

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### *I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Ozone, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: April 3, 2000.

**Laura Yoshii,**

*Acting Regional Administrator Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart F—California**

2. Section 52.220 is amended by adding paragraphs (c)(198)(i)(j)(4) to read as follows:

##### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(198) \* \* \*

(i) \* \* \*

(j) \* \* \*

(4) Rule 54, amended on June 14, 1994.

\* \* \* \* \*

[FR Doc. 00-9660 Filed 4-18-00; 8:45 am]

**BILLING CODE 6560-50-P**

#### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 73**

[DA No. 00-777; MM Docket No. 99-344; RM-9709]

#### **Radio Broadcasting Services; Lampasas and Leander, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reallots Channel 255C1 from Lampasas, Texas, to Leander, Texas, and modifies the license for Station KJFK to specify operation on Channel 255C1 at Leander in response to a petition filed by Shamrock Communications, Inc. See 64 FR 71098, December 20, 1999. The coordinates for Channel 255C1 at Leander are 30-43-34 and 97-59-23. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99-344, adopted March 29, 2000, and released

April 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

#### **List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Lampasas, Channel 255C1, and adding Leander, Channel 255C1.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-9776 Filed 4-18-00; 8:45 am]

**BILLING CODE 6712-01-P**

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 224 and 226**

[Docket No. 000404093-0093-01; I.D. 121198A]

**RIN 0648-AN90**

#### **Endangered and Threatened Species; Final Rule to Remove Umpqua River Cutthroat Trout From the Federal List of Endangered and Threatened Species**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS has determined that the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) population, formerly identified as an Evolutionarily Significant Unit (ESU) of the species, is part of a larger population segment that previously was determined to be neither endangered nor threatened

as defined by the Endangered Species Act (ESA). Therefore, NMFS determines that the Umpqua River cutthroat trout should be removed from the Federal List of Endangered and Threatened species. This action will remove all ESA protections, including critical habitat designated for this species in the Umpqua River basin. The U.S. Fish and Wildlife Service (FWS) concurs with this action and has recently obtained sole jurisdiction over this species. In the future, FWS will be responsible for ESA actions pertaining to all cutthroat trout.

**DATES:** This rule is effective April 19, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Garth Griffin at (503) 231-2005 or Christopher Mobley at (301) 713-1401 of NMFS, or Catrina Martin (503) 231-6131 of FWS. Reference materials regarding this determination can also be obtained via the internet at [www.nwr.noaa.gov](http://www.nwr.noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Species Background**

The coastal cutthroat trout subspecies (*Oncorhynchus clarki clarki*) is native to western North America and is found in the coastal temperate rainforests from southeast Alaska to northern California (Trotter, 1989). The populations addressed in this document inhabit the Umpqua River basin of coastal Oregon. Details of the coastal cutthroat trout's life history and ecology, including particular aspects of the various resident and migratory life forms, can be found in published reviews by Pauley et al. (1989), Trotter (1989), Behnke (1992), Johnson et al. (1994), and Johnson et al. (1999).

**Previous Federal ESA Actions Related to Coastal Cutthroat Trout**

Descriptions of previous Federal ESA actions pertaining to coastal cutthroat trout are summarized in the proposed rule (64 FR 16397, April 5, 1999) and the initial listing determination (61 FR 41514, August 9, 1996). In response to an ESA petition, NMFS proposed to list the Umpqua River cutthroat trout ESU as endangered on July 8, 1994 (59 FR 35089), and made the listing final on August 9, 1996 (61 FR 41514). The listing was followed by a critical habitat designation on January 9, 1998 (63 FR 1388).

After making these findings, NMFS conducted an expanded ESA review of coastal cutthroat trout that identified six ESUs in Washington, Oregon, and California (Johnson, 1999). One of the conclusions of this more comprehensive review was that the Umpqua River cutthroat trout populations are part of a

larger Oregon Coast ESU bounded by Cape Blanco in the south and the Columbia River mouth in the north. Moreover, NMFS determined that the larger ESU did not warrant listing under the ESA. In light of these findings, NMFS and FWS proposed to delist the Umpqua River ESU on April 5, 1999 (64 FR 16397).

