

This notice complies with the order of the Court that the recalculation and reassessment be subject to notice and comment.

Dated: October 24, 1996.

J.C. Card,
Chief, Marine Safety and Environmental Protection.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[I.D. 012595A]

Endangered and Threatened Species; Notice of Six-Month Extension on the Final Determination on Whether to List the Oregon Coast and Southern Oregon/Northern California Coast Evolutionarily Significant Units (ESUs) of Coho Salmon

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

ACTION: Notice of extension of final determination.

SUMMARY: NMFS has determined that substantial scientific disagreement exists regarding the sufficiency and accuracy of data relevant to NMFS' proposed determination that two Evolutionarily Significant Units (ESUs) of coho salmon in Oregon and northern California warrant listing as threatened species. Consequently, NMFS extends the deadline for a final listing determination for the Oregon Coast and the Southern Oregon/Northern California Coast ESUs for 6 additional months to solicit, collect, and analyze additional information that will enable NMFS to make the final listing determination based on the best available data.

DATES: The new deadline for final action on the proposed listing of the Oregon Coast and the Southern Oregon/Northern California Coast ESUs of coho salmon is April 25, 1997.

ADDRESSES: Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, 503-231-2005, Craig Wingert, 310-980-4021, or Marta Nammack, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995, NMFS published a proposed rule to list three ESUs of naturally-reproducing coho salmon (*Oncorhynchus kisutch*) in Oregon and California as threatened under the Endangered Species Act of 1973 (ESA) (60 FR 38011). The ESUs proposed for listing occur in three coastal areas: (1) The Oregon coast from the Columbia River south to Cape Blanco in southern Oregon (Oregon Coast ESU), (2) the southern Oregon/northern California coasts from Cape Blanco to Punta Gorda in northern California (Southern Oregon/Northern California Coast ESU), and (3) the central California coast from Punta Gorda to the San Lorenzo River in Santa Cruz, including San Francisco Bay (Central California Coast ESU). During a coastwide status review, NMFS found substantial population declines in each of the three coho salmon ESUs proposed as threatened.

Within 1 year from the date of a proposed listing, section 4(b)(6) of the ESA requires NMFS to take one of three actions: (1) Make final the proposed listing; (2) withdraw the proposed listing; or (3) extend the 1-year period for not more than 6 months. On July 23, 1996, the U.S. District Court for the Northern District of California upheld NMFS' proposal of October 25, 1996, as the end of the 1-year work period allowed for making one of these determinations on the three ESUs of coastal coho salmon. This proposal took into consideration the 3-month funding moratorium in early 1996 on NMFS' listing actions. Therefore, by October 25, 1996, NMFS must take one of the three actions outlined above.

Section 4(b)(6)(B)(i) of the ESA authorizes NMFS to extend the deadline for a final listing determination for not more than 6 months for the purpose of soliciting additional data. NMFS' ESA implementing regulations condition such an extension on finding "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination" (50 CFR § 424.17(a)(1)(iv)). After considering comments and information received in response to the proposed rule, NMFS determines that substantial scientific disagreements exist regarding the sufficiency and accuracy of data relevant to final listing determinations for the Oregon Coast ESU and the Southern Oregon/Northern California Coast ESU. These scientific disagreements concern the data needed to determine the status of these species,

the threats to their continued existence, and the efficacy of recent local, state, and Federal conservation measures. Therefore, NMFS extends the final listing determination deadline for the Oregon Coast and Southern Oregon/Northern California Coast ESUs for 6 months to solicit, collect, and analyze additional data.

While NMFS concludes that a 6-month extension is warranted for the Oregon Coast and Southern Oregon/Northern California ESUs, NMFS believes that such an extension is not warranted for the Central California Coast Coho Salmon ESU. For NMFS' determination on the Central California Coast Coho Salmon ESU, see the Central California Coast Coho Salmon ESU listing notice in the Rules and Regulations section of this Federal Register.

