

open seasons are prescribed" in part 20. Because of this definition, many of the migratory birds that we had intended 50 CFR 21.21(b) to cover are not covered by the new regulations. We are therefore publishing this document to correct the final regulations by revising § 21.21(b) to remove the term "migratory game birds" and instead use the more generic term "migratory birds."

#### List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

- Accordingly, 50 CFR part 21 is corrected by making the following correcting amendments:

#### PART 21—MIGRATORY BIRD PERMITS

- 1. The authority citation for part 21 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

#### § 21.21 [Amended]

- 2. In § 21.21, amend paragraph (b) introductory text by:
  - a. Removing the words "Game bird" from the heading; and
  - b. Removing the word "game" both times that it appears in the second and third sentences.

Dated: September 19, 2008.

**Sara Prigan,**  
*Federal Register Liaison.*

[FR Doc. E8–22516 Filed 9–24–08; 8:45 am]

**BILLING CODE 4310–55–P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 070727426–81200–01]

**RIN 0648–AV18**

#### Endangered and Threatened Species: Final Protective Regulations for Threatened Puget Sound Steelhead

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

**ACTION:** Final rule.

**SUMMARY:** We, NMFS, apply the Endangered Species Act (ESA) protective regulations for threatened West Coast salmon and steelhead to the distinct population segment (DPS) of

steelhead (*Oncorhynchus mykiss*) in Puget Sound, Washington.

**DATES:** The effective date of this rule is October 27, 2008.

**ADDRESSES:** NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

#### FOR FURTHER INFORMATION CONTACT:

Steve Stone, NMFS, Northwest Region, at (503) 231–2317; or Marta Nammack, NMFS, Office of Protected Resources, at (301) 713 1401. Reference materials regarding protective regulations for this and other threatened salmonids are available upon request or on the Internet at <http://www.nwr.noaa.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

ESA section 9(a)(1) (16 U.S.C. 1538(a)(1)) prohibits "take" and import/export of, and commercial transactions involving, all species listed as endangered. The term "take" is defined under the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct" (Section 3(19), 16 U.S.C. 1532 (19)). In the case of threatened species, section 4(d) of the ESA directs the Secretary of Commerce (Secretary) to issue regulations he or she deems necessary and advisable for the conservation of the species. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a)(1) of the ESA prohibits with respect to endangered species. These 9(a)(1) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Since 1997 we have promulgated a total of 29 limits to the ESA section 9(a) take prohibitions for 21 threatened Pacific salmon and steelhead Evolutionarily Significant Units (ESUs) or Distinct Population Segments (DPSs) (62 FR 38479, July 18, 1997; 65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 67 FR 1116, January 9, 2002; 73 FR 7816, February 11, 2008). On June 28, 2005, as part of the final listing determinations for 16 ESUs of West Coast salmon, we amended and streamlined the previously promulgated 4(d) protective regulations for threatened salmon and steelhead (70 FR 37160). We took this action to provide appropriate flexibility to ensure that fisheries and artificial propagation programs are managed consistently with the conservation needs of threatened salmon and steelhead. Under this change, the section 4(d) protections apply to natural and hatchery fish with an intact adipose fin, but not to listed hatchery fish that have had their

adipose fin removed prior to release into the wild. Additionally, we made several simplifying and clarifying changes to the 4(d) protective regulations including updating an expired limit (§ 223.203(b)(2)), providing a temporary exemption for ongoing research and enhancement activities, and applying the same set of 14 limits to all threatened Pacific salmon and steelhead ESUs or DPSs.

On March 29, 2006, we proposed to list the Puget Sound steelhead DPS as a threatened species (71 FR 15666). On February 7, 2007 (72 FR 5648), we proposed protective regulations for Puget Sound steelhead under section 4(d) of the ESA. On May 11, 2007, we issued a final determination listing the Puget Sound steelhead DPS as threatened, and we announced that we would finalize protective regulations in a subsequent **Federal Register** notice (72 FR 26722). In this final rule we apply the 4(d) protective regulations adopted for other Pacific salmonids, as amended in June 2005 (70 FR 37160; June 28, 2005), to Puget Sound steelhead.

#### Summary of Comments Received in Response to the Proposed Rule

We solicited public comment on the proposed protective regulations and draft Environmental Assessment (EA) (72 FR 5648; February 7, 2007) and received nine comments in response. Comments received consisted of e-mails and letters submitted by or for the following entities: Lummi Nation, Muckleshoot Indian Tribe, Native Fish Society, Port Gamble S'Klallam and Jamestown S'Klallam Tribes, Tulalip Tribes of Washington, U.S. Department of Interior, Washington Forest Protection Association, Western States Petroleum Association, and Wild Fish Conservancy. Copies of the full text of comments received are available upon request (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). Below we address the comments received that pertain to proposed protective regulations for Puget Sound steelhead.

