

application; announcement of the intent to issue the EFP; request for comments.

**SUMMARY:** NMFS announces the receipt of an application, and the intent to issue EFPs for vessels participating in an observation program to monitor the incidental take of salmon and groundfish in the shore-based component of the Pacific whiting fishery. The EFPs are necessary to allow trawl vessels fishing for Pacific whiting to delay sorting their catch, and thus to retain prohibited species and groundfish in excess of cumulative trip limits until the point of offloading. These activities are otherwise prohibited by Federal regulations.

**DATES:** Comments must be received by March 29, 2004. The EFPs will be effective no earlier than April 1, 2004, and will expire no later than May 31, 2005, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

**ADDRESSES:** Send comments or request for copies of the EFP application to Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115 0070 or email [EFPwhiting2004.nwr@noaa.gov](mailto:EFPwhiting2004.nwr@noaa.gov). Comments sent via email, including all attachments, must not exceed a 10 megabyte file size.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko or Carrie Nordeen at (206) 526 6150.

**SUPPLEMENTARY INFORMATION:** This action is authorized by the Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745 which states that EFPs may be used to authorize fishing activities that would otherwise be prohibited. At the November 2003 Pacific Fishery Management Council (Council) meeting in Del Mar, California, NMFS received an application for these EFPs from the States of Washington, Oregon, and California. An opportunity for public testimony was provided during the Council meeting. The Council recommended that NMFS issue the EFPs, as requested by the States.

Issuance of these EFPs, to about 40 vessels, will continue an ongoing program to collect information on the incidental catch of salmon and groundfish in whiting harvests delivered to shore-based processing facilities by domestic trawl vessels. Because whiting deteriorates rapidly, it must be handled quickly and immediately chilled to maintain the quality. As a result, many vessels dump catch directly or near directly into the hold and are unable to effectively sort their catch.

The issuance of EFPs will allow vessels to delay sorting of groundfish catch in excess of cumulative trip limits and prohibited species until offloading. These activities are otherwise prohibited by regulation. For 2004, video cameras that are provided by NMFS, will be used to monitor full retention at sea. Information gathered from video cameras may be used to assess the effectiveness of video monitoring for full retention monitoring programs.

Delaying sorting until offloading will allow samplers located at the processing facilities to collect incidental catch data for total catch estimates and will enable whiting quality to be maintained. Without an EFP, groundfish regulations at 50 CFR 660.306(b) require vessels to sort their prohibited species catch and return them to sea as soon as practicable with minimum injury. Similarly, regulations at 50 CFR 660.306(f) prohibit the retention of groundfish in excess of the published trip limits.

In addition to providing information that will be used to monitor the attainment of the shore-based whiting allocation, information gathered through these EFPs is expected to be used in a future rulemaking. For 2005, NMFS intends to implement, through federal regulation, a monitoring program for the shore-based Pacific whiting fleet. The Council recommended using EFPs only until a permanent monitoring program can be developed and implemented. NMFS is developing a preliminary draft Environmental Assessment which includes a range of alternative monitoring systems for the shore-based Pacific whiting fishery. At its September 2003 meeting, the Council considered a preliminary range of alternatives for a monitoring program which focus on three major issues: (1) the monitoring program (i.e., federal observers, state monitors, video cameras, or a combination thereof); (2) tracking and disposition of prohibited species and groundfish overages; and (3) mechanisms for funding of the monitoring program. At its April 2004 meeting, the Council is expected to adopt a revised range of alternatives for public review that cover these same issues. At its September 2004 meeting, the Council is expected to make final recommendations to NMFS regarding this monitoring program. NMFS will then prepare a proposed rule, that will include a public comment period, followed by a final rule implementing a monitoring program before the start of the 2005 shore-based primary Pacific whiting season.

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

Dated: March 8, 2004.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 04-5694 Filed 3-11-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 030404F]

#### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Applications for three scientific research permits (1127, 1465, 1469) and two permit modifications (1119, 1366).

**SUMMARY:** Notice is hereby given that NMFS has received three scientific research permit applications and two applications to modify existing permits relating to Pacific salmon and steelhead. All of the proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

**DATES:** Comments or requests for a public hearing on the applications or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on April 12, 2004.

**ADDRESSES:** Written comments on the applications or modification requests should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments may also be sent via fax to 503-230-5435 or by e-mail to [resapps.nwr@noaa.gov](mailto:resapps.nwr@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5435, e-mail: [Garth.Griffin@noaa.gov](mailto:Garth.Griffin@noaa.gov)). Permit application instructions are available at <http://www.nwr.noaa.gov>

#### SUPPLEMENTARY INFORMATION:

##### Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SR).

