed range extension, NMFS believes the available information (e.g. proximity of San Mateo Creek to nearest extant populations of southern California steelhead, mtDNA data demonstrating presence of a haplotype most common in Southern California steelhead populations, and otolith microchemistry data) all points to a conclusion that adult steelhead strayed into San Mateo Creek from elsewhere in Southern California and successfully spawned in 1997. As such, the *O. mykiss* in San Mateo Creek are progeny of anadromous *O. mykiss* (or steelhead) and should be part of the listed population. The additional mtDNA analysis performed by Dr. Jennifer Nielson is consistent with the original mtDNA analysis and reinforces this conclusion.

Comment 21: One commenter questioned the validity of the Southern California steelhead ESU as a definable

unit, as well as the overall ESU concept NMFS has developed and its applicability to steelhead on the west coast.

Response: NMFS disagrees with the commenter and believes that its ESU policy is scientifically sound and that the west coast steelhead ESUs, as defined, are consistent with the agency's stated policy.

NMFS has published a policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species such as *O. mykiss* (see 56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with the NMFS policy, regarding the definition of DPSs (see 61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids, therefore it has been used by NMFS for all of its west coast salmonid ESU determinations, including those for west coast steelhead (see 61 FR 41541 and 62 FR 43937). This policy states that one or more naturally reproducing salmonid populations will be considered distinct, and, therefore, a ''species'' under the ESA if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component of the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on how this policy should be applied is contained in a NOAA Technical Memorandum entitled: ''Definition of 'Species' under the ESA: Application to Pacific Salmon'' (Waples 1991). A more detailed discussion of steelhead ESU boundaries and the factors NMFS considered in defining these ESUs, including the Southern California steelhead ESU, is provided in the proposed and final listing determinations for west coast steelhead (61 FR 41541; 62 FR 43937). In making these ESU determinations, NMFS relied on genetic, ecological, life history, and habitat related information.

Issue: Factors Contributing to Decline or Risk

Comment 22: One commenter asserted that the Foothill Corridor is a ''threat'' to the San Mateo Creek steelhead population and that NMFS' proposal did not adequately acknowledge this risk factor.

Response: NMFS acknowledges that it did not explicitly discuss the Foothill Corridor project, which is currently in the planning stages, as a possible threat to the destruction, modification, or curtailment of steelhead habitat in San Mateo Creek. NMFS is well aware of this project and has been coordinating with the Federal Highway Administration (FHA) as part of the environmental review process which is currently ongoing for the project. NMFS recognizes that the project could have some potential impacts on the San Mateo Creek watershed depending upon which project alternative is selected and how the project is designed, constructed, operated, and mitigated. NMFS will continue to coordinate with FHA as the NEPA documentation for the project is prepared and provide comments and recommendations as appropriate. Because this project has the potential to impact anadromous *O. mykiss* in San Mateo Creek, as well as the watershed itself, NMFS expects that FHA will initiate an ESA section 7 consultation with us to ensure that construction and operation of the project does not jeopardize anadromous *O. mykiss* and that any impacts are minimized.

Issue: Economic Effects

Comment 23: One commenter asserted that expanding the range of the listed ESU would create economic burdens or impacts on local agencies, particularly in those areas where anadromous *O. mykiss* do not occur in watersheds between Malibu Creek and San Mateo Creek. For this reason, the commenter argued that NMFS should not expand the range of the ESU.

Response: NMFS does not believe that the range extension will cause economic impacts in those watersheds where anadromous *O. mykiss* do not presently occur. In the proposed range extension, NMFS made it clear that anadromous *O. mykiss* were only thought to occur in two streams south of Malibu Creek (i.e., San Mateo Creek and Topanga Creek), and that all other streams and watersheds had been so highly modified that they no longer contained habitat suitable for supporting anadromous *O. mykiss*. Issue: Administrative Process

Comment 24: One commenter criticized NMFS for failing to make all of the data underlying its range extension proposal available for public review.

Response: NMFS described all of the information supporting the proposed range extension in the **Federal Register** publication announcing the proposal (65 FR 79328). The **Federal Register** document also identified NMFS' points of contact for futher information, and directed interested parties to request further information or references from the Southwest Region's Assistant Regional Administrator or the identified point of contact. All information upon which the proposed range extension was based was readily available on request and at least one party did request the information.