**Comment 1:** One commenter recommended that we re-open the comment period on the proposed 4(d) limits after making a final listing determination. This commenter also believed that we should explain each of the 4(d) limits in greater detail to prevent confusion regarding which 4(d) limits would be in effect for Puget Sound steelhead.

**Response:** We have described the same 4(d) limits presently being applied to Puget Sound steelhead in previously published **Federal Register** notices (65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 69 FR 33102; June 14,

2004; 70 FR 37160, June 28, 2005). We do not believe that providing additional time for comment would result in substantive new information beyond that which we have already considered during this and previous rulemakings. To reduce confusion and enhance public understanding of the various 4(d) limits, we are in the process of updating a comprehensive "Citizen's Guide to the 4(d) Rule" available on the Internet at <http://www.nwr.noaa.gov>. At this website we also identify agency contacts who can assist interested parties in understanding the take prohibitions and which 4(d) limits are relevant to their anticipated activities.

**Comment 2:** One commenter suggested that it was not necessary to issue a 4(d) rule for Puget Sound steelhead because ESA protective regulations already exist for a number of other co-occurring species in Puget Sound. Another commenter was skeptical that the 4(d) limits would be effective at conserving steelhead, contending that many of the limits were based on vague criteria and would place responsibility on local agencies that have failed to meet their existing mandates to conserve steelhead. In contrast, another commenter asserted that the adoption of the proposed protective regulations was the most appropriate action for protecting Puget Sound steelhead.

**Response:** We acknowledge that existing ESA protective regulations for co-occurring species such as Puget Sound Chinook and Hood Canal summer-run chum salmon (both listed as threatened species under the ESA) provide some level of protection to Puget Sound steelhead. There are many activities that the existing regulations would not cover, however, such as the take of steelhead in fisheries or for hatchery broodstock. In addition, there are areas and times where Puget Sound steelhead are the only listed species that occur. Protective regulations prohibiting take of Puget Sound steelhead will specifically address the take of listed steelhead. Applying the existing limits on the take prohibition to Puget Sound steelhead will provide incentives and opportunities for interested parties to work with us to address a wide spectrum of human activities that will continue to pose a threat to steelhead unless they are managed in ways that adequately protect listed steelhead.

We also acknowledge that management efforts to date have not been sufficient to prevent Puget Sound steelhead from becoming a threatened species. However, we believe that state, tribal, and local governments remain in the best position to help develop and

implement conservation strategies for listed species. During 8 years of implementing these 4(d) protections we have worked with state, tribal, and local governments throughout the Pacific Northwest to achieve significant conservation benefits for listed species. Such achievements include more efficient review and implementation of hundreds of scientific studies on threatened salmon and steelhead, and closer coordination to craft Fishery Management Evaluation Plans (FMEP), Hatchery Genetic Management Plans, and Tribal Resource Management Plans.

**Comment 3:** One commenter recommended that we describe the current status of the Forest Practices Habitat Conservation Plan (HCP) in Washington and clarify that ESA take prohibitions need not apply to lands covered by this and other HCPs.

**Response:** Section 10 of the ESA allows us to issue permits for the take of a listed species. The process requires that a non-federal permit applicant develop and submit an HCP to NMFS. We coordinate with applicants, provide technical assistance to ensure use of the best available science, and ensure that National Environmental Policy Act (NEPA) and ESA procedures are followed. Once an HCP is final and all parties agree to the plan, we issue an ESA Section 10 incidental take permit for the listed species. HCPs are often in effect for many decades to provide the greatest benefits of functioning habitats, while permitting land management under stable regulations. This ESA regulatory assurance is particularly attractive to landowners with long-term investments, such as timber growers or water suppliers. While applicants' future activities under an HCP may cause a low level of unintentional injury or death to listed salmon and steelhead, the habitat they manage will support long-term survival and recovery of those fish.

On June 5, 2006, NMFS issued an incidental take permit under section 10 of the ESA to the Washington Department of Natural Resources that covers activities and forestlands identified in the Washington State Forest Practices HCP. This HCP is a 50-year agreement for protection of Washington's streams and forests that provide habitat for more than 70 aquatic species, including threatened or endangered salmon and steelhead. The incidental take permit includes a provision that, "for unlisted covered species, the permit will take effect upon the listing of a species as endangered, and for a species listed as threatened, on the effective date of a rule under Section

4(d) of the ESA prohibiting take of the species."

