

requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 26, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-12602 Filed 6-2-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-427-001]

#### Sorbitol From France; Final Results of Expedited Sunset Review of Antidumping Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for final results of expedited sunset review: Sorbitol from France.

**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for its final results in the expedited sunset review of the countervailing duty order on sorbitol from France.<sup>1</sup> The Department intends to issue final results of this sunset review on or before June 15, 2004.

**DATES:** Effective Date: June 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hilary E. Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

#### Extension of Final Determination

On February 2, 2004, the Department initiated a sunset review of the antidumping order on Sorbitol from France. *See Initiation of Five-Year (Sunset) Reviews*, 69 FR 4921 (February 2, 2004). The Department determined that it would conduct an expedited (120 day) sunset review of this order based on responses from the domestic and

<sup>1</sup> The Department normally will issue its final results in an expedited sunset review not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation. However, if the Secretary determines that a sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days. *See* section 751(c)(5)(B) of the Act.

respondent interested parties to the notice of initiation. The Department's final results of this review were scheduled for June 1, 2004. However, issues have arisen over the appropriate magnitude of the dumping margin likely to prevail for certain companies subject to the sunset review. Because of these complex issues, the Department will extend the deadline. Thus, the Department intends to issue the final results not later than June 15, 2004 in accordance with section 751(c)(5)(B).

Dated: May 27, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-12604 Filed 6-2-04; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-842, C-549-824]

#### Postponement of Preliminary Countervailing Duty Determinations: Bottle-Grade Polyethylene Terephthalate Resin from India and Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary determinations in the countervailing duty investigations of Bottle-Grade Polyethylene Terephthalate Resin ("BG PET Resin") from India and Thailand from June 17, 2004, until no later than August 21, 2004. This extension is made pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

**EFFECTIVE DATE:** June 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Douglas Kirby or Sean Carey, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-3782 or (202) 482-1394, respectively.

#### Postponement of Preliminary Determination:

On April 13, 2004, the Department initiated the countervailing duty investigations of BG PET Resin from India and Thailand. *See Notice of Initiation of Countervailing Duty Investigations: Bottle-Grade Polyethylene Terephthalate Resin from India and Thailand*, 69 FR 21086 (April 20, 2004). On May 21, 2004, the United

States PET Resin Producers Coalition ("petitioners") made a timely request pursuant to 19 CFR 351.205(e) for the postponement of the preliminary determinations in accordance with section 703(c)(1) of the Act. Petitioners requested a postponement in order to allow time for the Department to conduct full and complete investigations of the programs set forth in the notice of initiation.

Because the Department finds no compelling reason to deny petitioners' request, we are postponing the time limit for the preliminary determinations in the countervailing duty investigations of BG PET Resin from India and Thailand until no later than August 21, 2004. Because August 21, 2004, is a Saturday, the actual due date for these preliminary determinations will be Monday, August 23, 2004. This extension is made pursuant to section 703(c)(1)(A) of the Act.

This notice of postponement is published pursuant to section 703(c)(2) of the Act.

Dated: May 26, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-12601 Filed 6-2-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 040511148-4148-01; I.D. No. 050304B]

#### Endangered and Threatened Species: Proposed Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead

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

**ACTION:** Notice of proposed policy.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is issuing a proposed policy that will address the role of hatchery produced Pacific salmon (*Oncorhynchus gorbuscha*, *O. keta*, *O. kisutch*, *O. nerka*, *O. tshawytscha*.) and steelhead (*O. mykiss*) in listing determinations under the Endangered Species Act of 1973 (ESA) as amended. This proposed policy would supersede the Interim Policy on Artificial (hatchery) Propagation of Pacific Salmon under the Endangered Species Act published in the **Federal Register** on April 5, 1993. The interim

