of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule effects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at https://www.govinfo.gov/content/pkg/FR-2012-05-10/pdf/2012-11309.pdf) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA’s Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular. The rule rescinds the implementing regulations of a program repealed by statute, and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

List of Subjects in 49 CFR Part 624

Grant programs—transportation, Mass transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.90.

K. Jane Williams,
Acting Administrator.

PART 624—[REMOVED AND RESERVED]

In consideration of the foregoing, and under the authority of Public Law 112–141, 49 CFR chapter VI is amended by removing part 624.

[FR Doc. 2019–22859 Filed 10–18–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 17


RIN 1018–BC52

Endangered and Threatened Wildlife
and Plants; Endangered Species Status for Barrens Topminnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973, as amended (Act), for the Barrens topminnow (Fundulus julisias), a freshwater fish species from Cannon, Coffee, Dekalb, and Warren Counties, Tennessee. This rule adds this species to the Federal List of Endangered and Threatened Wildlife.

DATES: This rule is effective November 20, 2019.


SUPPLEMENTARY INFORMATION:
Supporting Documents

We prepared a species status assessment (SSA) report for the Barrens topminnow. Written in consultation with species experts, the SSA report represents the best scientific and commercial data available concerning the status of the Barrens topminnow, including the impacts of past, present and future factors (both negative and beneficial) affecting the species. Scientific expertise informing the SSA report came primarily from the Barrens Topminnow Working Group, which is a team of biologists from the Service, Tennessee Wildlife Resources Agency, Tennessee universities, and nongovernment organizations that have been working on Barrens topminnow conservation since 2001. Scientists on the Barrens Topminnow Working Group provided expertise in fish biology, habitat management, and stressors (factors negatively affecting the species). One biologist outside the Barrens Topminnow Working Group conducted independent peer review of the SSA report. The SSA report; the January 4, 2018, proposed rule (83 FR 490); this final rule; and other materials relating to this rulemaking can be found on the Service’s Southeast Region website at http://www.fws.gov/southeast/ and at http://www.regulations.gov under Docket No. FWS–R4–ES–2017–0094.

Previous Federal Actions

Please refer to the proposed listing rule for the Barrens topminnow (83 FR 490; January 4, 2018) for a detailed description of previous Federal actions concerning this species.

Background

The Barrens topminnow is a small fish with an average lifespan of 2 years that is endemic to springs and gently flowing portions of spring-fed streams in middle Tennessee. This species relies on aquatic vegetation for spawning substrate and cover. Owing primarily to invasive western mosquitofish (Gambusia affinis) that prey upon and harass Barrens topminnows, the species’ range has been curtailed and its status rangewid is low, based upon the best available scientific and commercial data available.


Summary of Comments and Recommendations

In the January 4, 2018, proposed rule (83 FR 490), we requested that all interested parties submit written comments on the proposal by March 5, 2018. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review actions under the Act (16 U.S.C. 1531 et seq.), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the Barrens topminnow and its habitat, biological needs, and threats. We received a response from one peer reviewer.

We updated the SSA report based on the peer reviewer’s comments. The changes consisted of clarifications and corrections to the SSA report, including typographical edits, incorporation of omitted references, and a clarification regarding the definition of a genetic term. The peer reviewer’s comments did not change our determination that the Barrens topminnow meets the definition of an endangered species under the Act.

Public Comments

We received 24 public comments on the proposed rule. Eleven of the comments were supportive of listing the Barrens topminnow as endangered but did not provide any new information on the species’ status. None of the remaining 13 comments provided substantive comments concerning the proposed listing of the Barrens topminnow. Ten of those did not address or provide any information concerning the Barrens topminnow, and three focused on the need for transparency in regulations implemented under the Act. Regarding transparency for our listing decision for the Barrens topminnow, we note that we provide our SSA report, as well as several other reports and surveys that helped inform this listing decision, to the public on http://www.regulations.gov under Docket No. FWS–R4–ES–2017–0094. Thus, none of the public comments changed our determination that the Barrens topminnow meets the definition of an endangered species under the Act.

Summary of Changes From the Proposed Rule

As discussed above, we made no changes to this final rule after consideration of the comments we received.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations in title 50 of the Code of Federal Regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (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. Our assessment evaluates the biological status of the species and possible threats to its continued existence based upon the best available scientific and commercial data.

Please refer to the SSA report for a more detailed discussion of the factors affecting the Barrens topminnow.