One of the 4(d) limits that will be in effect for Puget Sound steelhead recognizes that entities holding a permit under section 10 of the ESA (or receiving other exemptions of the ESA) are free of take prohibitions so long as they act in accordance with the permit or applicable law (§ 223.203(b)(1)). Therefore, approved HCPs in the range of Puget Sound steelhead including the Washington State Forest Practices HCP would comply with this 4(d) limit.

**Comment 4:** Several commenters requested that we delay adoption of a 4(d) rule until we engaged in government-to-government consultations with affected Indian tribes. These commenters also asserted that requiring the release of all steelhead with an intact adipose fin would discriminate against tribal fishermen by disrupting net fisheries and precluding access to large quantities of harvestable salmon and steelhead in order to avoid taking a small number of unmarked steelhead.

**Response:** We recognize that the tribes have longstanding cultural ties to steelhead and steelhead fisheries, and that a number of tribes have treaty-based rights. We also understand that an ESA listing of Puget Sound steelhead may impact some tribal fisheries and resource management agencies, at least in the short term. Soon after listing Puget Sound steelhead as a threatened species, we met and consulted with several of the affected tribes to discuss implications for their steelhead management. All Puget Sound steelhead fisheries are regulated, either by the State of Washington or by tribal governments. These discussions have continued to date and are expected to result in a comprehensive new fisheries management plan for Puget Sound steelhead from tribal and state co-managers. This plan will address all manner of steelhead harvest, including tribal net fisheries. We will review this plan, including public input and revisions to it, and determine if it meets the criteria for coverage under one or more of the 4(d) limits. To accommodate development and review of the plan, this final 4(d) rule provides for a delay in the effective date for take prohibitions associated with tribal and recreational steelhead harvest until June 1, 2009, so long as that harvest is not directed at naturally spawning stocks and is authorized either by a federally recognized treaty tribe or the State of Washington. By the beginning of the 2010 winter fishing season, we expect such harvest to be addressed by two relevant 4(d) limits: § 223.203(b)(4) -

fishery harvest activities associated with an approved FMEP, and § 223.203(b)(6) - actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon, and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States v. Washington* or *United States v. Oregon*. Delaying the take prohibitions pertaining to steelhead harvest until June 2009 (one fishing season) is not expected to pose undue risk to listed steelhead. In the final listing determination (72 FR 26722; May 11, 2007), we observed that a primary threat to Puget Sound steelhead is the natural spawning of out-of-basin hatchery steelhead. Allowing the present level of hatchery-directed harvest to continue through June 2009 will assist in removing existing hatchery fish before they are able to spawn. We also concluded in the final listing determination that previous harvest management practices likely contributed to the historical decline of Puget Sound steelhead, but that the elimination of the directed harvest of wild steelhead in the mid 1990s has largely addressed this threat. Based on these factors we concluded that suspending the take prohibition for one fishing season would be consistent with conservation of the Puget Sound steelhead ESU.

**Comment 5:** One commenter requested that we explain how the EA has complied with applicable case law. This commenter also asserted that we should explain if and how we intend to conduct ESA section 7 consultation pertaining to the proposed issuance of a 4(d) rule.

**Response:** The EA developed in support of these 4(d) regulations was prepared in accordance with NOAA directives, policies, and guidelines for implementing the NEPA, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and NOAA Administrative Order (NAO) 216-6. A NEPA Handbook, available on the Internet at <http://www.nepa.noaa.gov>, describes these and other relevant legal requirements and describes how we apply them.

We also have certain consultation responsibilities under section 7 of the ESA when making determinations regarding a specific 4(d) limit. That is, we must conduct a consultation to ensure that the proposed action (e.g., adopting an FMEP under § 223.203(b)(4)) will not jeopardize the continued existence of listed salmonids or destroy or adversely modify designated critical habitat. In addition, we must consider any adverse effects on

designated essential fish habitat (EFH) by completing a consultation as required by the Magnuson-Stevens Act. Generally, ESA and EFH consultations are conducted concurrently. As detailed in an updated “4(d) Rule Implementation Binder for Threatened Salmon and Steelhead on the West Coast” (available on the Internet at <http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/>), we expect that our 4(d) limit evaluations will provide a large part of the biological analysis required for the ESA section 7/EFH consultation.

