

**§ 930.32 Procedure.**

(a) Two-thirds (2/3) of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds (2/3) of those present at the meeting must vote in support of such action.

\* \* \* \* \*

**Proposal Number 5**

7. Revise paragraph (b)(2), redesignate paragraph (c)(3) as paragraph (c)(3)(i) and add a new paragraph (c)(3)(ii) to § 930.23 to read as follows:

**§ 930.23 Nomination and election.**

\* \* \* \* \*

(b) \* \* \*

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of one or more handler(s), other than the nominee, from the nominee's district who is or are eligible to vote in the election and that handle(s) a combined total of no less than five percent (5%) of the average production, as that term is used in § 930.20, handled in the district. The requirement that the petition form be signed by a handler other than the nominee shall not apply in any district where fewer than two handlers are eligible to vote.

\* \* \* \* \*

(c) \* \* \*

(3)(i) \* \* \*

(ii) To be seated as a handler representative in any district, the successful candidate must receive the support of handler(s) that handled a combined total of no less than five percent (5%), of the average production, as that term is used in § 930.20, handled in the district.

\* \* \* \* \*

**Proposal Number 6**

8. Revise paragraph (g) of § 930.20 to read as follows:

**§ 930.20 Establishment and membership.**

\* \* \* \* \*

(g) In order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board; *Provided*, That this prohibition shall not apply in a district where such a conflict cannot be avoided. There is, however, no prohibition on the number of Board members from differing districts that

may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.23, a handler or grower may only nominate Board members and vote in one district.

\* \* \* \* \*

**Proposal Number 7**

9. Revise paragraphs (b)(5) and (c)(4) of § 930.23 to read as follows:

**§ 930.23 Nomination and election.**

\* \* \* \* \*

(b) \* \* \*

(5) In districts entitled to only one Board member, both growers and handlers may be nominated for the district's Board seat. Grower and handler nominations must follow the petition procedures outlined in paragraphs (b)(1) and (b)(2) of this section.

\* \* \* \* \*

(c) \* \* \*

(4) In districts entitled to only one Board member, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

\* \* \* \* \*

Proposal submitted by USDA:

**Proposal Number 8**

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: February 5, 2007.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 07-549 Filed 2-5-07; 10:43 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration, National Marine Fisheries Service**

**50 CFR Part 223**

**[Docket No. [070123015-7015-01; I.D. 052104F]**

**RIN 0648-AV18**

**Endangered and Threatened Species: Proposed Protective Regulations**

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

**ACTION:** Proposed rule; request for comments; notice of availability of a draft environmental assessment.

**SUMMARY:** We, NMFS, are proposing to issue protective regulations under section 4(d) of the Endangered Species Act (ESA) for a distinct population segment (DPS) of steelhead in Puget Sound, Washington, presently proposed for listing as a threatened species. The 4(d) regulations prohibit the take of listed species, unless a "limit" applies for specified categories of activities determined to be adequately protective of listed salmonids. In addition, we are announcing the availability of an environmental assessment (EA) that analyzes the impacts of promulgating these 4(d) regulations. We are furnishing this notification to allow other agencies and the public an opportunity to review and comment on the draft EA. All comments received will become part of the public record and will be available for review.

**DATES:** Comments on this proposed rule and the draft EA must be received by no later than 5 p.m. P.S.T. on March 9, 2007. (See **ADDRESSES**).

**ADDRESSES:** Comments may be submitted by mail to Chief, Protected Resources Division, NMFS, 1201 NE Lloyd Blvd - Suite 1100, Portland, OR 97232-1274. Comments may be submitted by e-mail to [salmon.nwr@noaa.gov](mailto:salmon.nwr@noaa.gov). Include in the subject line of the e-mail the following document identifier: [070123015-7015-01]. Comments may also be submitted via facsimile (fax) to 503-230-5441, or via the Internet through the Federal e-Rulemaking portal at <http://www.regulations.gov>. The draft EA and other information regarding Pacific salmon and steelhead can be found at <http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/>.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this proposed rule contact Steve Stone, NMFS, Northwest Region, (503) 231-2317; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Regulatory Authority*

NMFS is responsible for determining whether species, subspecies, or distinct population segments (DPSs) of most marine and anadromous species warrant listing as threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). For species listed as endangered, section 9(a) of the ESA prohibits activities that result in take. Under the ESA the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Activities that may harm

include significant habitat modification or degradation that actually kills or injures listed species by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding or sheltering (64 FR 60727, November 8, 1999). For species listed as threatened, section 4(d) of the ESA requires the Secretary of Commerce to issue such regulations as are deemed necessary and advisable to provide for the conservation of the species. Such 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts that section 9(a) of the ESA prohibits with respect to endangered species. Both the section 9(a) prohibitions and section 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