Points of Substantial Scientific Disagreement

Comments received from peer reviewers, as well as knowledgeable scientists from state fish and wildlife agencies, tribes, and the private sector, dispute the sufficiency and accuracy of data employed by NMFS in its proposed listing of the Oregon Coast and Southern Oregon/Northern California Coast ESUs of coastal coho salmon. The primary areas of dispute concern data relevant to risk assessment and NMFS' evaluation of existing protective measures. The following section briefly discusses the types of data subject to substantial scientific disagreement.

Risk Assessment

Risk assessment involves the collection and analysis of data on the status of coastal coho and the threats presented by various human activities and natural occurrences. In its coastwide status review, NMFS assessed the status of coho salmon and identified the principal threats to coastal coho as habitat loss, adverse ocean conditions, hatchery practices, and harvest.

In the Oregon Coast and Southern Oregon/Northern California Coast ESUs, substantial scientific disagreement exists regarding the sufficiency of data used to assess the risks faced by coastal coho. For example, Oregon Department of Fish and Wildlife (ODFW) and a peer reviewer criticize NMFS' assessment of these ESUs for relying on insufficient data. These scientists argue that NMFS failed to consider the same types of data for Oregon and Washington coastal coho salmon. This difference, they argue, biased NMFS' risk analysis toward finding a relatively higher risk for Oregon ESUs. ODFW argues that the Olympic Peninsula ESU (located in Washington) faces the same risks as the

Oregon ESUs, yet NMFS did not propose the Olympic Peninsula ESU for listing.

ODFW contends that NMFS overstated the depressed condition of Oregon coastal coho salmon leading NMFS to incorrectly conclude that listing is warranted. In the draft Coastal Salmon Restoration Initiative (CSRI) submitted to NMFS on August 20, 1996, ODFW scientists proposed population abundance listing thresholds that are inconsistent with NMFS' assessment that Oregon coho salmon are threatened.

In an attempt to define the risk of extinction faced by coho in the Oregon Coast ESU, ODFW has begun an effort to develop three different population simulation models. The results of these models could have direct bearing on NMFS' final listing determinations. These models apply different approaches and assumptions, and, to date, the models have produced inconsistent results. The third model, under development by a recognized expert in conservation biology, includes genetic data not analyzed in the first two models.

Equally relevant to both the Oregon Coast and Southern Oregon/Northern California Coast ESUs, several scientists claim that NMFS relied on insufficient data in determining the effects of natural environmental variability and population cycles. This, the commenters believe, led NMFS to overstate the risk associated with low population numbers.

Some commenters argue that NMFS did not use sufficient data to properly assess significant risk factors facing coastal coho salmon. For example, ODFW and a peer reviewer contend that NMFS overstated the adverse effects of hatchery fish by failing to consider data relevant to factors that mitigate the risk posed by hatchery stocks. These three factors include: (1) The temporal separation in spawning between wild and hatchery runs; (2) the reduced reproductive success of naturally-spawning hatchery fish; and (3) the limited geographic scope of significant hatchery straying. ODFW argues that by not using these data, NMFS based its determination on insufficient data.

With respect to the Southern Oregon/Northern California Coast ESU, both the States of Oregon and California have expressed disagreement with NMFS' assessment of risks facing coho in this region. As described above, the State of Oregon and a peer reviewer disagree with the sufficiency and adequacy of data used by NMFS in assessing Oregon coho populations in this ESU. In a letter to NMFS dated September 27, 1996, the California Resources Agency expressed

similar disagreement. The Resources Agency adopted ODFW's criticisms in whole and argued that they applied equally in California, thus expressing disagreement regarding the sufficiency and accuracy of data used to conduct risk assessments for the California portion of the Southern Oregon/Northern California Coast ESU. Moreover, the data on California coho populations, particularly in small streams in northern California, are limited. The State of California provided NMFS with additional information from private landowners that was consistent with NMFS' recent observations. The State believes the information it provided, and information now being collected, will indicate that coho are more abundant and widespread than currently thought.