Comment 25: One commenter believed NMFS should extend the public comment period to provide greater opportunity for public comment and review of the available information supporting the proposed range extension.

Response: The original comment period for the proposed range extension was 60 days. NMFS did extend the public comment period an additional 30 days, both to provide the public with additional opportunity to review the proposed extension and develop comments, as well as to accommodate a public hearing which was held in San Clemente, CA.

Comment 26: Many commenters requested that NMFS hold one or more public hearings to take public testimony on the proposed range extension.

Response: In response to many such requests, NMFS did schedule a public hearing in San Clemente, CA. This hearing location was selected because it was in close proximity to San Mateo Creek which was the focus of the proposed range extension. The selection of this location resulted in a well attended hearing and provided an opportunity for 37 individuals to provide comments. To accommodate this hearing, NMFS extended the public comment period an additional 30 days.

Revised Geographic Range of Listed Southern California Steelhead

In August 1997, NMFS listed the Southern California steelhead ESU as an endangered species (62 FR 43937). Although this ESU was broadly described as occupying all coastal rivers from the Santa Maria River southward to the southern extent of the species range, the final regulation more specifically defined the listed population as all naturally spawned populations of steelhead (i.e. anadromous *O. mykiss*), and their progeny, which occupied rivers and streams from the Santa Maria River in San Luis Obispo County, CA (inclusive) to Malibu Creek in Los Angeles County, CA (inclusive). Although Malibu Creek was identified as the southernmost stream supporting a persistent, naturally

spawning population of anadromous *O. mykiss* based on the best available information, NMFS acknowledged in both the proposed (61 FR 41541) and final listing determinations that there was some limited anecdotal information that the anadromous life form may occasionally occur as far south as the Santa Margarita River.

As described in NMFS' December 19, 2000, proposed range extension for listed Southern California steelhead (65 FR 79328), new information was collected and analyzed by the California Department of Fish and Game (DFG) in 1999 and 2000 (DFG 2000) that indicated anadromous *O. mykiss* spawned and were rearing in San Mateo Creek which is located approximately 100 miles (161.3 kilometers (km)) further south than Malibu Creek which had previously been identified as the southernmost coastal stream supporting *O. mykiss* The San Mateo Creek watershed arises in the Cleveland National Forest and flows in a southwesterly direction to the Pacific Ocean just south of San Clemente in northern San Diego County. Much of the lower portion of San Mateo Creek flows through the Camp Pendleton Marine Corps Base. Approximately 6-7 miles (9.7-11.3 km) are accessible to anadromous *O. mykiss* in the mainstem and tributaries. According to information in Titus *et al.* (in press), Woelfel (1991), and DFG (2000), San Mateo Creek was an important steelhead-producing stream prior to 1950 and evidently supported a local sport fishery of both juveniles and adults. More recently, however, Nehlsen *et al.* (1991) classified the San Mateo Creek steelhead population as extinct.

Although this new information is limited, it is the best available information, and it indicates that adult steelhead entered San Mateo Creek and successfully spawned in 1997. The juvenile progeny of those spawning adults were observed by DFG during its field investigations in the spring and summer of 1999. More recent information from DFG in May 2000 suggests that *O. mykiss* still occupy portions of San Mateo Creek and may have successfully spawned again since 1997. The limited genetic information presented by DFG (DFG, 2000) suggests that the juvenile *O. mykiss* found in 1999 have close genetic affinities to native southern California steelhead and are not the result of domestic trout planting. More recently, Dr. Jennifer Nielsen has completed mtDNA analysis of an additional 16 tissues samples from *O. mykiss* collected in San Mateo Creek in 1999 and 2000. The results of this analysis indicate that all sampled fish carried the MYS5 haplotype which is found most commonly in southern California steelhead. Since there is no evidence of a resident trout population or recent evidence of steelhead presence in San Mateo Creek (DFG, 2000; Titus *et al.*, in press; Lang *et al.*, 1998), NMFS believes the adult steelhead which successfully spawned in 1997 were strays from another watershed elsewhere in the Southern California steelhead ESU. Based on the information collected by DFG (DFG, 2000), the new genetic data analysis performed by Dr. Jennifer Nielsen, and a review of all comments on the proposed range extension, NMFS concludes that the *O. mykiss* population in San Mateo Creek is part of the listed Southern California steelhead population.