In the 1990s, we adopted ESA section 4(d) regulations for Pacific salmon and steelhead that applied to threatened species all of the ESA section 9(a)(1) prohibitions for endangered species. In 1997 we began to use our authority under section 4(d) to tailor specific protective regulations to limit the application of those prohibitions for a range of activities determined to be necessary and advisable to provide for the conservation of threatened Pacific salmon and steelhead. The specific regulations (commonly referred to as "limits") addressed an array of activities, including salmonid research, habitat restoration, and harvest and hatchery management. We created a mechanism whereby parties could obtain an approval determining that their proposed activity qualified under one of the limits and, therefore, any take in the course of the activity is not prohibited under the ESA. In 2005 we revised and simplified the 4(d) regulations for threatened Pacific salmon and steelhead DPSs by making all DPSs subject to the same limits (70 FR 37160; June 28, 2005).

Additionally, the regulations were modified so that the section 9 prohibitions do not apply to adipose-fin-clipped hatchery fish. We determined that these revisions would minimize the regulatory burden of managing species listed as threatened under the ESA, while retaining the necessary and advisable protections to provide for the conservation of threatened Pacific salmon and *O. mykiss* DPSs. Currently, there are 14 limits applicable to one or more threatened DPSs of Pacific salmon and steelhead, and the resultant regulations are codified in our regulations at 50 CFR 223.203.

The ESA provides other protections for both endangered and threatened

species. In particular, section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of NMFS or FWS, as appropriate, ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of areas designated as critical habitat. Also, under section 10 of the ESA, we may issue permits authorizing the take of a listed species for scientific purposes, to enhance its propagation or survival, or to conduct otherwise lawful activities identified in a conservation plan that may result in the incidental take of a listed species.

#### *Puget Sound Steelhead*

In 1996 we identified Puget Sound steelhead as a DPS of West Coast steelhead and determined that listing was not warranted under the ESA (61 FR 41541; August 9, 1996). Subsequently we received a petition to re-evaluate the status of this DPS and on March 29, 2006, published a proposed rule to list it as threatened under the ESA (71 FR 15666). The new information reviewed and relevant findings are described in that **Federal Register** notice as well as an updated species status review (NMFS, 2005). The DPS is proposed to include all naturally spawned anadromous winter-run and summer-run *O. mykiss* (steelhead) populations, in streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hamma Hamma winter-run steelhead hatchery stocks.

We are presently reviewing comments received on the listing proposal in preparation of a final listing determination due within 1 year of the proposal. Section 4(b)(6)(B)(I) of the ESA authorizes extending the deadline for a final listing determination for not more than 6 months for the purpose of soliciting additional data. Our ESA regulations at 50 CFR 424.17(a)(1)(iv) condition such an extension on finding "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination."

#### Proposed 4(d) Protective Regulations for Puget Sound Steelhead

If the Puget Sound steelhead DPS is listed as a threatened species, we would have to issue such ESA section 4(d)

regulations deemed necessary and advisable for its conservation. We would propose to amend existing 4(d) regulations to provide the necessary flexibility to ensure that programs are managed consistently with the conservation needs of Puget Sound steelhead. Doing so would be warranted because, as described in our proposal to list this DPS, the inadequacy of existing regulatory mechanisms is a factor limiting the viability of Puget Sound steelhead into the foreseeable future.

In keeping with recent updates to our ESA section 4(d) regulations for Pacific salmon and steelhead, we propose to apply the ESA section 9(a)(1) prohibitions (subject to the "limits" discussed below) to unmarked steelhead with an intact adipose fin that are part of the Puget Sound steelhead DPS. Juvenile hatchery steelhead are typically marked by clipping off their adipose fin just prior to release into the natural environment as a means of distinguishing them from fish of natural origin. Most unmarked steelhead in this DPS are of natural origin. However some hatchery steelhead are released unmarked. Unmarked hatchery fish that are surplus to the recovery needs of this DPS and that are otherwise distinguishable from naturally spawned fish in the DPS (e.g., by run timing or location) may be made not subject to the 4(d) prohibitions by limits (b)(4) and (b)(6) of 50 CFR 223.203 for fishery management plans, as well as under 50 CFR 223.209 for tribal resource management plans. This approach provides an effective means to manage the artificial propagation and directed take of threatened Puget Sound steelhead while providing for the species' conservation and recovery.