**Comment 6:** One commenter noted that juvenile steelhead and rainbow trout are similar in appearance and requested that we explain how take prohibitions would apply to the former but not the latter life form. Another commenter believed that protective regulations should apply to both resident and anadromous life forms and that we should require applicants for take authorization to undertake efforts to research the relationship between the two forms and incorporate the findings into management actions.

**Response:** As described in the final listing determination for the Puget Sound steelhead DPS (72 FR 26722; May 11, 2007), resident *O. mykiss* occur within the range of the DPS but are not part of the DPS due to marked differences in physical, physiological, ecological, and behavioral characteristics. Only anadromous *O. mykiss* are listed in this DPS and subject to the ESA 4(d) take regulations. We recognize that it is difficult to distinguish between the two life forms, especially juvenile fish. Therefore we encourage the public to carefully consider the impacts of activities that might result in taking either life form and recommend that they consult with NMFS (see contacts at <http://www.nwr.noaa.gov/Regional-Office/Habitat-Conservation/Washington-State-Branch/>) or state or tribal biologists familiar with steelhead in the area of concern.

There is a critical need to improve our understanding of the interactions between the anadromous and resident life forms of *O. mykiss*, and, when appropriate, we will encourage applicants for take authorization to undertake efforts to research the relationship between the two forms and incorporate the findings into management actions and additional scientific research. Such research could elucidate the factors affecting reproductive exchange between the two life forms, as well as their respective contributions to the viability of *O. mykiss* as a whole. These considerations

may prove to be important in the context of recovery planning and assessing risks faced by the *O. mykiss* species as a whole. At present, there is insufficient information to evaluate whether, under what circumstances, and to what extent the resident form may contribute to the viability of steelhead over the long term (Recovery Science Review Panel, 2004; Good *et al.*, 2005; Independent Scientific Advisory Board, 2005; NMFS, 2005).

#### Description of Protective Regulations Being Afforded Puget Sound Steelhead

Consistent with the June 28, 2005 amended 4(d) protective regulations (70 FR 37160), this final rule applies the ESA section 9(a)(1) take prohibitions (subject to the limits discussed below) to unmarked anadromous fish with an intact adipose fin that are part of the Puget Sound steelhead DPS. (The clipping of adipose fins in juvenile hatchery fish just prior to release into the natural environment is a commonly employed method for the marking of hatchery production). We believe this approach provides needed flexibility to appropriately manage the artificial propagation and directed take of threatened salmon and steelhead for the conservation and recovery of the listed species.

The June 2005 amended ESA 4(d) protective regulations simplified the previously promulgated 4(d) rules by adopting the same set of 14 limits for all threatened salmon and steelhead. These limits allow us to exempt certain activities from the take prohibitions, provided that the applicable programs and regulations meet specific conditions to adequately protect the listed species. In this final rule we adopt this same set of 14 limits for Puget Sound steelhead. Comprehensive descriptions of each 4(d) limit are contained in “A Citizen’s Guide to the 4(d) Rule” (available on the Internet at <http://www.nwr.noaa.gov>), and in previously published **Federal Register** notices (65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 69 FR 33102; June 14, 2004; 70 FR 37160, June 28, 2005). These limits include: activities conducted in accordance with ESA section 10 incidental take authorization (50 CFR 223.203(b)(1)); ongoing scientific and conservation activities for which a permit application has been timely submitted, and treaty and non-treaty fisheries for which a comanager’s management plan has been timely submitted (§ 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 (U.S.) v. Washington or U.S. v. Oregon* (§ 223.203(b)(6)); scientific research activities conducted or permitted 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)); certain park 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).

Limits § 223.203(b)(4) and § 223.203(b)(6) address fishery management plans. As noted in our response to comments above, steelhead co-managers and stakeholders in the State of Washington have been actively working to develop a comprehensive management plan for Puget Sound steelhead. We have participated in the development of this plan and will review it for compliance with the above 4(d) limits. We have reviewed existing state and tribal fisheries management regimes and concluded that implementation of these regimes for the balance of the current fishing season is adequate for conservation of Puget Sound steelhead, until a comprehensive regime is adopted (NMFS, 2008). Therefore, steelhead harvest is not prohibited until June 1, 2009, so long as the harvest is authorized by the State of Washington or a tribe with jurisdiction over steelhead. If NMFS does not receive a fishery management plan for Puget Sound steelhead by November 14, 2008, subsequent take by harvest will be subject to the take prohibitions.