policy requires revision for several reasons, including the need to take into account the results of scientific research that has occurred over the past decade, as well as the legal implications of a September 12, 2001, decision by the U.S. District Court in Oregon, which held that NMFS made an improper distinction under the ESA by excluding from a listing of Oregon Coast coho salmon under the ESA of certain artificially propagated salmon populations that were nevertheless determined by NMFS to be part of the same "distinct population segment" (DPS) as the listed natural populations. Under the proposed new policy, NMFS would determine the viability of each DPS, including both natural and hatchery populations, in conducting ESA status reviews and using the product of such reviews in making listing determinations of threatened or endangered under the ESA for Pacific salmon and steelhead. This policy applies only to Pacific salmon and steelhead and only in the context of making ESA listing determinations. NMFS also plans to provide separate guidance on how artificial propagation programs may contribute to salmon and steelhead conservation and recovery.

**DATES:** Information and comments on the proposed policy must be received at the appropriate address or fax number (See **ADDRESSES**), no later than 5 p.m. on September 1, 2004. In a forthcoming **Federal Register** document, NMFS will announce the dates and locations of public meetings to provide the opportunity for the interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed policy. NMFS encourages the public's involvement in such ESA matters.

**ADDRESSES:** Information and comments on this proposed policy should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232. Comments may also be sent via facsimile (fax) to 503 230-5435 or by e-mail. The mailbox address for providing e-mail comments is [hatch.policy@noaa.gov](mailto:hatch.policy@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: Hatchery Listing Policy.

**FOR FURTHER INFORMATION CONTACT:** Donna Darm, NMFS, Northwest Region, (206) 526-4489; Craig Wingert, NMFS, Southwest Region, (562) 980-4021; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401, ext. 180.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS is responsible for determining whether species, subspecies, or DPSs of Pacific salmon and steelhead are threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). To be considered for listing as threatened or endangered under the ESA, a group of organisms must constitute a species, which is defined in section 3 of the ESA to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Since 1991, NMFS has used the term "evolutionarily significant unit" (ESU) to refer to a DPS of Pacific salmon and steelhead, and has defined an ESU as a Pacific salmon or steelhead population or group of populations that (i) is substantially reproductively isolated from other conspecific populations, and (ii) represents an important component in the evolutionary legacy of the biological species (56 FR 58612; November 20, 1991). ESUs typically are composed of several genetically similar populations. (A few ESUs are composed of a single extant population, e.g., the Snake River sockeye, Snake River fall-run chinook, and Sacramento River winter-run chinook ESUs).

The viability of salmon and steelhead ESUs is characterized by the health, abundance, productivity, spatial structure, and genetic/behavioral diversity of the individual populations within the ESU (McElhany et al., 2001). An ESU with a greater abundance of productive populations will be more tolerant to environmental variation, catastrophic events, genetic processes, demographic stochasticity, ecological interactions, and other processes than one with a single or a few populations (Caughley and Gunn, 1996; Foley, 1997; Meffe and Carroll, 1994; Lande, 1993; Middleton and Nisbet, 1997). Similarly, an ESU that is distributed across a variety of well-connected habitats can better respond to environmental perturbations including catastrophic events, than ESUs in which connectivity between populations has been restricted or lost (Schlosser and Angermeier, 1995; Hanski and Gilpin, 1997; Tilman and Lehman, 1997; Cooper and Mangel, 1999). Genetic and behavioral diversity and the maintenance of local adaptations within an ESU allow for the exploitation of a wide array of environments, protect against short-term environmental changes, and provide the raw material for surviving long-term environmental change (Groot and Margolis, 1991; Wood, 1995).