Current Condition of the Barrens Topminnow

To evaluate the current and future viability of the Barrens topminnow, we assessed a range of conditions to consider the species’ resiliency, representation, and redundancy (the “3 Rs” described in detail in the SSA report). The historical range of the Barrens topminnow included springs and spring runs (first and second order streams with a spring source) on the Barrens Plateau, which is part of the Eastern Highland Rim physiographic province in middle Tennessee. Historical species records are from the Duck River, Elk River, and Caney Fork River drainages. The Duck River and Elk River drain to the Tennessee River, and the Caney Fork River drains to the Cumberland River. Captively held Elk River and wild Caney Fork River stock exist today and are considered “evolutionary significant units” (ESUs, historically isolated groups of populations that are on independent evolutionary trajectories). Historical Duck River stock became extinct in the 1960s, before genetic material could be examined to assess whether the Duck River stock was a unique ESU or belonged to one of the two extant ESUs. Once known to occupy 18 sites (and likely more sites that were not sampled
prior to extirpation) within the three drainages, the Barrens topminnow currently occurs in the wild at 5 sites. The species occurs in the Duck River drainage in Short Spring and Marcum Spring, and in the Caney Fork drainage in Benedict Spring, McMahan Creek, and Greenbrook Pond. The Benedict Spring and McMahan Creek occurrences consist of native stock, while the remaining three, including the two Duck River occurrences, are populated with individuals introduced from Caney Fork drainage sites. An arid population of Barrens topminnows from Pond Spring in the Elk River drainage is held in captivity at three facilities, with the intention to reintroduce individuals from that population to the drainage where habitat conditions are, or can be made, suitable.

Of the five sites currently occupied by the species, the Greenbrook Pond and Marcum Spring populations are estimated to have medium resiliency, and the other three populations low resiliency. Rangewide, the Barrens topminnow has low representation, owing to the species’ reduced genetic diversity, loss of at least one ESU from the wild, and restriction to a single ecoregion and specific habitat type. Redundancy is also low, as the species is extant at only 5 of 18 known historical sites. Based on the 3 Rs, the species’ overall current condition is low.

**Threats**

The greatest threat to Barrens topminnow is predation from the western mosquitofish (Factor C), an invasive species native to portions of Tennessee west of the Barrens Plateau that preys upon young topminnows and harasses adults. Extirpation of Barrens topminnows has occurred consistently within 3 to 5 years of western mosquitofish invasion of a site, and the five sites where Barrens topminnows remain extant are the only sites not occupied by western mosquitofish. Predation upon Barrens topminnows by western mosquitofish (Factor C) is the primary driver of Barrens topminnow range curtailment and habitat modification (Factor A), as well as adverse demographic changes (Factor E). The presence of predatory western mosquitofish in most spring and stream systems of the Barrens Plateau has rendered otherwise suitable habitat for the Barrens topminnow uninhabitable. In addition to modification of habitat by a biological feature (invasive western mosquitofish), alteration of physical habitat features has occurred due to conversion of surrounding upland habitat to pasture, with concomitant removal of riparian vegetation and livestock accessing streams. Livestock access increases bank erosion, sedimentation, and nutrient loading in streams. Removal of riparian vegetation can also increase sedimentation and may raise water temperatures above levels suitable for Barrens topminnows. While such physical habitat alteration (Factor A) has occurred and has been a factor in curtailing some of the species’ range, its impact on the topminnow is much less substantial than predation by western mosquitofish.

Adverse demographic changes (Factor E) also are largely driven by invasive western mosquitofish (Factor C). The expansion of western mosquitofish into topminnow habitat has eliminated connectivity between sites that would allow gene flow and maintenance of genetic diversity. Each occupied site is vulnerable to extirpation due to prolonged drought or a flood that enables western mosquitofish invasion. Topminnows cannot move from these sites during droughts or floods because western mosquitofish are downstream. Further, the erosion of genetic variability due to site isolation reduces the capacity of the species to withstand stochastic events. Climate change (Factor E) is a threat to the Barrens topminnow. Drought poses a threat to Barrens topminnows as evidenced by the Benedict Spring site drying up three times since 2006, although each time topminnows were rescued from the drying spring and held in captivity until they could return to the spring after the drought subsided. Climate models at the scale of the Barrens Plateau are lacking, but in the broader southeastern United States, variability in weather is expected to increase over the next century, resulting in more extreme dry and wet years.

We did not find that the Barrens topminnow is impacted by overutilization (Factor B). Regarding the adequacy of existing regulatory mechanisms (Factor D), such as regulations implemented under the Clean Water Act to protect water quality and instream habitat, we found that they do not address, nor do they contribute to, the threat of invasive mosquitofish, which is the primary driver of the Barrens topminnow’s status.

**Determination**

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Barrens topminnow. Most Barrens topminnow is extirpated from 13 of 18 historically occupied sites, which is equivalent to a 72 percent loss in the species’ range. Native Duck River populations have been lost, and the ESU from the Elk River drainage currently persists only in captivity. Due primarily to predation by the western mosquitofish, but secondarily to habitat alternation exacerbated by climate change, the overall condition of the species is low, based on population resiliency and rangewide representation and redundancy.