The Malibu Creek and San Mateo Creek watersheds are separated by approximately 100 miles (161.3 km). Therefore, inclusion of the San Mateo Creek steelhead population in the Southern California ESU raises the question of whether or not steelhead occur or may be present in those watersheds located between Malibu Creek and San Mateo Creek. Based on information reported by Titus *et al.* (in press), steelhead were historically reported in several watersheds between Malibu Creek and San Mateo Creek (i.e., Los Angeles River, San Gabriel River, Santa Ana River, and San Juan Creek), but are now extinct as a result of major habitat modification or habitat blockage associated with flood control, urban development, and other factors. Given the existing habitat conditions in these highly modified river systems, NMFS does not believe they are currently suitable for steelhead utilization, and, therefore, are highly unlikely to support steelhead absent major restoration efforts.

Information regarding the current presence of *O. mykiss* in other streams between Malibu Creek and San Mateo Creek is lacking with the exception of a recent observation of fish in Topanga Creek which is approximately 4 miles (6.5 km) south of Malibu Creek. Titus *et al.*, (in press) indicated that *O. mykiss* were observed in Topanga Creek in 1979 and in the early 1990s. In April 2000, an adult *O. mykiss* was reported in Topanga Creek. A NMFS' biologist conducted a site visit and confirmed the presence and identification of two *O. mykiss* ranging from 14-20 inches (359-573 mm) in total length. Both fish were observed in a relatively deep pool (4 ft (1.2 meters (m))deep) located about 1 mile (1.7 km) upstream of the confluence with the ocean. Based on the existing habitat conditions and the size of the fish, it is unlikely that they spent their entire life cycle in Topanga Creek. Since there is no evidence of any stocking of rainbow trout in Topanga Creek, it is most likely that these fish originated from some other stream within the ESU. The nearest streams known to support steelhead are Malibu Creek and Arroyo Sequit, both of which are located only a few miles north of Topanga Creek.

NMFS recognizes that habitat suitable for anadromous *O. mykiss* may occur in watersheds south of San Mateo Creek (e.g. San Onofre Creek and perhaps elsewhere) and that anadromous *O. mykiss* historically occurred further south than San Mateo Creek. For these reasons, and because anadromous *O. mykiss* may stray to streams south of San Mateo Creek just as they did to San Mateo Creek in 1997 during years of high rainfall, NMFS will consider all anadromous *O. mykiss* that are found to occur in coastal streams, including estuarine habitat, between Malibu Creek and San Mateo Creek or further south of San Mateo Creek to be part of the listed Southern California steelhead population unless there is evidence indicating they are non-listed resident forms or are derived from hatchery rainbow trout populations. Because the southern boundary of anadromous *O. mykiss* in Southern California is likely to vary over time given highly variable and uncertain rainfall patterns and habitat conditions, NMFS is not delineating a specific stream as the southern boundary for the listed population in this final rule. Instead, the final rule indicates that the listed *O. mykiss* population extends from the Santa Maria River to the southern extent of the species range. As discussed previously, however, NMFS does not believe that anadromous *O. mykiss* presently occur further south than San Mateo Creek. If information becomes available in the future that a persistent population of anadromous *O. mykiss* exists further south than San Mateo Creek, NMFS will promptly inform the public by means of notification in the **Federal Register**.

Status of Southern California Steelhead ESU

The Southern California steelhead ESU was listed as an endangered species in August 1997 (62 FR 43937). As discussed in the final listing determination, this ESU is considered to be at a high risk of extinction based on the results of NMFS' west coast steelhead status review (Busby *et al.*, 1996) and in a subsequent status update (NMFS, 1997).