ESUs with fewer populations have greater risk of becoming extinct due to catastrophic events, and have a lower likelihood that the necessary phenotypic and genotypic diversity will exist to maintain future viability than ESUs with more populations. ESUs with limited geographic range are similarly at increased extinction risk due to catastrophic events. ESUs with populations that are geographically distant from each other, or are separated by severely degraded habitat, may lack the connectivity to function as metapopulations and are more likely to become extinct than populations that can function as metapopulations. ESUs with limited life-history diversity are more likely to become extinct as the result of correlated environmental catastrophes or environmental change that occurs too rapidly for an evolutionary response. ESUs comprised of a small proportion of populations meeting or exceeding these viability criteria may lack the "source" populations to sustain the non-viable "sink" populations during environmental downturns. ESUs consisting of a single population are especially vulnerable in this regard.

Assessing an ESU involves evaluating the current biological viability of the populations that comprise the ESU. The fact that the current biological status of an ESU does not reflect historical abundance, productivity, spatial structure or diversity does not mean that it is currently not viable, but historical status serves as an informative benchmark against which to weigh viability. Whether, upon assessment, the biological status of an ESU meets the ESA's standard for listing as either threatened or endangered i.e., the ESU is in danger of extinction throughout all or a significant portion of its range or is likely to become so in the foreseeable future--depends on which viability criteria it fails to meet, what the past trend has been, whether that trend is likely to continue, and how far below the benchmark it is.

### Artificial Propagation of Pacific Salmon and Steelhead

Most of the ESUs listed as threatened or endangered have associated hatchery populations (that is, artificially propagated salmon and steelhead released into habitats within the historic geographic range of the ESU) as well as mixed populations of natural and hatchery fish.

The artificial propagation of hatchery fish presents both potential benefits and risks to the biological status of salmonid ESUs (e.g., Independent Scientific Advisory Board (ISAB), 2003;

Independent Multidisciplinary Science Team (IMST), 2001; ISAB, 2001; Hatchery Scientific Review Group, 2004). Artificial propagation has been shown to be effective in bolstering the numbers of naturally spawning fish in the short term under certain conditions, and in conserving genetic resources and guarding against the catastrophic loss of naturally spawned populations at critically low abundance levels (IMST, 2001).

There are, however, several reasons why long-term deleterious consequences of such supplementation may outweigh the short-term advantage of increased population size (NRC, 1995). In recent years, various studies and scientific works have identified some potential adverse effects of artificial propagation, including behavioral differences that result in diminished fitness and survival of hatchery fish relative to naturally spawned fish; genetic effects resulting from poor broodstock and rearing practices (e.g., inbreeding, outbreeding, domestication selection); incidence of disease; and increased rates of competition with and predation on naturally spawned populations. In assessing the risks to any particular population, however, it is often difficult to demonstrate conclusively that adverse effects are actually occurring, and, if they are demonstrated, how serious they are (CDFG/NMFS, 2001).

In response to these concerns, there have been recent changes in hatchery practices seeking to mitigate risks and enhance benefits of artificial propagation. Continued scientific work is necessary to identify and to measure these risks and benefits more completely, and to assess the operations of hatcheries that implement modern management practices. In light of the developing science on the positive and negative effects of hatchery programs on natural populations, the legacy of hatchery programs and the existing requirements to maintain many of them present a challenge for developing a framework for consideration of hatchery fish in listing determinations.

#### **Past Pacific Salmon and Steelhead ESA Listings and the *Alesea* Decision**

Section 3 of the ESA defines (i) an endangered species as "any species that is in danger of extinction throughout all or a significant portion of its range" and (ii) a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The statute enumerates five factors that may cause a species to be threatened or endangered (ESA section

4(a)(1)): (a) The present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence.

Since 1991, NMFS has conducted ESA status reviews of six species of Pacific salmonids in California, Oregon, Washington, and Idaho, identifying 51 ESUs and listing 26 of these ESUs as of September 2001. Twenty-three of the listed ESUs include hatchery populations, and in many of those cases the annual abundance of fish from hatcheries far exceeds that of naturally spawned fish. Thus, the manner in which the hatchery populations associated with an ESU are considered in making a determination whether the ESU should be listed can affect the outcome of that determination.