The Act defines an endangered species as any species that “is in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species that “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” As discussed above, the resiliency, representation, and redundancy of the species has been severely compromised by the operation of threats in the past, primarily due to predation by introduced and expanding populations of nonnative western mosquitofish. In addition, all of the remaining populations of Barrens topminnow are at imminent risk of further expansion of western mosquitofish, as well as drought events, with no reasonable prospect of natural reestablishment once a population is extirpated. Therefore, we conclude that the species is currently at risk of extinction throughout its range, thus meeting the definition of an endangered species. For the same reasons, we find that a threatened species status is not appropriate for the Barrens topminnow.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Barrens topminnow is in danger of extinction throughout its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species’ degree of imperilment and better promotes the purposes of the statute. Under this reading, we should first consider whether listing is appropriate based on a rangewide analysis and proceed to conduct a “significant portion of its range” analysis if, and only if, a species does not qualify for listing as either endangered or threatened according to the “all” language. We note that the court in *Desert Survivors v. Department of the Army*...
Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Recovery Actions

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species’ decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be made to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (http://www.fws.gov/endangered) or from our Tennessee Ecological Services Field Office (see FOR FURTHER INFORMATION CONTACT).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Tennessee will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Barrens topminnow. Information on our grant programs that are available to aid species recovery can be found at: http://www.fws.gov/grants. Please let us know if you are interested in participating in recovery efforts for the topminnow. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see FOR FURTHER INFORMATION CONTACT).

Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that we designate critical habitats at the species level if the species is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. In the proposed listing rule (83 FR 490; January 4, 2018), we determined that designation of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking. We are still in the process of assessing this information. We plan to publish a proposed rule to designate critical habitat for the Barrens topminnow in the near future.

Regulatory Provisions

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Federal agency actions within the species’ habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Service; technical assistance and projects funded through the U.S. Department of Agriculture Natural Resources Conservation Service; issuance of permits by the Tennessee Valley Authority for right-of-way stream crossings; issuance of section 404 Clean Water Act (33 U.S.C. 1251 et seq.) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration. The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, also codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the
course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22. A permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

1. Normal agricultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

2. Normal residential landscaping activities.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

1. Collection or handling of the Barrens topminnow;

2. Introduction of nonnative species that compete with or prey upon the Barrens topminnow, including western mosquitofish and other species in the mosquitofish genus Gambusia;

3. Removal or destruction of native aquatic vegetation in any body of water in which the Barrens topminnow is known to occur; and

4. Discharge of chemicals or fill material into any waters in which the Barrens topminnow is known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see FOR FURTHER INFORMATION CONTACT).

Required Determinations
National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the Federal Register on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

There are no tribal lands affected by this listing determination.

References Cited

Authors
The primary authors of this final rule are the staff members of the Service’s Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17
Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation
Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for “Topminnow, Barrens” to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

(h) * * * * * * *

Topminnow, Barrens Fundulus julisia * * * * * * Wherever found * * E 83 FR [insert Federal Register page where the document begins], 10/21/2019.

* * * * * * *
Dated: August 20, 2019.
Margaret E. Everson,
Principal Deputy Director, U.S. Fish and
Wildlife Service, Exercising the Authority of
the Director, U.S. Fish and Wildlife Service.
[FR Doc. 2019–22857 Filed 10–18–19; 8:45 am]
BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration
50 CFR Part 635
[Docket No. 191011–0060]
RIN 0648–BJ29
Atlantic Highly Migratory Species;
Removal of Billfish Certificate of
Eligibility Requirements
AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.
ACTION: Final rule.
SUMMARY: This final rule removes
obsolete language in the Atlantic highly
migratory species (HMS) regulations
requiring that a Billfish Certificate of
Eligibility accompany certain product.
The requirement to possess a Billfish
Certificate of Eligibility no longer
applies because passage of 2018
amendments to the Billfish
Conservation Act of 2012 prohibited the
associated product sales. This
amendment removes a now-obsolete
requirement consistent with an already-
effective statutory provision. As further
discussed below, we anticipate finding
good cause that notice is unnecessary
and that it will not be necessary to
provide an opportunity for public
comment. No aspect of this action is
controversial.
DATES: This final rule is effective on
October 21, 2019.
ADDRESSES: Documents related to HMS
fisheries management, such as the 2006
Consolidated Atlantic HMS Fishery
Management Plan (FMP) and its
amendments, are available from the HMS
Management Division website at https://www.fisheries.noaa.gov/topic/
atlantic-highly-migratory-species or
upon request from the HMS
Management Division at 1315 East-West
Highway, Silver Spring, MD 20910.
FOR FURTHER INFORMATION CONTACT:
Lauren Latchford by phone at 301–427–
8503 or Rick Pearson by phone at 727–
551–5742.