This proposal was announced jointly with FWS because section 4(a)(2)(B) of the ESA requires its concurrence on any NMFS delisting action. The proposal also noted that a determination would be made regarding which of the two agencies should have sole ESA jurisdiction over this species. On [insert publication date of "cutthroat jurisdiction" FRN], the agencies published a notice announcing that FWS would retain this authority but that NMFS would complete the final determination on the Umpqua delisting proposal. FWS will deal with other elements of the April 5, 1999, proposed rule (e.g., the proposed listing of cutthroat trout populations from Southwestern Washington and the lower Columbia River) in a separate rulemaking. It should be noted that FWS does not employ the phrase "ESU" to describe a Distinct Population Segment (DPS) under the ESA. In addition, NMFS' April 1999 classification of the Oregon Coast ESU as a "candidate species" may no longer apply because FWS' definition of candidates differs from NMFS' definition (see 61 FR 7596, February 28, 1996, and 64 FR 33466, June 23, 1999).

The agencies requested information on all aspects of the April 1999 proposal, and NMFS held public hearings on May 25-26, 1999, to solicit additional comments (64 FR 20248, April 26, 1999). In accordance with a July 1, 1994, interagency policy (59 FR 34270), NMFS also solicited scientific peer review on the proposal from 12 species experts and received three responses.

Government agencies, non-government organizations, the scientific community, and other individuals submitted a total of 26 comments on the proposal. Many respondents offered similar comments, hence these are addressed together in this document. NMFS has evaluated only those comments specific to ESU delineations for cutthroat trout in Oregon coastal basins. FWS will address comments on other issues (e.g., population status, efficacy of conservation efforts, factors contributing to the species' decline, etc.) in future determinations relating to coastal cutthroat trout.

**Summary of Comments**

*Comment 1:* Some commenters questioned the sufficiency and accuracy of the data NMFS employed in the delisting proposal. In contrast, the peer reviewers generally found that NMFS' status review was comprehensive and credible even though they may have not concurred with all of the conclusions. Two peer reviewers cited additional data and reports that the agencies should assess before making a risk assessment and noted an apparent omission in NMFS' status review document (Johnson et al., 1999).

*Response:* Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data, after reviewing a species' status and taking into account any efforts being made to protect it. NMFS believes that information contained in the agency's status reviews (Johnson et al., 1994; Johnson et al., 1999), together with more recent information obtained in response to the proposed rule, represent the best scientific and commercial information presently available for the Umpqua River cutthroat trout populations addressed in this final rule. NMFS has made every effort to conduct an exhaustive review of all available information, solicited information and opinion from all interested parties, and subjected the conclusions to peer reviewers.

With respect to the data/reports cited by peer reviewers, NMFS agrees that these and other data sets may be helpful in determining the degree of risk the species currently faces. However, for this final rule the agency has focused solely on information that relates to identifying ESUs along the Oregon coast (specifically whether any new data would contradict the agency's proposal to include the Umpqua River populations as part of a larger Oregon Coast ESU). Much of the data provided by reviewers specifically focused on abundance data that were not directly relevant to delineating ESU boundaries. As previously described in this document, FWS will be responsible for making any future risk assessments for coastal cutthroat trout. NMFS has transmitted all relevant information and data sets to FWS.

NMFS recognizes the omission that two peer reviewers cited in the status review's description of average annual river flows (Figure 8, page 26 of Johnson et al., 1999). The agency notes that a representation of the correct figure can be found in NMFS' status review for West Coast chinook salmon (Figure 5, page 16 of Myers et al., 1998).

*Comment 2:* Some commenters contended that the ESUs were delineated in an arbitrary manner and they questioned NMFS' analyses and interpretation of genetic results. One peer reviewer suggested that NMFS should de-emphasize the genetic data when determining ESUs and give more consideration to other types of information, e.g., life history traits and ecological data.

*Response:* NMFS disagrees with the contention that cutthroat trout ESUs were delineated in an arbitrary manner and believes that available genetic and ecological data do support NMFS' ESU delineations for this species. For example, the status review (Johnson et al., 1999) describes the marked genetic differences between cutthroat trout populations from the Washington and Oregon coasts. These differences, coupled with a significant migrational barrier at the mouth of the Columbia River and a major biogeographic boundary for marine and terrestrial species at Cape Blanco, provide substantial evidence of a distinct population segment along the Oregon coast. Similar findings using both genetic and ecological data formed the basis for other ESU delineations.