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account efforts being made to protect the species. Accordingly, NMFS follows three steps in making its listing determinations. First, NMFS determines whether a population or group of populations constitutes an ESU; that is, whether the population(s) should be considered a "species" within the meaning of the ESA. Second, NMFS determines the biological status of the ESU and the factors that have led to its decline. Third, NMFS assesses efforts being made to protect the ESU and determines whether, in light of those efforts, the statutory listing criteria are satisfied.

In the past, NMFS focused on whether the naturally spawned fish are, by themselves, self-sustaining in their natural ecosystem over the long term. NMFS listed as "endangered" those ESUs whose naturally spawned populations were found to have a present high risk of extinction, and listed as "threatened" those ESUs whose naturally spawned populations were found likely to become endangered in the foreseeable future (that is, whose present risk of extinction was not high, but whose risk of extinction was likely to become high within a foreseeable period of time).

In its listing determinations, NMFS did not explicitly consider the contribution of the hatchery fish to the overall viability of the ESU, or whether the presence of hatchery fish within the

ESU might have the potential for reducing the risk of extinction of the ESU or the likelihood that the ESU would become endangered in the foreseeable future. (The listing of Snake River fall chinook, however, is an exception. See 57 FR 14653; April 22, 1992.) NMFS frequently evaluated artificial propagation only as a factor in the decline of the naturally spawned populations within an ESU.

For each ESU where hatchery fish were present, NMFS reviewed the associated hatchery populations to determine how closely related the hatchery populations were to the naturally spawned populations. This review focused on the origin of the hatchery fish and their similarity to locally adapted naturally spawned fish. Factors included in this consideration were: genetic, life history, and habitat use characteristics; the degree to which the characteristics of the wild population may have been altered over time; and other factors that would affect the biological usefulness of hatchery fish for recovery.

Since 1993, NMFS has applied an interim policy on how it will consider artificial propagation in the listing and recovery of Pacific salmon and steelhead under the ESA (58 FR 17573, April 5, 1993). The 1993 policy provided guidance on the use of artificial propagation to assist in the conservation of these listed species and to help avoid additional species listings. The policy also provided guidance for evaluating artificial propagation in section 7 consultation, section 10 permitting, and recovery planning pursuant to the ESA.

When NMFS determined that an ESU should be listed as threatened or endangered, it applied its interim artificial propagation policy for Pacific salmon and steelhead. That policy provided that hatchery salmon and steelhead found to be part of the ESU would not be listed under the ESA unless they were found to be essential for recovery (i.e., if NMFS determined that the hatchery population contained a substantial portion of the genetic diversity remaining in the ESU). The result of this policy was that a listing determination for an ESU depended solely upon the relative health of the naturally spawning component of the ESU. In most cases, hatchery fish within the ESUs were not relied upon to contribute to recovery, and therefore were not listed.

Subsequently, in *Alesea Valley Alliance v. Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001) (*Alesea decision*), the U.S. District Court in Eugene, Oregon, set aside NMFS' 1998 ESA listing of Oregon

Coast coho salmon (*O. kisutch*) because it impermissibly excluded hatchery fish within the ESU from listing and therefore listed an entity that was not a species, subspecies or DPS. The court stated: "NMFS concluded that nine hatchery stocks were part of the same Oregon Coast ESU/DPS as the 'naturally-spawned' populations but none of the hatchery stocks were included in the listing decision because NMFS did not consider them 'essential to recovery.' The distinction between members of the same ESU/DPS is arbitrary and capricious because NMFS may consider listing only an entire species, subspecies or distinct population segment ('DPS') of any species."

Although the court's ruling applied only to the Oregon Coast coho salmon ESU, the court's interpretation of the ESA implicitly called into question nearly all of NMFS' Pacific salmonid listing determinations since 1991. In addition, a preliminary review of the other 25 listing determinations suggested that hatchery populations were not treated consistently in those listings. Further, substantially more scientific research into artificial propagation issues had been completed since the interim policy was adopted in 1993.