Historically, steelhead occurred as far south as northern Baja California. Titus *et al.*, (in press), as cited in the final listing determination, concluded that all steelhead populations south of Malibu Creek in Los Angeles County were extinct. Estimates of pre-1960s abundance for several rivers in this ESU (i.e. Santa Ynez, Ventura, Santa Clara, Malibu Creek) suggest that individual steelhead populations numbered in the thousands of individuals. Published abundance estimates for the Ventura and Santa Clara Rivers, for example, ranged from 4,000-6,000 and 7,000-9,000 fish, respectively. At the time of NMFS' final listing determination in 1997, the total run size for several streams in the ESU (e.g., Santa Ynez, Ventura River, Santa Clara River, Malibu Creek) was estimated to number fewer than 200 individuals each (Titus *et al.*, in press). Recent information regarding steelhead abundance for the Santa Ynez, Ventura, and Santa Clara Rivers suggests that the abundance estimates made at the time of the final listing determination were probably high.

NMFS' primary concerns about this ESU at the time of listing were the widespread and dramatic declines in abundance relative to historical levels, and the major reduction in the species range. Given the extremely low abundance estimates and the associated risk associated with demographic and genetic variability in small populations, the long-term persistence or sustainability of this ESU in the future was a critical concern to NMFS. In addition, NMFS was concerned that the restricted spatial distribution of the remaining populations placed the ESU as a whole at risk because of reduced opportunities for re-colonization of streams suffering local population extinctions. NMFS concluded that the principal factors responsible for the decline of steelhead populations within this ESU were water diversions and extraction, habitat blockages and degradation, agricultural activities, and urbanization. Little new information regarding the abundance of steelhead in this ESU has been collected since NMFS' final listing determination in 1997, with the exception of limited data collected as a result of monitoring efforts in the Santa Ynez and Santa Clara Rivers. These data are not comprehensive enough to estimate population sizes, but they do indicate that these steelhead populations in Southern California continue to be very small.

As discussed previously in this document, NMFS has concluded that the *O. mykiss* population in San Mateo Creek is part of the Southern California ESU based on the available information. Based on the information compiled and analyzed by DFG (DFG, 2000), the juvenile *O. mykiss* population found in San Mateo Creek in 1999 appeared to be very small and was likely produced by a limited number of adults that strayed into the watershed and spawned in 1997. Given the small number of fish found in San Mateo Creek, the absence of any other naturally reproducing populations of steelhead in those streams occurring between Malibu Creek and San Mateo Creek, and the extremely low abundance estimates for all other populations within the ESU, NMFS concludes that the Southern California steelhead ESU continues to be at a high risk of extinction.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

In conjunction with its proposed listing determination for west coast steelhead ESUs in 1996, NMFS prepared a report summarizing the factors leading to the decline of west coast steelhead, including the Southern California steelhead ESU. This report was entitled: ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996). This report concluded that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of west coast steelhead ESUs. The report specifically identified destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary causes for the decline of steelhead on the west coast.

NMFS (1996) identified several specific factors that contributed to the decline of steelhead populations in the Southern California ESU as it was defined in the proposed and final listing determinations, including: habitat blockages, water diversion and extraction, urbanization, agriculture, and recreational harvest. McEwan and Jackson, 1996; and Titus *et al.*,(in press) also cited extensive loss of habitat due to water development, impassible dams, and de-watering of portions of rivers as the principal reasons for the decline of steelhead in Southern California. Habitat problems resulting from water development include inadequate flows, flow fluctuations, blockages (partial and full), and entrainment (McEwan and Jackson, 1996). These factors for decline are discussed in more detail in NMFS (1996), McEwan and Jackson (1996), and in NMFS' 1997 final listing determination (62 FR 43937). Although NMFS has been working to address impacts to this endangered ESU through sections 7 and 10 of the ESA since it was listed in 1997, these same factors continue to adversely affect the small steelhead populations which persist in the watersheds ranging from the Santa Maria River southward to the southern extent of this life form's range.

As discussed previously, NMFS has decided not to delineate a specific stream as the southern boundary for the listed anadromous *O. mykiss* population in this final rule because the southern boundary of this life form is likely to vary over time due to variable and unstable climatic, hydrographic, and freshwater habitat conditions, and the ability of this life form to naturally stray from its natal streams. Nevertheless, the currently available information indicates that anadromous *O. mykiss* do not occur in coastal streams south of San Mateo Creek. Accordingly, the following discussion focuses only on those factors affecting anadromous *O. mykiss* within the geographic area that extends from Malibu Creek southward to and including San Mateo Creek.