Since the beginning of the coastal cutthroat trout status review in 1993, NMFS has continually sought and evaluated input from the public, comanagers, and species experts regarding how best to characterize the population structure and status of *O. clarki clarki*. The agency has made every attempt to conduct a rigorous scientific assessment of this species and document the rationale for the resultant ESA decisions. In comparison with ESA status reviews for other salmonids, these decisions were more difficult to make because key data were often scarce or nonexistent. In particular, while genetic and life history data suggested that cutthroat trout populations may be structured differently than other Pacific salmon species, it was not clear how these differences should be interpreted in terms of ESU delineations.

NMFS has published a policy describing how it will apply the ESA definition of "species" to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with NMFS' policy, regarding the definition of "distinct population segments" (61 FR 4722, February 7, 1996). NMFS' policy states that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be

considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance for applying this policy is contained in a scientific paper entitled "Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' Under the Endangered Species Act" (Waples, 1991a) and in a NOAA Technical Memorandum: "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991b).

NMFS continues to believe that genetic analyses are an essential component of ESA status reviews. These analyses, in conjunction with life history and ecological assessments, provide an important view into the population structure of a species while helping to discern whether a species faces a genetically-based conservation risk. During the past year, NMFS has compiled additional genetic data relevant to the Oregon Coast/Umpqua ESU determination. Preliminary analyses of these new data (including 16 samples from the Oregon coast) do not change any of the major relationships observed among coastal cutthroat trout populations during the coastwide status review (NMFS, 2000). As was the case before the proposed delisting, genetic samples for the Umpqua River populations are loosely clustered within a group encompassing the Oregon and Northern California coasts.

While some commenters provided independent interpretations of the existing data, none provided substantial new information regarding ESU configurations along the Oregon coast. NMFS concurs with comments by several reviewers that unique ecological conditions in the Umpqua River basin could make these cutthroat trout populations adaptively different from populations in other coastal basins. As Johnson et al. (1999) describe, there was considerable uncertainty about how best to characterize ESUs for this species. NMFS scientists evaluated several alternative ESU scenarios (ranging from a single subspecies ESU to numerous basin-sized ESUs) and ultimately identified six ESUs for the species. A considerable part of these deliberations

focused on the Umpqua River basin and its cutthroat trout populations. In the end, NMFS scientists concluded that "new information that has become available since completion of the status review does not materially change our understanding of any factors that contribute to ESU determinations for coastal Oregon cutthroat trout" (NMFS, 2000).

*Comment 3:* Some commenters stated that Umpqua River cutthroat trout should be removed from endangered species status only when the population actually recovers, not when it is redefined as part of a larger ESU. Many were concerned that removing ESA protections could cause the Umpqua River populations to become extinct. One commenter suggested that NMFS should establish measurable delisting criteria.

*Response:* NMFS believes that ESA determinations should reflect the best available information on a species' status and population structure and that § 3(15) of the ESA requires that listing decisions be made at a scale no smaller than a DPS. According to criteria at 50 CFR 424.11(d), NMFS may delist a species if information shows that the species is no longer endangered or threatened because of (1) extinction, (2) recovery, or (3) the original data for classifying the species were in error. NMFS believes that the latter case applies to this delisting, i.e., new information indicates that the original listing was in error and that the Umpqua River populations should be considered part of a larger DPS.

As described in Comment #2, NMFS' policy states that a DPS of Pacific salmon must represent an ESU of the biological species (56 FR 58612, November 20, 1991). When appropriate, NMFS will revise the boundaries of an ESU (e.g., the recent cases of chum salmon (64 FR 14508, March 25, 1999) and chinook salmon (64 FR 50394, September 16, 1999)). In the case of the Umpqua River cutthroat trout, this revision resulted in a revised risk assessment wherein NMFS concluded that the larger Oregon Coast ESU was neither threatened nor endangered under the ESA (64 FR 16397, April 5, 1999). NMFS shares many of the concerns expressed about the health of the Umpqua River populations, in particular the precarious status of the anadromous (sea-run) life form. It is unclear whether de-listing the Umpqua River cutthroat trout will lead to a local extinction, but the agency anticipates that local, state, and Federal conservation efforts will continue to progress. Key among these will be the Northwest Forest Plan (overarching

management strategy for Federal lands in the basin) and the state and locally driven Oregon Plan for Salmon and Watersheds. NMFS will encourage, and where possible support these and other efforts to help Umpqua Basin cutthroat trout.