Accordingly, NMFS determined that it would reconsider its 1993 interim policy on how it considers hatchery populations in making ESA listing determinations (67 FR 6215; February 11, 2002). The proposed policy set forth in this notice results from that reconsideration. It would supersede NMFS' 1993 interim artificial propagation policy.

#### **Additional Legal Factors Influencing Consideration of Hatchery Fish**

The ESA defines "fish or wildlife" to mean "any member of the animal kingdom, including without limitation any fish ." [emphasis added]. This definition includes fish bred in a hatchery. 16 U.S.C. 1532(8).

The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. 1532(16). NMFS cannot list any group of organisms that is not a species, subspecies or DPS. If NMFS determines that an ESU includes hatchery fish as well as naturally spawned fish, it must list or not list the entire ESU.

The statutory provisions of the ESA do not address the relationship between naturally spawned populations and hatchery populations regarding species

conservation. One of the purposes of the ESA, however, is "to provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved." 16 U.S.C. 1531(b). Further, in issuing incidental take permits pursuant to section 10(a)(1)(B), the Secretary is required to find that "the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild." This incidental take permit provision was patterned after the preexisting joint NMFS/U.S. Fish and Wildlife Service (FWS) consultation regulations to implement section 7 of the ESA, which defines "jeopardize the continued existence of" to mean "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both survival and recovery of a listed species in the wild. . . ." 50 CFR 402.02. Accordingly, the ESA does not preclude NMFS from giving special recognition to naturally spawned fish as a measure of the sustainability of the natural ecosystem.

#### **Artificial Propagation under the ESA**

Section 4(b) of the ESA requires the Secretary to make listing determinations after conducting a review of the status of the species, and after taking into account those efforts, if any, being made to protect the species. 16 U.S.C. 1533(b)(1)(A). Such efforts being made to protect the species include "conservation" practices, defined by the ESA as "all methods and procedures which are necessary to bring any endangered species or any threatened species to the point at which" the protections of the act are no longer necessary. 16 U.S.C. 1532(3). The methods and procedures of conservation include "propagation" and "transplantation."

Although the NMFS/FWS Policy Regarding Controlled Propagation of Species Listed Under the ESA (65 FR 56916; September 20, 2000) exempted Pacific salmon from its application (65 FR at 56921), the joint policy provides useful general guidance regarding the role of artificial propagation in the conservation and recovery of ESA-listed species, including plant, invertebrate, and vertebrate species. The joint policy notes several potential contributions of artificial propagation including: preventing extinction; providing opportunities for scientific research regarding beneficial propagation methods and technologies; maintaining genetic vigor and demographic diversity; maintaining refugial populations while habitat threats or vulnerabilities to catastrophic events are

addressed; introduction or re-introduction of individuals to (re)establish self-sustaining populations; and enhancing existing wild populations to facilitate recovery.

While acknowledging the potentially supportive role that artificial propagation may play in the conservation and recovery of listed species, the joint policy stresses that artificial propagation is not a substitute for addressing factors responsible for a species' decline and that recovery of wild populations in their natural habitat is the first priority. The policy recognizes that genetic and ecological risks may be associated with artificial propagation, and requires that artificial propagation for species conservation and recovery be conducted in a manner that minimizes risks and preserves the genetic and ecological distinctiveness of the species to the maximum extent possible.

The proposed policy is intended to be consistent with the joint policy. This policy provides more specific guidance for considering artificial propagation issues particular to listing Pacific salmon and steelhead under the ESA. For Pacific salmon and steelhead, artificial propagation programs have been in place for many decades, serving a variety of purposes established by Congress and local authorities. Those programs now number in the hundreds. Whereas the joint policy pertains to recovery, the proposed policy would guide NMFS' consideration of existing artificial propagation efforts when evaluating the extinction risk of a salmon or steelhead ESU for purposes of making an ESA listing decision.