Placing specific limits on the application of section 9(a)(1) prohibitions for this DPS will allow NMFS to not apply these prohibitions to certain activities, provided the activities meet specific conditions to adequately protect the species. In this rule the agency is proposing to protect Puget Sound steelhead using the same 14 limits currently in place for other threatened Pacific salmon and steelhead. These limits, codified in agency regulations at 50 CFR 223.203, address: activities conducted in accordance with ESA section 10 incidental take authorization (50 CFR 223.203(b)(1)); scientific or artificial propagation activities with pending permit applications at the time of rulemaking (§ 223.203(b)(2)); emergency actions related to injured, stranded, or dead salmonids (§ 223.203(b)(3)); fishery management activities (§ 223.203(b)(4)); hatchery and genetic management

programs (§ 223.203(b)(5)); activities in compliance with joint tribal/state plans developed within *United States v. Washington* or *United States v. Oregon* (§ 223.203(b)(6)); scientific research activities permitted or conducted by the states (§ 223.203(b)(7)); state, local, and private habitat restoration activities (§ 223.203(b)(8)); properly screened water diversion devices (§ 223.203(b)(9)); routine road maintenance activities (§ 223.203(b)(10)); Portland parks pest management activities (§ 223.203(b)(11)); certain municipal, residential, commercial, and industrial development and redevelopment activities (§ 223.203(b)(12)); forest management activities on state and private lands within the State of Washington (§ 223.203(b)(13)); and activities undertaken consistent with an approved tribal resource management plan (§ 223.204).

Comprehensive descriptions of each ESA section 4(d) limit are contained in previously published **Federal Register** notices (62 FR 38479, July 18, 1997; 65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 67 FR 1116, January 9, 2002) and on the Internet at: <http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/Index.cfm>. One of these limits (§ 223.203(b)(11) - Portland parks pest management) is very limited in scope and not applicable to this DPS.

Limit § 223.203(b)(2) exempts scientific or artificial propagation activities with pending applications for ESA section 4(d) approval. The limit was most recently amended on February 1, 2006, to temporarily not apply the take prohibitions (71 FR 5178) to such activities, provided that a complete application for 4(d) approval was received within 60 days of the notice's publication. In the interest of conserving Puget Sound steelhead, we propose to once again revise § 223.203(b)(2) to provide a "grace period" that allows research and enhancement activities to continue uninterrupted while the necessary 4(d) assessments are completed.

These limits are not prescriptive regulations, and no one is required to seek our approval for the management of their activities under an ESA section 4(d) limit. The fact that an activity is not conducted within the specified criteria for a limit does not automatically mean that the activity violates the ESA. Many activities do not affect Puget Sound steelhead and, therefore, need not be conducted according to a given limit to avoid ESA section 9 take violations. Nevertheless, there is greater certainty that an activity or program is not at risk

of violating the section 9 take prohibitions if it is conducted in accordance with these limits. In order to reduce its liability, a jurisdiction, entity, or individual may informally comply with a limit by choosing to modify its programs to be consistent with the evaluation considerations described in the individual limits. Or they may seek to qualify their plans or ordinances for inclusion under a limit by obtaining authorization from NMFS under a specific section 4(d) limit.

If Puget Sound steelhead were listed, we would encourage everyone to evaluate their practices and activities to determine the likelihood of taking Puget Sound steelhead. We can assure ESA compliance by ensuring compliance with existing section 4(d) regulations, as well as through section 7 consultation with Federal agencies or section 10 research, enhancement, and incidental take permits. If take is likely to occur, then the jurisdiction, entity, or individual should modify its practices to avoid the take of listed steelhead, or seek to avoid potential ESA liability through section 7, section 10, or section 4(d) procedures. We will continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve listed Puget Sound salmonids and to strengthen others. Any final rule resulting from this proposal may be amended (through proposed rulemaking and public comment) to add new limits on the take prohibitions, or to amend or delete adopted limits as circumstances warrant.

#### Public Comments Solicited

We invite comments and suggestions from all interested parties regarding the proposed approach for managing protective regulations for Puget Sound steelhead under section 4(d) of the ESA (see **ADDRESSES**). We request that data, information, and comments be accompanied by: supporting documentation such as maps, logbooks, bibliographic references, personal notes, and/or reprints of pertinent publications; and the name of the person submitting the data, the address, and any association, institution, or business that the person represents.

#### Peer Review

In December 2004 the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (Peer Review Bulletin) establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The Peer Review Bulletin, implemented under the Information

Quality Act (Public Law 106 554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities. The text of the Peer Review Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Peer Review Bulletin requires Federal agencies to subject "influential" scientific information to peer review prior to public dissemination. Influential scientific information is defined as "information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions," and the Peer Review Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. The Peer Review Bulletin establishes stricter standards for the peer review of "highly influential" scientific assessments, defined as information whose "dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest."