SUPPLEMENTARY INFORMATION: Atlantic
HMS are managed under the dual
authority of the Magnuson-Stevens
Fishery Conservation and Management
Act, 16 U.S.C. 1801 et seq., (Magnuson-
Stevens Act) and the Atlantic Tunas
Convention Act, 16 U.S.C. 971 et seq.,
(ATCA). On October 2, 2006, NMFS
published in the Federal Register (71
FR 58058) regulations implementing the
2006 Consolidated HMS FMP, which
details the management measures for
Atlantic HMS fisheries; these
management measures have been amended or otherwise modified numerous
times. The implementing
regulations for Atlantic HMS are at 50
CFR part 635.

Background
The regulations at 50 CFR part 635 are
promulgated under ATCA and the
Magnuson-Stevens Act for the
conservation and management of
Atlantic HMS, including species of
tunas, billfish, sharks, and swordfish.
The sale of Atlantic billfish has been
prohibited by regulation since
implementation of the 1988 Fishery
Management Plan (FMP) for the Atlantic
Billfishes (53 FR 21501; June 8, 1988).
The Billfish Conservation Act of 2012
prohibited any person from possessing
or offering billfish or billfish products
for sale but included a limited exception
for Pacific billfish, with the result that
Pacific billfish product could continue
to be sold throughout the United States.
Thus, HMS regulations continued to
require that a Billfish Certificate of
Eligibility accompany any billfish
product sold to ensure that the product
did not come from the Atlantic Ocean.
In 2018, amendments to the Billfish
Conservation Act of 2012, clarified that
billfish are only exempted from the
sales prohibition when they are retained
in Hawaii or the Pacific Insular Areas.
Accordingly, such billfish may only be
sold in the same location where landed
or when legally transported to the other
exempted location (i.e., from Hawaii to
the Pacific Insular Areas or vice versa).
The new prohibition became effective
when the legislation was signed into
law on August 2, 2018. Thus, the
Billfish Certificate of Eligibility
requirement in 50 CFR part 635 is no
longer necessary, and this final rule
removes the requirement.
Corrections To Remove Billfish
Conservation Act of 2012 Language
Regulations at §§ 635.2 (definition of
“Billfish Certificate of Eligibility (COE)”
and 635.31(b)(2) and (3) are out of date.
Except for two specific exemptions that
apply to Hawaii and Pacific Insular
Areas, the Billfish Conservation Act, as
amended in 2018, prohibits any person
from offering billfish or billfish products
for sale, selling them, or having custody,
control, or possession of them for
purposes of offering them for sale.
Therefore, any language in 50 CFR part
635 referencing the Billfish COE is
obsolete. In order to be consistent with
Federal Register guidelines, this final
action removes the out of date definition
at § 635.2 and the language at
§ 635.31(b)(2) and (3). This final action
also revises the language at
§ 635.31(b)(1).
Classification
The Assistant Administrator for
Fisheries has determined that this final
rule is necessary for the conservation
and management of U.S. fisheries and
that it is consistent with the Magnuson-
Stevens Act, the 2006 Consolidated
Atlantic HMS FMP and its amendments,
ATCA, and other applicable law.
Pursuant to 5 U.S.C. 553(b)(B), there is
good cause to waive prior notice and
an opportunity for public comment on
this action, as notice and comment are
unnecessary and contrary to the public
interest. This action removes regulatory
text at 50 CFR part 635 for a
requirement that became obsolete as a
result of a statutory change that took
place in 2018. For this reason, there is
also good cause under 5 U.S.C. 553(d)
to waive the 30-day delay in
effectiveness.
This final rule has been determined to
be not significant for purposes of
Executive Order 12866.
Because prior notice and opportunity
for public comment are not required for
this rule by 5 U.S.C. 553, or any other
law, and a proposed rule is not being
published, the analytical requirements
of the Regulatory Flexibility Act, 5
U.S.C. 601 et seq., are inapplicable.
NMFS has determined that fishing
activities conducted pursuant to this
rule will not affect endangered and/or
threatened species or critical habitat
listed under the Endangered Species
Act, or marine mammals protected by
the Marine Mammal Protection Act,
because the action only removes
obsolete regulatory text at 50 CFR part
635.
List of Subjects in 50 CFR Part 635
Fisheries, Fishing, Fishing vessels,
Foreign relations, Imports, Penalties,
Reporting and recordkeeping
requirements, Treaties.