Chinook salmon (*O. tshawytscha*): endangered natural and artificially propagated upper Columbia River (UCR); threatened natural and

artificially propagated SR spring/summer (spr/sum); threatened SR fall; threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): threatened SR; threatened middle Columbia River (MCR); endangered UCR, threatened LCR.

Coho Salmon (*O. kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

#### Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits/modifications based on findings that such permits and modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

#### Applications Received

##### *Permit 1119 - Modification 1*

The U.S. Fish and Wildlife Service (FWS) is seeking to modify its 5-year permit covering five studies that, among them, would annually take adult and juvenile endangered UCR spring chinook salmon (natural and artificially propagated) and UCR steelhead (natural and artificially propagated) at various points in the Wenatchee, Entiat, Methow, Okanogan, and Yakima River watersheds and other points in eastern Washington State. The research was originally conducted under Permit 1119, which was in place for 5 years (63 FR 27055) with two amendments (65 FR 11288, 66 FR 38641); it expired on December 31, 2002. A new permit was granted for the research in 2003, and the FWS is seeking to modify that permit to change the take allotment and add a sixth study. Over the years, there have been some changes in the research (e.g., the aforementioned amendments) and they are reflected in this proposal. Nonetheless, the proposed projects are largely continuations of ongoing research. They are: Study 1—Recovery of ESA-listed Entiat River Salmonids through Improved Management Actions; Study 2—From extirpation to

colonization: an attempt to restore salmon back to their former streams; Study 3—Entiat Basin Spawning Ground Surveys; Study 4—Snorkel Surveys in the Wenatchee, Entiat, Methow, Okanogan, and Yakima Watersheds and Other Waterways of Eastern Washington; Study 5—Fish Salvage Activities in the Wenatchee, Entiat, Methow, Okanogan, and Yakima Watersheds and other Waterways of Eastern Washington; Study 6—Ice Creek Salmonid Production and Life History Investigations. Under these studies, listed adult and juvenile salmon and steelhead would be variously (a) captured (using nets, traps, and electrofishing equipment) and anesthetized; (b) sampled for biological information and tissue samples; (c) tagged with passive integrated transponders (PIT tags) or other identifiers; (d) marked and recaptured to determine trap efficiency, and (e) released.

The research has many purposes and would benefit listed salmon and steelhead in different ways. In general, the purposes of the research are to (a) gain current information on the status and productivity of various fish populations (to be used in determining the effectiveness of restoration programs); (b) collect data on the how well artificial propagation programs are helping salmon recovery efforts (looking at hatchery and wild fish interactions); (c) support the aquatic species restoration goals found in several regional plans; and (d) fulfill ESA requirements for several fish hatcheries. The fish would benefit through improved recovery actions, better designs for hatchery supplementation programs, and by being rescued outright when they are stranded by low flows in Eastern Washington streams. The FWS does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

##### *Permit 1127*

The Shoshone-Bannock Tribe is seeking to renew a 5-year permit to annually take threatened juvenile and adult SR spr/sum chinook salmon and steelhead during the course of two research projects in the Salmon River subbasin: The Snake River Habitat Enhancement (SRHE) project and the Idaho Supplementation Studies (ISS) project. Under the two ongoing projects (the SRHE was initiated in 1984, the ISS in 1998), the fish would be variously observed, captured, anesthetized, handled, implanted with passive integrated transponder (PIT) tags, allowed to recover, and released back to

the habitats from which they were taken.

The purposes of the research are to (a) monitor adult and juvenile fish in key upper SR basin watersheds, (b) assess the utility of hatchery chinook salmon in increasing natural populations in the Salmon and Clearwater Rivers, and (c) evaluate the genetic and ecological impacts of hatchery chinook salmon on natural populations. The fish will primarily benefit from the research in two ways. First, the research will broadly be used to help guide restoration and recovery efforts throughout the SR basin. Second, and more specifically, the research will be used to determine how hatchery supplementation can be used as a tool for salmon recovery. The Shoshone-Bannock Tribe does not intend to kill any of the fish being captured, but some may die as an unintended result of the research.