The agency's status review for Puget Sound Steelhead (NMFS, 2005) is the key science document underlying the proposal to list Puget Sound steelhead as a threatened species. As described in our proposed rule, the status review was considered to be influential scientific information and was subjected to pre-dissemination peer review (60 FR 15666; March 29, 2006). However, we do not consider the scientific information underlying the proposed protective regulations to constitute influential scientific information as defined in the Peer Review Bulletin. The information is not novel; similar information for other listed salmonids whose range overlaps with that of Puget Sound steelhead has been used in support of protective regulations that have been in existence for more than 6 years. Therefore the agency expects the information to be non-controversial and have minimal impacts on important public policies or private sector decisions.

#### References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**) or via the internet at <http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/Index.cfm>.

## Required Determinations

### *National Environmental Policy Act (NEPA)*

While the ESA requirement to adopt protective regulations for threatened species is mandatory, NMFS has discretion in adopting such regulations as it deems necessary and advisable to provide for their conservation. Accordingly, the promulgation of ESA section 4(d) protective regulations is subject to the requirements of the NEPA, and we have prepared a draft Environmental Assessment (EA) analyzing the proposed amendments to our 4(d) regulations. We are seeking comment on the draft EA, which is available upon request (see **DATES** and **ADDRESSES**, above).

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule issued under authority of ESA section 4, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis has been prepared. The factual basis for this certification follows:

Under section 4(d) of the ESA, NMFS is required to adopt such regulations as it deems necessary and advisable for the conservation of species listed as threatened, including prohibiting “take” of the threatened species.

Steelhead are considered a gamefish in Washington state, and in Puget Sound are primarily harvested in recreational fisheries. The entities that service steelhead fisheries range in size from multi-national corporations and chain stores to local family businesses. Except for the multi-national corporations and chain stores, most of these entities are small businesses that include bait and tackle suppliers, guides, and lodging and related service providers. These entities do not support steelhead fisheries exclusively, but instead provide goods and services related to a variety of other fisheries (e.g., for salmon and trout) as well. The economic output associated with sport fisheries for Puget Sound steelhead is estimated to be approximately \$29 million per year, most of which (\$19.5 million) is associated with the winter steelhead fishery (Washington Department of Fish and Wildlife, 2006).

NMFS has previously adopted ESA 4(d) rules prohibiting take, except in certain circumstances, of all Pacific salmon and steelhead (salmonid) species listed as threatened under the ESA. NMFS now proposes to apply the

Section 9(a)(1) take prohibitions (subject to the “limits” discussed above and applicable to other threatened Pacific salmon and steelhead) to unmarked steelhead with an intact adipose fin that are part of the Puget Sound steelhead DPS. Because these prohibitions and associated limits address other threatened Pacific salmonids whose range overlaps that of Puget Sound steelhead, the proposed rule, if adopted, would not add a significant impact to the existing regulatory scheme. In addition, because the take of hatchery fish will not be prohibited, fisheries will be largely unaffected. Landowners will not be affected because the range of the Puget Sounds steelhead proposed for listing overlaps that of already-listed species whose take is already prohibited. Thus, this proposed rule, if adopted, will not have significant impacts on small entities. If you believe that this proposed rule will impact your economic activity, please comment on whether there is a preferable alternative that would meet the statutory requirements of ESA section 4(d) (see **DATES** and **ADDRESSES**). Please also describe the impact that alternative would have on your economic activity and why the alternative is preferable.

### *Paperwork Reduction Act (PRA)*

This proposed rule does not contain a collection-of-information requirement for purposes of the PRA of 1980.

### *Executive Order (E.O.) 12866 - Regulatory Planning and Review*

The proposed ESA section 4(d) regulations addressed in this rule have been determined to be not significant for the purposes of E.O. 12866. We have prepared a Regulatory Impact Review which was provided to the OMB.

Section I(12) of E.O. 12866 also requires each agency to write regulations that are easy to understand. We invite your comments (see **ADDRESSES**) on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could NMFS do to make the rule easier to understand?

### *E.O. 12988 – Civil Justice Reform*

We have determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988. We are proposing protective regulations pursuant to provisions in the ESA using an existing approach that improves the clarity of the regulations and minimizes the regulatory burden of managing ESA listings while retaining the necessary and advisable protections to provide for the conservation of threatened species.

### *E.O. 13084 – Consultation and Coordination with Indian Tribal Governments*

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule does not impose substantial direct compliance costs on the communities of Indian tribal governments within the range of this DPS. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule. Nonetheless, we intend to inform potentially affected tribal governments and to solicit their input on the proposed rule and will continue coordination and discussions with interested tribes as we move toward a final rule.