Efficacy of Conservation Measures

Sections 4(a)(1)(D) and 4(b)(1)(A) of the ESA require NMFS to consider the likely effect of existing regulatory mechanisms and state efforts to protect the species in making listing determinations. In its proposed rule, NMFS concluded that, at present, existing measures were not sufficient to offset population declines.

Regarding the Oregon Coast and Southern Oregon/Northern California Coast ESUs, several reviewers disagree with this assessment and believe that NMFS should give more weight to existing or recently implemented conservation measures. For example, ODFW and the Oregon Department of Forestry contend that recent conservation measures will substantially improve habitat conditions for coho salmon populations. NMFS believes that more data are needed to properly evaluate measures regarding road erosion, stream habitat assessment, and stream fish surveys. The California Resources Agency asserts that NMFS needs to more carefully consider all available scientific evidence, including existing regulatory mechanisms such as state forest practice rules. Also, ODFW states that recent changes in ocean harvest management have drastically reduced total fishing mortality and will provide substantial protection in future years.

The Southern Oregon/Northern California Coast ESU presents unique problems in evaluating existing conservation measures, given that this ESU includes land in both states. An added level of consideration results from the mix of state jurisdictions and regulatory authorities. Not only must NMFS assess the protective measures provided by each regulatory program, but each program's relative importance

to the ESU. For example, while Oregon has recently established a wider range of conservation efforts, California has initiated forest practice changes protective of coho. NMFS must consider the differences in these programs and weigh their overall benefit for coho salmon. As stated above, however, both states contest NMFS' current evaluation of their respective conservation programs. Therefore, more time is required both to resolve these disagreements and conduct a thorough analysis of the relative benefits of state conservation efforts in this ESU.

Prospects for Resolving Existing Disagreements

Several efforts are underway that have prospects for resolving scientific disagreement on the accuracy and sufficiency of data relevant to listing the Oregon Coast and Southern Oregon/Northern California Coast ESUs. NMFS recently requested additional information on the proposed and candidate ESUs from the States of Washington, California, and Oregon. NMFS recently received data from the State of California and expects the submission of additional data (including population modeling results) from the State of Oregon when it completes its CSRI. NMFS expects that all new information will be submitted and under review by late 1996.

On November 13 through 15, 1996, NMFS will conduct a scientific workshop to solicit information and develop and evaluate approaches to risk assessment for Pacific salmon. This workshop will feature twelve scientists with expertise in various aspects of extinction risk analysis. The panelists will provide written summaries of their presentations to NMFS at the time of the workshop. Further, an editor will compile a written report of the workshop, with publication expected by the end of January 1997. Information obtained from this workshop should produce results that are highly relevant to coho salmon listing determinations, in particular, how to interpret limited and conflicting data and how best to make species/ESU risk assessments.

The State of Oregon has requested independent review of the CSRI plan by scientists with Oregon State University and other peer reviewers. By the spring of 1997, the State is expected to provide its completed CSRI to NMFS for its review. In addition, the State of California may have a similar draft prepared next year. NMFS expects these plans to contain detailed summaries and assessments of conservation measures which benefit coho salmon in the respective states. During the period of

this 6-month extension, NMFS will assess more complete versions of these plans, work with the states to resolve scientific disagreements surrounding the adequacy of the plans, and seek a scientific basis for determining whether these conservation measures will substantially reduce the risks faced by one or both of these coho salmon ESUs proposed for listing.

Determination

The scientific disagreements about data and information identified above are substantial and may alter NMFS' assessment of the status of the Oregon Coast and Southern Oregon/Northern California Coast coho salmon ESUs. In light of these disagreements and the fact that more data are forthcoming on conservation planning and risk assessment, NMFS extends the final determination deadline on the Oregon Coast and Southern Oregon/Northern California Coast ESUs of coastal coho salmon for 6 additional months, until April 25, 1997. During this period, NMFS will collect and analyze new information aimed at resolving these disagreements. If new information or analyses indicate that listing of one or more ESUs of west coast coho salmon is not warranted, NMFS will withdraw or modify the proposed rule accordingly.