Section 223.203(b)(2) exempts scientific or artificial propagation activities with pending applications for ESA approval. The limit was amended as part of the June 28, 2005, final listing determination for West Coast salmon and steelhead to temporarily exempt such activities from the take prohibitions for 6 months, provided that a complete application was received within 60 days of the notice's publication (70 FR 37160). The deadlines associated with this exemption were most recently extended to address research related to threatened Oregon Coast coho salmon (73 FR 7816; February 11, 2008), but one of these

deadlines has now expired. As discussed in the proposed rule (69 FR 33102; June 14, 2004), it is in the interest of the conservation and recovery of Puget Sound steelhead to allow ongoing research and enhancement activities to continue uninterrupted while we process the necessary permits and approvals. For modified research requests received by November 14, 2008, the take prohibitions will not apply to research and enhancement activities until the application is rejected as insufficient, a permit or 4(d) approval is issued, or until June 1, 2009, whichever occurs earliest. The length of this "grace period" is necessary because we process applications for 4(d) approval annually.

#### Classification

*National Environmental Policy Act (NEPA)*

We conducted an EA under the NEPA analyzing the proposed application of the 4(d) protective regulations to Puget Sound steelhead. We solicited and received comments on the EA as part of the proposed rule. Informed by the comments received, we finalized the EA on August 25, 2008, and issued a finding of no significant impact for promulgation of the 4(d) protective regulations.

#### 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 this rule would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required and none 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, which may include prohibiting "take" of the threatened species. Steelhead are considered a game fish in Washington State, and in Puget Sound are primarily harvested in recreational fisheries. The entities that provide goods and services to 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 as well, e.g., for salmon and trout. 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 (with some limits) take 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, this final rule would not add a significant impact to the existing regulatory scheme. In addition, non-tribal harvest regulations currently prohibit, and are expected to continue to prohibit, the retention of fish with an intact adipose fin, and so are consistent with the 4(d) rule. Fisheries in the foreseeable future will thus be largely unaffected. In the long term, fisheries may be affected by changes in hatchery production. Landowners will be affected only in those areas (primarily headwater streams) where the range of the Puget Sound steelhead DPS does not overlap with that of already-listed species whose take is already prohibited. Thus, this final rule will not have significant impacts on small entities.

#### Paperwork Reduction Act (PRA)

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

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

We prepared a regulatory impact review in 2000 when the ESA section 4(d) regulations were initially adopted and concluded that among the alternative regulatory approaches, the proposed 4(d) rule would maximize net benefits and minimize costs, within the constraints of the ESA. We have reviewed that analysis and new information available since the analysis was initially prepared, including OMB Circular A-4 (2003). We have determined that none of the new information would change the earlier analysis or conclusion.

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

We have determined that this 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 issue 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 necessary and advisable protections to provide for the conservation of threatened species.

**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 rulemaking. In fact, this rule includes mechanisms by which we, in the form of 4(d) limits to take prohibitions, may defer to state and local governments where they provide adequate protections for Puget Sound steelhead.

**E.O. 13175 – Consultation and Coordination with Indian Tribal Governments**

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and co-management agreements. These differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 outlines the responsibilities of the Federal Government in matters affecting tribal interests. During our status review of Puget Sound steelhead we solicited information from the tribes, met with several tribal governments and

associated tribal fisheries commissions, and provided the opportunity for all interested tribes to comment on the proposed listing of this DPS and discuss any concerns they may have. Several tribes submitted comments during the public comment period. We thoroughly considered and incorporated them, as appropriate, into our final determinations regarding listing and take prohibitions. We will continue to coordinate with the tribes on management and conservation actions related to this species.

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

E.O. 13211 requires agencies to prepare a statement 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. We have determined that the energy effects of this final rule are unlikely to exceed the energy impact thresholds identified in E.O. 13211 and that this rulemaking is, therefore, not a significant energy action. No statement of energy effects is required.

**References**

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or can be obtained from the Internet at: <http://www.nwr.noaa.gov>.

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

Endangered and threatened species, Exports, Imports, Transportation.

Dated: September 22, 2008.

**John Oliver,**

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

■ For the reasons set out in the preamble, 50 CFR part 223 is 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.

■ 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)(24).

(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)(24) 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:

(i) Activities specified in an application for a permit 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 November 14, 2008. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or June 1, 2009, whichever occurs earliest, or

(ii) Steelhead harvested in tribal or recreational fisheries prior to June 1, 2009, so long as the harvest is authorized by the State of Washington or a tribe with jurisdiction over steelhead harvest. If NMFS does not receive a fishery management plan for Puget Sound steelhead by November 14, 2008, subsequent take by harvest will be subject to the take prohibitions.

\* \* \* \* \*

[FR Doc. E8-22556 Filed 9-24-08; 8:45 am]

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