1. The Present or Threatened Destruction, Modification, or Curtailment of Steelhead Habitat or Range

With the exception of the recent observations of fish in San Mateo Creek and Topanga Creek, anadromous *O. mykiss* populations south of Malibu Creek are thought to be extirpated due to habitat destruction or blockages associated with urbanization and flood control (Titus *et al.*, in press), although extensive monitoring has not been conducted to assess their presence. For example, steelhead access and use of the Los Angeles River is currently precluded by the presence of flood control structures throughout much of its lower reach such as the concrete lining of the river channel and the dam at the Sepulveda Flood Control Basin. The lower reaches of the San Gabriel River are highly urbanized with the

channel modified for flood control, and the river is impounded further upstream. The Santa Ana River is similarly modified for flood control and flows largely consist of effluent from water treatment plants except in the rainy season. Because of these limited flows and restricted releases from Prado Dam, fish habitat is limited in the lower Santa Ana River. San Juan Creek, a much smaller stream in southern Orange County, is also channelized for flood control in its lower reach (approximately 2-3 miles (3.2-4.8 km)) and other potential barriers to upstream movement also exist.

San Mateo Creek was once thought to be an important production area for steelhead in San Diego County (Nehlsen *et al.*, 1991; DFG, 2000). As summarized in Titus *et al.*, (in press), steelhead appear to have been most abundant in the San Mateo Creek watershed prior to 1950. After 1950, there are many fewer observations of steelhead and none after the early 1980s until fish were found there in 1999. For example, Woelfel (1991) found no steelhead or resident trout in San Mateo Creek during surveys in 1987-88. Similarly, Lang *et al.*, (1998) failed to observe or capture any steelhead during surveys in 1995, 1996, and 1997. The steelhead population in San Mateo Creek was probably reduced by natural episodes of sediment input from within the watershed. However, increased groundwater extraction in the lower creek area since the mid-1940s may also have contributed to reducing the ability of steelhead to use the system as they historically did (DFG, 2000; Titus *et al.*, in press; Lang *et al.*, 1998). Riparian vegetation has been lost, stream channel width has increased, and surficial flow has been reduced or eliminated during most of the year. Accordingly, the migration corridor for immigrating adult and emigrating juvenile steelhead has become unreliable. Human-caused fires farther upstream have also resulted in large sediment input that has filled pools and contributed sediment to the lagoon at the river mouth, both of which are important rearing habitat for juvenile steelhead. Although habitat conditions in the lower river may not always be conducive to adult or juvenile passage, Lang *et al.*, (1998) and DFG (2000) have identified upstream spawning and rearing habitat which can be used by steelhead if sufficient stream flows allow for adult passage.

2. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

NMFS' review of factors affecting west coast steelhead concluded that harvest was a factor contributing to the decline of the Southern California steelhead ESU (NMFS, 1996). According to McEwan and Jackson (1996), steelhead in most streams in Santa Barbara, Ventura, and Los Angeles Counties were until the early 1990s subject to the most liberal angling regulations anywhere in the State of California. Most streams in southern California were regulated by the general regulations of the Southern Sport Fishing District (which includes Santa Barbara, Ventura, Los Angeles, Orange, and San Diego counties) which allowed fishing year-round with a five-fish daily bag limit. The only streams with special protective regulations were the Ventura River and Malibu Creek.

Because steelhead populations in southern California had declined to such critically low population levels by the early 1990s, the California Fish and Game Commission (Commission) adopted more restrictive angling regulations for some streams (Santa Ynez River, Ventura River, Santa Clara River, and Gaviota Creek) in 1994. These more stringent regulations included: (1) a reduction in the fishing season from year round to the Saturday before Memorial Day through December 31; (2) a zero bag limit; and (3) a requirement that anglers use artificial lures with barbless hooks. In 1996, these same regulations were adopted by the Commission for the anadromous reaches of all coastal streams in southern California. Within the coastal area extending south of Malibu Creek to San Mateo Creek, these same regulations are now in effect for the following streams: Topanga Creek, San Juan Creek, and San Mateo Creek. Given the extremely low numbers of juvenile steelhead that were found in San Mateo Creek, and the possible sporadic occurrence of small numbers of steelhead in other streams, recreational angling may continue to be a risk to steelhead in some streams south of Malibu Creek.