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

Dated: October 24, 1996.

Gary C. Matlock,

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

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50 CFR Part 648

[I.D. 102296A]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone. There will also be a discussion of applications received for permits for two separate experimental scallop fisheries.

DATES: The meeting will be held on Wednesday, November 6, 1996, at 10 a.m., and on Thursday, November 7, 1996, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Eastland Hotel, 157 High Street, Portland, ME 04101; telephone (207) 775-5411. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone (617) 231-0422.

FOR FURTHER INFORMATION CONTACT:

Christopher B. Kellogg, Acting Executive Director, New England Fishery Management Council, (617) 231-0422.

SUPPLEMENTARY INFORMATION:

November 6, 1996

After introductions, the November 6 session will begin with issues related to sea scallop management. The Council will discuss and provide policy guidance to the Scallop Oversight Committee on the use of separable and transferable units of fishing effort. A framework adjustment to the Atlantic Sea Scallop Fishery Management Plan (Sea Scallop FMP) also will be considered. Monkfish management issues will be addressed on Wednesday afternoon. The Monkfish Committee will ask the Council to finalize a range of proposed management measures. An accompanying draft public hearing document will be reviewed and modified.

Background Information for Abbreviated Rulemaking—Atlantic Sea Scallops

The Council will consider initial action on Framework Adjustment 9 to the Sea Scallop FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. The action would extend the state waters exemption to include the 400 lb (181.44 kg) trip limit for general category scallop permit holders. Currently, scallopers holding this type of permit are prohibited from landing more than 400 lb (188.44 kg) per trip, even when fishing strictly within state waters.

November 7, 1996

On November 7 the meeting will start with reports from the Council Chairman, Acting Executive Director, NMFS Regional Administrator, Northeast Fisheries Science Center, Mid-Atlantic Fishery Management Council liaisons, and representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission (ASMFC). The Groundfish Oversight Committee will discuss, but will not request final action on two framework adjustments to the Northeast Multispecies FMP. The first action would modify the Amendment 7 effort

reduction measures for gillnet vessels and the second would establish an alternative to the current haddock possession limit. Final action may be taken on a third framework adjustment concerning general permit category scallop fishermen who are affected by the Amendment 7 groundfish regulations. The Council also will discuss ASMFC's winter flounder management strategy. In the afternoon, the Council will consider a herring and mackerel joint venture application by World Wide Trading, Inc., and the appointment of advisors to the Responsible Fishing Committee. Changes in Council operations brought about by the Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265) will be addressed at the end of the day along with any other outstanding business.

Background Information for Abbreviated Rulemaking—Northeast Multispecies

The Council will consider final action on Framework Adjustment 21 to the Northeast Multispecies FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. The modification would allow general category scallop permit holders to fish with small dredges for scallops only (no regulated species bycatch). The current groundfish regulations prohibit the use of dredges because they have not demonstrated a less than 5 percent bycatch of regulated species by weight.

The Council will consider public comments at a minimum of two Council meetings prior to making any final recommendations to the Regional Administrator under the provisions for abbreviated rulemaking cited above. If the Regional Administrator concurs, the measures will be published as a final rule in the Federal Register.

Announcement of Experimental Fishery Applications

There will be a discussion and opportunity for the public to comment on two experimental scallop fisheries proposed in conjunction with two Saltonstall/Kennedy (S/K) Grant awards. The Regional Administrator is considering issuing experimental fishing permits (EFPs) to vessels involved in each project. The Westport Scallop Corporation received an S/K Grant to demonstrate bottom seeding and off-bottom grow-out of Atlantic sea scallops in an offshore commercial setting. The proposed experimental fishery would involve collection and landing of in-shell scallops with less than 3.5 inch (89 mm) shell height to study behavior, disease, growth and