Constituent elements for all areas of critical habitat include permanent sources of water, water quality and quantity to satisfy requirements for all life history stages of the fish, a predator-free habitat, adequate vegetative cover, and other environmental features that may be deemed necessary upon site-specific evaluations.

Dated: September 18, 1995.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227 and 425

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17 and 425

RIN 1018–AD 12

Endangered and Threatened Species; Proposed Threatened Status for a Distinct Population Segment of Anadromous Atlantic Salmon (Salmo salar) in Seven Maine Rivers

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FWS), Interior.

ACTION: Proposed rule.

SUMMARY: The NMFS and the FWS (collectively, the Services) have completed a status review of U.S. Atlantic salmon populations and identified a distinct population segment (DPS) in seven Maine rivers. Atlantic salmon in these rivers are likely to become endangered in the foreseeable future and therefore are being proposed for listing as threatened pursuant to the Endangered Species Act of 1973 (Act). This proposed rule includes joint regulations which apply all prohibitions of 50 CFR 17.31 to the DPS, but allows exceptions for incidental take under sections 4(d) and 10 of the Act. The special rule allows for a state plan, approved by the Services, to define the manner in which certain activities could be conducted without violating the Act. If this proposed listing is finalized, the protective measures of the Act will extend to the Atlantic salmon in the seven rivers, and a recovery plan will be prepared and implemented.

DATES: Comments from all interested parties must be received by December 28, 1995. Public hearing requests must be received by November 13, 1995.

ADDRESSES: Comments and materials concerning this proposed rule and requests for public hearings should be sent to the Chief, Division of Endangered Species, FWS, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or the Chief, Habitat and Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, Massachusetts 01930.

FOR FURTHER INFORMATION CONTACT: Paul Nickerson at 413–253–8615 or Mary Colligan at 508–281–9116.

SUPPLEMENTARY INFORMATION:

Background

In October and November 1993, the Services received a petition under the Act to list anadromous Atlantic salmon as endangered. The Services published a notice of finding on January 20, 1994 (59 FR 3067), stating that the petition presented substantial information indicating that the requested action may be warranted. The notice also requested information from the public. A biological review team (Team) comprised of staff from the Services compiled and analyzed all available scientific information pertaining to the status of anadromous Atlantic salmon in the United States. The Team prepared a report entitled ''Status Review for Anadromous Atlantic Salmon in the United States, January 1995'' (Status Review). The Status Review provides detailed information and references used as the basis for this proposed rule. This Status Review was summarized in a March 17, 1995, finding (60 FR 14410) and is available upon request (see **ADDRESSES**). Further details from the Status Review are provided below. In the March 17, 1995, finding, the Services stated that they would promptly publish a proposed rule with appropriate listing actions.

Life History

Anadromous Atlantic salmon have a relatively complex life history that extends from spawning and juvenile rearing in freshwater rivers to extensive feeding migration in the high seas. As a result, Atlantic salmon have several distinct phases in their life history that are identified by specific behavioral and physiological changes. Adult Atlantic salmon ascend the rivers of New England beginning in spring, a migration that peaks in June and continues into fall. Spawning occurs in late October through November. Good spawning habitat has a gravel substrate and adequate water circulation to keep the eggs well oxygenated. Female anadromous Atlantic salmon produce between 1,500 and 1,800 eggs per kilogram (2.2 pounds) of body weight; on average each female Maine Atlantic salmon produces 7,200 eggs. Eggs hatch in late March or April and the resulting alevins remain in the redd for about six weeks and are nourished by their yolk sac. When the alevins emerge from the gravel about mid-May and begin feeding, they are referred to as fry. Fry become parr as vertical bars become visible on the sides of their bodies. In spring, when the parr are two or three years of age and 12.5 centimeters (cm) to 15 cm (5 to 6 inches) long, they undergo smoltification, a process where morphological and physiological changes prepare the smolt for the transition from fresh to salt water. Most smolts in New England rivers migrate to sea in May and begin their ocean feeding migration.

The marine life history of Atlantic salmon of U.S. origin is not as well understood as the freshwater phase. Scientists have discovered correlations between natural mortality in the marine environment and abiotic factors, particularly sea surface temperature. Atlantic salmon of U.S. origin are highly migratory, undertaking long marine migrations from the mouths of U.S. rivers to the northwest Atlantic Ocean where they are distributed seasonally over much of the region. Upon entry into the nearshore waters of Canada, the U.S. post-smolts become part of a mixture of stocks of Atlantic salmon from various North American streams. Data from commercial harvest indicate that post-smolts overwinter in the southern Labrador Sea and in the Bay of Fundy. Direct sampling during the winter months is needed to better understand post-smolt Atlantic salmon distribution in the North Atlantic. Most Atlantic salmon of U.S. origin spend two winters in the ocean before returning to fresh water for spawning. Those that return after only one year at sea are called grilse.

Consideration as a ''Species'' Under the Act

The Act defines species as ''any species of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.'' This definition allows for the recognition of distinct population segments at levels below taxonomically recognized species or subspecies. To qualify as a DPS, a population (or group of populations) of indigenous Atlantic salmon must be reproductively isolated from conspecific

populations and must be biologically significant.