3. Disease or Predation

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous west coast river systems, thereby increasing the level of predation experienced by steelhead and other salmonids (NMFS, 1996). Exotic fish species that are potential predators of *O. mykiss* are known to occur in San Mateo Creek and other watersheds (San Onofre Creek, Santa Margarita River) on Camp Pendleton (Lang *et al.*, 1998). According to Lang *et al.*, (1998) brown bullhead dominated the fish assemblage in San Mateo Creek, with both adults and juveniles observed in perennial pools. Other species observed in the San Mateo Creek watershed include mosquito fish, adult and juvenile green sunfish, bluegill, and largemouth bass. One Channel catfish, which is a known predator of steelhead, was found dead in the upper San Mateo Creek in a portion of the Cleveland National Forest (Lang *et al.*, 1998). Brown trout have been stocked in San Mateo Creek (last time in the mid 1980s), but they were not observed during the most recent surveys (Lang *et al.*, 1998).

Mosquito fish were introduced for mosquito abatement and are found in most Camp Pendleton waters. This species has taken over the niche of the native three-spine stickleback which is often an important prey item for salmonids; thus, it could possibly serve as a prey item for steelhead in San Mateo Creek. Green sunfish dominated the San Mateo Creek lagoon in the late 1980s and early 1990's according to Swift (1994) and were the only fish found in perennial pools in the upper watershed and Devil Canyon in the late 1980's, suggesting that they may have displaced residual steelhead during the drought period (Woelfel, 1991). In other California streams (i.e., Malibu Creek and Carmel River) green sunfish were found to prey on juvenile trout (Swift, 1975; Greenwood, 1988; cited in Woelfel, 1991), and in San Clemente Reservoir on the Carmel River, green sunfish outcompeted trout for benthic food (Greenwood, 1988).

The control of exotic fish species in the San Mateo Creek watershed, both on Camp Pendleton and in Cleveland National Forest, is considered critical to reducing impacts to steelhead in that watershed (DFG, 2000; Lang *et al.*, 1998). Lang *et al.*, (1998) recommended implementation of measures to contain exotic fish species in small lakes and ponds where recreational fishing occurs, in conjunction with efforts to control in-river propagation of exotics using Rotenone, electro-shocking, seining, or other means in perennial pools during summer low flows.

4. Inadequacy of Existing Regulatory Mechanisms

Virtually all of the San Mateo Creek watershed is located on Federal land managed by the Cleveland National Forest and the Camp Pendleton Marine Corps Base. San Mateo Creek originates in the Cleveland National Forest and flows in a southwesterly direction through Camp Pendleton to the Pacific Ocean just south of San Clemente, CA. Within the San Mateo Creek watershed, the majority of spawning and rearing habitat is upstream from Camp Pendleton within the Cleveland

National Forest. That portion of San Mateo Creek on Camp Pendleton serves primarily as migratory habitat for adults and juveniles.

That portion of the San Mateo Creek watershed located on Cleveland National Forest land has not been greatly altered by human activity over the past 50 years (Woelfel, 1991). Forest lands in the watershed have remained natural and undeveloped over this period although there are a few private property in-holdings which have had limited development. Woelfel (1991) reviewed water use on these private in-holdings and concluded that stream flows in the watershed were not significantly altered. According to Woelfel (1991), one of the main activities of the Cleveland National Forest has been the protection of vegetation and water resources in its various watersheds through the prevention of forest fires. In part, this effort was intended to protect and manage forest vegetation so that water resources were retained and water quality remained high.