Because NMFS must base its listing determinations for Pacific salmon and steelhead on the risk of extinction of the entire ESU, including both natural and hatchery fish, the agency must consider the likelihood that the hatchery and naturally spawned components will contribute to the continued existence of the ESU into the future. Yet, because there are so many different ways in which hatchery-origin fish interact with the environment, there can be no uniform conclusion about the potential contribution of hatchery-origin fish to the survival of an ESU. For example, fish that are carefully reared under semi-natural conditions, then acclimated to a specific stream and introduced to re-establish, or expand the range of, the natural population, might make an important contribution to the rebuilding or support of that population. On the other hand, fish that are reared solely for the purpose of augmenting harvest and which are released away from the spawning and rearing areas

used by the naturally spawning fish in the ESU might contribute little to rebuilding or supporting other populations within the ESU, although their presence will increase the overall numbers of fish within the ESU.

#### Proposed Five-Point Policy

In light of the above considerations, NMFS proposes to adopt the policy set forth below to supersede NMFS' 1993 interim artificial propagation policy. The proposed policy would have five points. First, the proposed policy summarizes NMFS' existing ESU policy, and recognizes that genetic resources that represent the ecological and genetic diversity of a salmonid species can be found in hatchery fish as well as fish spawned in the wild.

The second point describes the process NMFS will use to delineate which populations are included in an ESU. In deciding which hatchery programs are likely to produce fish that would be included in an ESU, NMFS used terminology developed by the Salmon And Steelhead Hatchery Assessment Group (SSHAG, 2003)(available at <http://www.noaa.gov/fisheries/>). In its report, the SSHAG defines categories to describe the degree of genetic divergence between hatchery stock(s) and the natural population(s) that occupy the watershed into which the hatchery stock is released. In previous status reviews, the test for inclusion of hatchery stocks in a given ESU was a "substantial" divergence threshold evaluated relative to "historical" populations in the ESU. NMFS is proposing that it consider, as part of the ESU, those hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU. This proposal is consistent with the "moderate divergence" standard used in the SSHAG (2003) report. In practice, it is unlikely that this proposed change, as applied, would present an appreciably different threshold for the inclusion of hatchery stocks in an ESU compared to policy struck down by the court in the *Alsea* decision.

The third point states, consistent with the *Alsea* decision, that status determinations for Pacific salmonid ESUs will be based on the entire ESU, while recognizing the necessity of conserving natural populations and their habitat. This point also acknowledges the ESA's focus on the conservation and recovery of natural populations, the use of natural populations in reducing the risk of extinction, and their use as a point of

comparison for monitoring/evaluating the level of genetic divergence of hatchery fish from naturally spawning fish in an ESU.

The fourth point describes the process for making status determinations for ESUs. The process incorporates the concept of Viable Salmonid Populations that was developed by NMFS scientists (McElhany et al., 2000, available at <http://www.nwafc.noaa.gov>). Specifically, the process generally considers four key attributes of a viable salmonid population or conservation unit: abundance, productivity, spatial distribution, and genetic diversity. Under these criteria, a high abundance of one population of fish within an ESU is not, by itself, adequate to show that the ESU is viable. The analysis does not assign equal or predetermined weight to each of the four attributes, nor does it preclude consideration of other factors that may be biologically relevant in a particular circumstance. The analysis was designed to evaluate the viability of naturally spawning salmonid populations and requires the application of professional judgment when applied to salmonid populations that include hatchery fish because, for example, attributes such as productivity (number of adults returned per spawner) are measured differently for hatchery fish than for naturally spawning fish.

Finally, the fifth point recognizes that hatcheries can play an important role in fulfilling trust and treaty obligations with regard to harvest of some Pacific salmonid populations and provides a mechanism for using hatchery fish that are surplus to the conservation and recovery needs of the ESU.