##### *Permit 1366 - Modification 2*

The Oregon Cooperative Fish and Wildlife Research Unit (OCFWRU) is asking to modify its 5-year permit allowing it to annually take juvenile threatened SR fall chinook salmon; juvenile threatened SR spring/summer chinook salmon (natural and artificially propagated); juvenile endangered UCR spring chinook salmon (natural and artificially propagated); juvenile threatened LCR chinook salmon; juvenile endangered UCR steelhead (natural and artificially propagated); juvenile threatened LCR steelhead; juvenile threatened MCR steelhead; juvenile threatened SR steelhead; and juvenile endangered SR sockeye salmon at various dams on the Columbia and Snake Rivers. The research is largely a continuation of four ongoing studies in the lower Snake and Columbia Rivers, but only one, Study 4 Evaluation of Migration and Survival of Juvenile Salmonids Following Transportation would be modified. Under this study, juvenile listed salmonids would be variously (a) captured using lift nets or dipnets at the dams (or acquired from Columbia River Smolt Monitoring Program or NMFS personnel at Bonneville Dam), (b) sampled for biological information or tagged with radiotransmitters, and (c) released. The OCFWRU does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

The research has many purposes and would benefit listed salmon and steelhead in different ways. In general, the purpose of the research is to compare biological and physiological indices of wild and hatchery juvenile

fish exposed to stress during bypass, collection, and transportation activities at the dams. The research will benefit the listed species by helping determine what effects the dams and their associated structures and management activities transportation, in particular have on the outmigrating salmonids and using that information modify those factors in ways that increase salmonid survival.

#### Permit 1465

The Idaho Department of Environmental Quality (IDEQ) is requesting a 5-year permit to annually take juvenile threatened SR steelhead, fall chinook salmon, spr/sum chinook salmon, and endangered SR sockeye salmon during the course of two research projects designed to ascertain the condition of many Idaho streams and determine the degree to which they meet certain critical stream health parameters. The fish will largely be captured using backpack electrofishing equipment (though boat electrofishing equipment may also be used), weighed and measured (some may be anesthetized to limit stress), and released. The IDEQ does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

The purposes of the research are to (a) determine whether aquatic life is being properly supported in Idaho's rivers, streams and lakes, and (b) assess the overall condition of Idaho's surface waters. The fish will benefit from the research because the data it produces will be used to inform decisions about how and where to protect and improve water quality in the State.

#### Permit 1469

The Ecosystems Research Institute (ERI) is requesting a 2-year research permit to annually handle threatened juvenile SONCC coho salmon in the Applegate River. The purpose of the research is to measure outmigration rates from the Applegate Reservoir to determine current fish entrainment and mortality. The ERI is proposing to construct a hydroelectric power plant on the Applegate Dam. The study is needed to determine the impacts the project's hydroelectric turbines would have on outmigrating reservoir fish. The research will benefit natural SONCC coho by providing current outmigration estimates of artificially propagated coho and gamefish that may affect the SONCC population through genetic introgression and by predation. The ERI proposes to capture the fish (using a screw trap), anesthetize them, check

them for the presence of an adipose clip, measure them, allow to them recover, and release them. The ERI does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: March 8, 2004.

#### Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Patent Appeals and Interferences

**ACTION:** New collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 11, 2004.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703-308-7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at [susan.brown@uspto.gov](mailto:susan.brown@uspto.gov); or by facsimile at 703-308-7407.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Richard Torczon, 703-308-9797; or by e-mail at [BPAL.Rules@uspto.gov](mailto:BPAL.Rules@uspto.gov) with "Paperwork" in the subject line.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The United States Patent and Trademark Office (USPTO) established the Board of Patent Appeals and Interferences (BPAI or Board) under 35 U.S.C. 6(b). This statute directs BPAI to "on written appeal of an applicant, review adverse decisions of examiners upon applications for patent and shall determine priority and patentability of invention in interferences." BPAI has the authority under 35 U.S.C. 134, 135, 306, and 315 to review ex parte and inter partes appeals and interferences. In addition, 35 U.S.C. 6 establishes the membership of BPAI as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges, one of which serves as the Chief Judge and another as the Vice Chief Judge. Each appeal and interference is heard by a merits panel of at least three members of the Board.

Under the statute, the Board's two main responsibilities include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant, and the administration of interferences to "determine priority" (or decide who is the first inventor) whenever an applicant claims the same patentable invention that is already claimed by another applicant or patentee. In inter partes reexamination appeals, BPAI reviews decisions adverse to a patent owner or a third-party requestor.

BPAI does not currently collect appeal and interference information electronically, but is working on a pilot program that would provide electronic filing in contested cases. Once the pilot program is completed, the results of this program will be analyzed to determine whether electronic filing will be beneficial enough to deploy a production system. BPAI disseminates opinions and decisions to the public through the USPTO's Web site, as well as disseminating them through various publications and databases.

Publication of opinions and binding precedent is governed by BPAI's Standard Operating Procedure 2 (Revision 4) for the "Publication of Opinions and Binding Precedent," effective March 29, 2000. Opinions are categorized as either precedential opinions, which when published provide the criteria and authority that BPAI uses to determine all related cases (unless overruled or changed by statute), or as non-precedential opinions that the authoring judge or panel determines may be published. These opinions are not binding on BPAI, and the authoring