### *E.O. 13132 – Federalism*

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule. In fact, this notice proposes mechanisms by which we, in the form of 4(d) limits to take prohibitions, may defer to state and local governments where they provide necessary protections for Puget Sound steelhead.

### *E.O. 13211 – Energy Supply, Distribution, or Use*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to E.O. 13211, “significant energy action” means any action by an agency that is expected to lead to the

promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. Although the regulations addressed in this rule have been determined to be significant for the purposes of E.O. 12866, we have determined that the energy effects are unlikely to exceed the energy impact thresholds identified in E.O. 13211. Therefore, this proposed action is not a significant energy action, and no Statement of Energy Effects is required.

#### List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: February 1, 2007.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

#### PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.201 202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.203, paragraphs (a), (b) introductory text, and (b)(2) are revised to read as follows:

##### § 223.203 Anadromous fish.

\* \* \* \* \*

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(c)(3) through (c)(23).

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(c)(3) through (c)(23) are described in the following paragraphs (b)(1) through (b)(13):

\* \* \* \* \*

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in § 223.102(c)(23) do not apply to activities specified in an application for ESA 4(d) authorization for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries,

NOAA (AA), no later than 60 days after the publication of the final rule in the **Federal Register**. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of authorization, or 6 months after the publication of the final rule in the **Federal Register**, whichever occurs earliest.

\* \* \* \* \*

[FR Doc. E7–2010 Filed 2–6–07; 8:45 am]

BILLING CODE 3510–22–S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 300

[Docket No. 070119012–7012–01; I.D. 010307B]

RIN 0648–AU78

##### Pacific Albacore Tuna Fisheries; Vessel List to Establish Eligibility to Fish for Albacore Tuna in Canadian Waters Under the U.S.–Canada Albacore Tuna Treaty

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to develop a new vessel list at the beginning of each calendar year of U.S. vessels eligible to fish for albacore tuna in Canadian waters. The vessel list would revert to zero vessels on December 31 of each year, unless NMFS receives a notice for a vessel to be added to the list for the upcoming year, with the requisite information. This proposed regulation would clarify that the vessel list will remain valid for a single calendar year. Updating the list every year is intended to facilitate the United States' obligation to annually provide Canada a current list of U. S. vessels that are likely to fish albacore off the coast of Canada.

**DATES:** Comments must be received by 5 p.m. Pacific Standard Time March 9, 2007.

**ADDRESSES:** You may submit comments on this proposed rule, identified by [I.D. 010307B] by any of the following methods:

- E-mail: [albacore.fish@noaa.gov](mailto:albacore.fish@noaa.gov). Include the I.D. number in the subject line of the message.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.
- Phone: (562)980–4024.
- Fax: (562) 980–4047.

**FOR FURTHER INFORMATION CONTACT:** Chris Fanning, Southwest Region, NMFS, (562) 980–4198 or (562) 980–4030.

**SUPPLEMENTARY INFORMATION:** On August 18, 2006, NMFS published a notice (71 FR 47779) revising the methodology to create a vessel list for 2006 for vessels eligible to fish for albacore tuna in Canadian waters. The 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty), as amended in 2002, establishes a number of obligations for both countries to control reciprocal fishing in waters of one country by vessels of the other country. One obligation is that each country is required to annually provide to the other country a list of its fishing vessels that are expected to fish for Pacific albacore tuna off the coast of the other country during the upcoming fishing season, generally June through October each year.

As described in the 2004 final rule implementing amendments to the Treaty (69 FR 31531, June 4, 2004), and codified at 50 CFR 300.172, the list must include vessel and owner name, address, and phone number; USCG documentation number (or state registration if not documented); vessel operator (if different from the owner) and his or her address with phone number. Each U.S. vessel must be on the list for at least 7 days prior to engaging in fishing under the Treaty. This is intended to ensure that both countries have equal information as to eligible vessels. U.S. and Canadian enforcement officers need up-to-date lists of eligible vessels to adequately enforce the Treaty. Vessel owners who wish their vessels remain on, or be added to, the vessel list must contact NMFS at the address specified at 50 CFR 300.171 (definition of “Regional Administrator”), which is the address that appears in the **ADDRESSES** section above and provide the required information. NMFS will notify fishermen by a confirmation letter or email of the date the request to be on the list was received.

Before the 2006 fishing season June through October, NMFS did not require owners of albacore fishing vessels that wanted their vessels to be on the list of U. S. vessels eligible to fish for albacore tuna in Canadian waters under the