#### Proposed Policy

For the foregoing reasons, NMFS proposes to adopt the following new policy on the consideration of hatchery fish in Endangered Species Act listing determinations for Pacific salmon and steelhead:

1. Under NMFS' Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon (ESU policy)(56 FR 58612; November 20, 1991), a distinct population segment (DPS) of a Pacific salmonid species is considered for listing if it meets two criteria: (a) it must be substantially reproductively isolated from other conspecific population units; and (b) it must represent an important component in the evolutionary legacy of the species. A key feature of the ESU concept is the recognition of genetic resources that represent the ecological and genetic diversity of the species. These genetic resources can reside in a fish spawned in a hatchery (hatchery

fish) as well as in a fish spawned in the wild (natural fish).

2. In delineating an ESU to be considered for listing, NMFS will identify all populations that are part of the ESU, including populations of natural fish (natural populations), populations of hatchery fish (hatchery fish), and populations that include both natural fish and hatchery fish (mixed populations). Hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU (a) are considered part of the ESU, (b) will be considered in determining whether an ESU should be listed under the ESA, and (c) will be included in any listing of the ESU.

3. Status determinations for Pacific salmonid ESUs will be based on the status of the entire ESU. In assessing the status of an ESU, NMFS will apply this policy in support of the conservation of naturally-spawning salmon and the ecosystems upon which they depend, consistent with section 2(b) of the ESA. 16 U.S.C. 1531(b). Natural populations that are stable or increasing, are spawning in the wild, and have adequate spawning and rearing habitat reduce the risk of extinction of the ESU. Such natural populations, particularly those with minimal genetic contribution from hatchery fish, can provide a point of comparison for the evaluation of the effects of hatchery fish on the likelihood of extinction of the ESU.

4. Status determinations for Pacific salmonid ESUs generally consider four key attributes: abundance, productivity, genetic diversity, and spatial distribution. The effects of hatchery fish on the status of an ESU will depend on which of the four key attributes are currently limiting the ESU, and how the hatchery fish within the ESU affect each of the attributes. The presence within an ESU of hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU can affect the status of the ESU, and thereby, affect a listing determination, by contributing to increasing abundance and productivity of the ESU, by improving spatial distribution, and by serving as a source population for repopulating unoccupied habitat. Conversely, a hatchery program managed without adequate consideration of its conservation effects can affect a listing determination by reducing genetic diversity of the ESU and reducing the productivity of the ESU. In evaluating

the effect of hatchery fish on the status of an ESU, the presence of a long-term hatchery monitoring and evaluation program is an important consideration.

5. Hatchery programs are capable of producing more fish than may be immediately useful in the conservation and recovery of an ESU and can play an important role in fulfilling trust and treaty obligations with regard to harvest of some Pacific salmonid populations. For ESUs listed as threatened, NMFS will, where appropriate, exercise its authority under section 4(d) of the ESA to allow the harvest of listed hatchery fish that are surplus to the conservation and recovery needs of the ESU in accordance with approved harvest plans.

#### Request for Comments

NMFS intends to base the final policy on the best available scientific and commercial information available, and take advantage of information and recommendations from all interested parties. Therefore, NMFS solicits comments and suggestions regarding this proposed policy from the public, as well as other concerned governmental agencies and tribal governments, the scientific community, industry, or any other party (see **DATES** and **ADDRESSES**). In addition, in a separate notice, NMFS will schedule public meetings on this proposed policy to provide the opportunity for the public to give comments and to permit an exchange of information and opinion. NMFS encourages the public's involvement in such ESA matters. Written comments on the proposed policy are solicited (see **DATES** and **ADDRESSES**). The final decision on this policy is expected to be published by January 2005 and will take into consideration the comments and any additional information received by NMFS. Such communications may lead to a decision that differs from this proposal.