The lower portion of San Mateo Creek watershed, which flows through Camp Pendleton, may have been impacted by base activities according to Woelfel (1991). Woelfel (1991) suggested that groundwater extraction to support base military training operations and on-base agriculture has led to stream channel de-watering or reduced channel flows, loss of riparian vegetation, and increased erosion, and that military training operations, including accidental fires caused by live ammunition use, may have contributed to erosion problems in the watershed. The cumulative effect of groundwater extraction, reduction or loss of riparian vegetation, stream channel morphology changes, and accelerated erosion is that steelhead may have reduced opportunities for both upstream and downstream migration. Camp Pendleton has developed a programmatic management plan for protecting and conserving riparian dependent species that occur on the Base which includes the San Mateo Creek watershed. NMFS expects to work with Camp Pendleton to evaluate the effectiveness of this plan in protecting steelhead.

5. Other Natural or Human-Made Factors Affecting Continued Existence of Steelhead

Natural climatic conditions have exacerbated the problems associated with degraded and altered riverine and estuarine habitats. Persistent drought conditions have reduced already limited spawning, rearing and migration habitat. Climatic conditions appear to have resulted in decreased ocean productivity which, during more productive periods, may help offset degraded freshwater habitat conditions (NMFS, 1996). Efforts Being Made to Protect the Southern California Steelhead ESU

In conjunction with its west coast steelhead status review, NMFS reviewed a wide range of protective efforts for west coast steelhead and other salmonids, ranging in scope from regional strategies to local watershed initiatives. NMFS has summarized some of the major efforts in a document entitled ''Steelhead Conservation Efforts: A Supplement to the Notice of Determination for West Coast Steelhead under the Endangered Species Act'' (NMFS, 1996c).

In the coastal area extending from Malibu Creek southward to San Mateo Creek, steelhead-specific conservation efforts are currently very limited. The FWS recently completed an assessment of habitat distribution and restoration potential on the Camp Pendleton Marine Corps Base (Lang *et al.*, 1998; and DFG, 2000). Over the past 2 years, the DFG has made several qualitative assessments of steelhead presence in the San Mateo Creek watershed and has also undertaken several efforts to remove exotic predators from pools know to contain steelhead which are located in that portion of the watershed which occurs in the Cleveland National Forest.

In addition, efforts are currently underway on the development of restoration plans for San Mateo Creek and San Onofre Creek, both of which are located on Camp Pendleton, to support native fish species including the unarmored three-spine stickleback, arroyo chub, and steelhead. This restoration planning effort is expected to focus on control of exotic plants, control of exotic fish species which compete with and/or prey upon steelhead and other native species, restoration of streambed pools, channels, and stream banks, and the reintroduction of native plants and possibly native fish species. Several agencies and private organizations, including the Cleveland National Forest, Camp Pendleton Marine Corps Base, FWS, DFG, Trout Unlimited, San Diego Trout, and the Coastal Conservancy, are participating in development of this program. NMFS strongly supports this effort and will continue to participate in its development and implementation.

In addition to this restoration planning which is directed specifically at San Mateo and San Onofre Creek restoration, additional funding is potentially available for habitat restoration in other coastal watersheds in Southern California through DFG's Habitat Restoration Grant Program. For the past 3 years NMFS has transferred at least $9.0 million annually from its Pacific Coast Salmon Recovery Fund to the State of California for use in this Grant Program. A Memorandum of Understanding between NMFS and the State of California governs the expenditure of these funds, some of which have already been allocated for the habitat restoration projects within the geographic range of the endangered Southern California steelhead ESU.

Final Determination

Based on the best scientific information available at the time of listing in 1997, NMFS concluded that the Southern California steelhead ESU, as it was then defined (i.e., Santa Maria River to and including Malibu Creek), was in danger of extinction and should be listed as an endangered species (621 FR 43937). This determination was based on the fact that steelhead had already been extirpated from much of its historic range in southern California, the extremely low abundance of extant steelhead populations, and the continued threats to the species from widespread habitat degradation and loss, water diversions and extraction, and other factors. As discussed previously in this document, there is no new information indicating that steelhead populations occurring in watersheds ranging from the Santa Maria River to Malibu Creek have increased in abundance since the ESU was listed in 1997, and populations in this geographic area continue to be threatened by the same factors that existed at the time of listing.