### Determinations

Based on an assessment of the available scientific and commercial information, and after taking into account public and peer review comments, NMFS finds that the Umpqua River cutthroat trout is no longer a "species" as defined by the ESA. New information collected during the coastwide status review indicate that the Umpqua River populations are part of a larger Oregon Coast ESU that previously was determined to be neither threatened nor endangered under the ESA (64 FR 16397, April 5, 1999). Therefore, NMFS concludes that the Umpqua River cutthroat trout should be removed from the Federal List of Endangered and Threatened species, thereby removing all protections provided by the ESA. FWS concurs with this action in accordance with 4(a)(2)(B) of the ESA.

As a result of this delisting, the taking, interstate commerce, import, and export of Umpqua River cutthroat trout will no longer be prohibited by the ESA. In addition, Federal agencies will no longer be required to consult with NMFS under section 7 of the ESA in the event activities they authorize, fund, or carry out adversely affect Umpqua River cutthroat trout.

In accordance with 5 U.S.C. 553(d), NMFS has determined that this rule relieves an existing restriction and that there is good cause to make the effective date of this delisting immediate. Delaying the delisting would keep the ESA's take prohibitions in place (as well as the resultant ESA consultation and permitting requirements) and result in needless expenditures of time and money. An immediate delisting will provide prompt public notification and allow NMFS and other Federal agencies to focus limited resources on actions affecting listed species.

### Critical Habitat

Critical habitat for the Umpqua River cutthroat trout was designated on January 9, 1998 (63 FR 1388). It includes all estuarine areas and river reaches accessible to the species in the Umpqua River basin, except areas above longstanding, naturally impassable barriers. The ESA defines critical habitat as "specific areas within the geographical area occupied by the species, at the time it is listed on which

are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection." Because critical habitat can be designated only for species listed as endangered or threatened under the ESA, there will be no designated critical habitat for the Umpqua River cutthroat trout upon publication of this final rule.

### Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS concluded that all ESA listing actions are not subject to environmental assessment requirements of the National Environmental Policy Act. See NOAA Administrative Order 216-6 (see ADDRESSEES).

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered in determinations regarding the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

### References

A complete list of all references cited herein is available upon request (see ADDRESSES) and can also be obtained from the internet at [www.nwr.noaa.gov](http://www.nwr.noaa.gov).

### List of Subjects

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

#### 50 CFR Part 226

Endangered and threatened species.

Dated: April 14, 2000.

**Andrew A. Rosenberg**,  
Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 224 and 226 are amended as follows:

### PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

#### § 224.101 [Amended]

2. In § 224.101, in paragraph (a), remove the words "Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*)".

### PART 226—DESIGNATED CRITICAL HABITAT

3. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

#### § 226.206 [Removed and reserved]

4. Remove and reserve § 226.206.

#### Table 4 to Part 226 [Removed and reserved]

5. Remove and reserve Table 4 to part 226.

[FR Doc. 00–9842 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 981216308-9124-02; I.D. 040500B]

RIN 0648–AJ67

### Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems

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

**ACTION:** Delay of effectiveness.

**SUMMARY:** NMFS further delays the effective date of a section of a final rule published May 28, 1999, which required certain vessel owner/operators to install a NMFS-approved vessel monitoring system (VMS). The effective date of the VMS requirement is delayed until September 1, 2000.

**DATES:** The effective date of 50 CFR 635.69 is September 1, 2000.

**ADDRESSES:** Copies of the Highly Migratory Species Fishery Management Plan (HMS FMP), the final rule and supporting documents can be obtained from Rebecca Lent, Chief, Highly Migratory Species Division, Office of