#### References

A complete list of all cited references, and an overview of the scientific literature regarding the potential benefits and risks of artificial propagation, is available upon request (see **ADDRESSES**) or via the internet at <http://www.nwr.noaa.gov/HatcheryListingPolicy/References.html>.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: May 28, 2004.

**William T. Hogarth,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No.: 040526164-4164-01 I.D. 050304G]

RIN 0648-ZB60

#### Submerged Aquatic Vegetation Culture and Restoration Projects in the Chesapeake Bay; Chesapeake Bay Non-native Oyster Research to Support an Environmental Impact Statement

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

**ACTION:** Notice of availability of funds.

**SUMMARY:** The purpose of this notice is to invite the public to submit proposals for available funding provided through the NOAA Chesapeake Bay Office (NCBO) to assist in carrying out the following two initiatives under the Chesapeake Bay Studies Program (11.457) Submerged Aquatic Vegetation (SAV) culture and large-scale restoration in the Chesapeake Bay; and, research and development projects on non-native oysters to support the current effort to develop a Chesapeake Bay Environmental Impact Statement. Funds are available to state, local and Indian tribal governments, institutions of higher education, other non-profit and commercial organizations. This notice describes the conditions under which project proposals will be accepted and the criteria under which proposals will be evaluated. Depending upon the level of Federal involvement in these two initiatives, selected recipients will enter into either a cooperative agreement or a grant. NCBO intends to continue with several existing relationships and to make awards through these programs for currently funded multiple year projects pending acceptable scientific review.

**DATES:** Applications must be received by 5 p.m. eastern time on July 6, 2004. Applications received after that time will not be considered for funding.

Statements of Intent (see **SUPPLEMENTARY INFORMATION**) should be submitted by June 23, 2004.

**ADDRESSES:** Proposals must be submitted Derek Orner, Program Coordinator, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

**FOR FURTHER INFORMATION CONTACT:** Derek Orner, Program Coordinator, NOAA Chesapeake Bay Office, telephone: (410) 267-5660, or e-mail: [derek.orn@noaa.gov](mailto:derek.orn@noaa.gov). You can obtain a

copy of the application package, including the full funding opportunity announcement for this solicitation, from Derek Orner. You can also obtain the application package from the NOAA Chesapeake Bay Office grants home page <http://noaa.chesapeakebay.net/grants>. The Statement of Intent (see **SUPPLEMENTARY INFORMATION**) should be sent to Derek Orner ([derek.orn@noaa.gov](mailto:derek.orn@noaa.gov)).

**SUPPLEMENTARY INFORMATION: Electronic Access:** The full funding opportunity announcement for these Chesapeake Bay Studies programs is available via Web site: <http://www.ofa.noaa.gov/amd/SOLINDEX.HTML> or by contacting the program official identified above (see **ADDRESSES**). This announcement will also be available through Grants.gov at <http://www.Grants.gov>.

**Funding Availability:** This solicitation announces that approximately \$550,000 may be made available through the Chesapeake Bay Studies submerged aquatic vegetation program and approximately \$2,000,000 may be made available through the Chesapeake Bay Studies non-native oyster research program. This document describes how interested persons can apply for funding and how funding decisions will be made for both initiatives.

**Authority:** 16 U.S.C. 753a; 16 U.S.C. 661-666c.

**CFDA:** 11.457, Chesapeake Bay Studies.

**Eligibility:** Eligible applicants include state, local and Indian tribal governments, institutions of higher education, other nonprofit organizations and commercial organizations.

**Cost Sharing Requirements:** NOAA strongly encourages applicants applying for either initiative to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process. Priority will be given to proposals that propose cash rather than in-kind contributions.

**Intergovernmental Review:** Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

**Evaluation and Selection Procedures:** An initial administrative review/screening is conducted by the NCBO to determine compliance with requirements/completeness including eligibility and relevance to the NCBO. Proposals that do not support the technical and management areas of interest of the Chesapeake Bay, as