Steelhead are almost completely extirpated from coastal watersheds south of Malibu Creek, with the exception of their recent observations in Topanga Creek and San Mateo Creek, and they occur only sporadically or in extremely low abundance in those streams. As discussed previously, most of the coastal rivers and streams south of Malibu Creek are highly impacted or modified and no longer support steelhead. Where steelhead have recently been found in San Mateo Creek, there are potential threats to their existence from land management activities on Cleveland National Forest and the Camp Pendleton Marine Corps Base.

Based on a review of the currently available information regarding the status of steelhead in the redefined Southern California ESU, as well as a consideration of the factors affecting steelhead throughout this geographic area, NMFS concludes that Southern

California steelhead ranging from the Santa Maria River to the southern extent of this life form's range continue to be endangered. As was the case in NMFS' 1997 listing determination, only the anadromous form of *O. mykiss* (i.e. steelhead and their progeny) ranging from the Santa Maria River to the southern extent of this life form's range is listed.

As discussed previously in this document, the currently available information indicates that anadromous *O. mykiss* or their progeny have only been found in two watersheds located south of Malibu Creek (Topanga Creek and San Mateo Creek). NMFS believes that steelhead have been extirpated from virtually all other streams and rivers between Malibu Creek and San Mateo Creek, including the Los Angeles River, San Gabriel River, Santa Ana River, and San Juan Creek, because viable habitat is extremely limited or no longer exists as a result of habitat degradation. For these reasons, NMFS does not expect that steelhead will be found to occupy these watersheds in the future absent major restoration efforts. Nevertheless, if steelhead or their progeny are found to occur in any stream or river between Malibu Creek and San Mateo Creek, NMFS will consider those fish to be part of the listed populations, and, therefore, protected under the ESA. Because anadromous *O. mykiss* may potentially stray to streams south of San Mateo Creek when hydrological and other habitat conditions are favorable, NMFS will also consider steelhead or their progeny that occur south of San Mateo Creek to be part of the listed ESU unless there is evidence to indicate they are non-listed resident forms or derived from hatchery rainbow trout populations.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species such as Southern California steelhead throughout its freshwater, estuarine, and marine range.

Sections 7(a)(2) and 7(a)(4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or adversely modify critical habitat or proposed critical habitat. Federal agencies and actions that may be affected by the revision of the Southern California steelhead ESU and its critical habitat designation are the U.S. Forest Service (USFS) and their management and regulatory activities in Cleveland National Forest, the U.S. Marine Corps and its operation and management of Camp Pendleton Marine Corps Base, and the Corps of Engineers (COE) and its issuance of permits under the Clean Water Act.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for listed salmonids, including Southern California steelhead, to conduct activities such as trapping and tagging and other research and monitoring activities.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities conducting activities which may incidentally take listed species so long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state regulated angling, academic research not receiving Federal authorization or funding, road building, grazing, and diverting water onto private lands.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, NMFS and FWS published a policy in the **Federal Register** (59 FR 34272) indicating that the agencies would, to the maximum extent practicable at the time a species is listed, identify those activities that will not be considered likely to result in violations of section 9, as well as activities that will be considered likely to result in violations. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9 with regard to Southern California steelhead:

1. Possession of steelhead which are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

2. Federally funded or approved projects that involve activities such as military operations, agriculture, grazing, mining, road construction, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

3. Incidental take of steelhead authorized through a section 10(a)(1)(B) permit which occurs in the course of an otherwise lawful activity.

Activities that NMFS believes could potentially harm Southern California steelhead, and, therefore, may violate the section 9 take prohibitions of the ESA include, but are not limited to:

1. Land-use activities that adversely affect steelhead habitat (e.g., agriculture, water extraction, recreational activities, road construction in riparian areas and areas susceptible to mass wasting and surface erosion).

2. Destruction/alteration of steelhead habitat, such as removal of woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting steelhead.

4. Violation of discharge permits.

5. Pesticide applications.

6. Collecting or handling of steelhead. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

7. Introduction of non-native species likely to prey on steelhead or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a prohibited take of Southern California steelhead. Questions regarding whether specific activities may constitute a violation of the section 9 take prohibitions, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Critical Habitat

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. In accordance with this requirement, NMFS designated freshwater and estuarine critical habitat for the endangered

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