The Team determined that the Atlantic salmon populations in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys rivers, are, as a group, reproductively isolated, and therefore, discrete. These populations are also, as a group, biologically significant. The Services are proposing that these seven populations be listed as one DPS but that management be conducted on a watershed basis. Since the persistence of Atlantic salmon in the Kennebec River, Penobscot River, Tunk Stream, and St. Croix River and their link to native populations warrant further study, these populations were designated as category 2 candidate species by FWS and candidate species by NMFS (60 FR 14410, March 17, 1995). Since that time, the FWS has clarified that only species for which it has sufficient information on biological vulnerability and threat(s) to support issuance of a proposed listing are designated as candidate species. This definition is synonymous with the FWS' former category 1 candidate species. Former category 2 species are regarded by the FWS as species of concern, and are not, at present, candidates for listing. NMFS maintains its candidate species list, however, NMFS and FWS plan to issue joint guidance on candidate species soon. Specific information needs for these four rivers are identified below under Available Conservation Measures.

A critical factor in determining the significance of the river populations of U.S. Atlantic salmon is the continuous persistence of a substantial component of native stock reproduction. If the documented absence of wild Atlantic salmon from natal habitat were to occur for at least two generations (12 years), this would suggest the total loss of the river's native population even under the most conservative approach. Such a gap has not occurred in the DPS rivers. While it is unlikely that U.S. Atlantic salmon exist in a genetically pure native form in any of the DPS rivers, these stocks represent a significant component of the species' genetic legacy.

Naturally reproducing populations of Atlantic salmon in U.S. rivers are substantially reproductively isolated from those in Canada. Within the United States, Atlantic salmon populations exhibit strong fidelity to natal streams. Although there is some evidence of straying, recolonization from adjacent watersheds appears to be minimal. Gene flow between wild populations, or stock transfers, was determined not to have been sufficient to have eliminated all historic differences. As a group, the seven populations composing the DPS meet the criterion of reproductive isolation.

In salmonids, adaptations to local ecosystems are important to the survival of populations and the survival of the species throughout its range. An examination of U.S. populations of Atlantic salmon provides evidence of their distinctness from stocks in Canada and northern Europe. Historically, adult spawners in U.S. rivers have been predominantly 2-sea-winter fish, whereas many Canadian and European stocks return predominantly after 1 year at sea. The riverine habitat occupied by U.S. Atlantic salmon is distinctive in that it is located at the southern extent of the range of the species in North America. U.S. rivers produce smolts that are younger than those produced in rivers at the northern extreme of the range. Atlantic salmon have persisted in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys rivers, and, consequently, represent the last known wild remnant of U.S. Atlantic salmon. All of these factors indicate that the DPS is discrete and biologically significant.

Distribution and Abundance

The original range of Atlantic salmon in the United States was from the Housatonic River in Connecticut, north to U.S. tributaries of the St. Johns River in New Brunswick, Canada. The historic Atlantic salmon run in the United States has been estimated to have approached 500,000 fish.

The species began to disappear from U.S. rivers 150 years ago and currently only remnant populations occur in a limited number of rivers in Maine. Construction of hundreds of dams blocked salmon migration and reduced spawning habitat to a fraction of that available historically. Water pollution and overexploitation further reduced the abundance of Atlantic salmon. Indigenous Atlantic salmon in rivers south of the Kennebec River were extirpated by the mid-1800's. In addition, some populations north of the Kennebec River were also extirpated; most of these were in small rivers with less than 1 hectare (2.5 acres) of available nursery habitat. Beginning in the mid-1800's and continuing to the present time, numerous restoration efforts were undertaken. The Connecticut and Merrimack rivers provided nearly 40 percent of historic U.S. Atlantic salmon habitat. These rivers are currently the focus of restoration efforts using nonindigenous stocks, and extensive efforts are being undertaken to provide access to historic habitat.

The North American Salmon Working Group's method for estimating the escapement goal for adequate egg deposition for each river was used. Thus, an escapement goal was determined for each river and the return calculated as a percentage of the escapement goal. Throughout the past 24 years, the Dennys and Narraguagas rivers have had the best returns relative to available habitat, averaging 20 percent of escapement goal. The Pleasant, Sheepscot, and Machias rivers have had returns that averaged between 10 and 12 percent of escapement goal. However, recent downward trends in abundance have put most rivers at less than 10 percent of their respective escapement goals. Only the Narraguagas River has exceeded 10 percent in the past seven years.

The combination of low relative abundance and low numbers relative to spawning requirements demonstrates that the DPS is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 also requires that listing determinations be based solely on the best scientific and commercial data available, without reference to possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Atlantic salmon DPS are:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The construction of dams with either inefficient or non-existent fishways was a major cause for the decline of U.S. Atlantic salmon. Dams adversely impact Atlantic salmon by impeding both their upstream and downstream migration, increasing predation, altering the chemistry and flow pattern of rivers, increasing water temperature, and reducing available flow downstream. Currently, there are no dams on rivers in the DPS that have the potential to adversely impact the species. The Machias and Dennys rivers have natural falls that may partially bar salmon migration at certain flows. Beaver dams

and debris dams have been documented on many of the rivers within the DPS. Typically, these are partial obstructions and are ephemeral in nature.

One of the predominant land uses of central and northern coastal Maine watersheds is the growth and harvest of forest products. Forest management practices can cause numerous short- and long-term negative impacts to Atlantic salmon. Deforestation alters the water retention of watersheds resulting in high seasonal runoff followed by inadequate river flows. The removal of riparian vegetation reduces shading and increases water temperature. Poor logging practices and road construction adjacent to streams results in the deposition of substantial loads of woody debris and silt into waterways. Insecticides used to control insect infestations and herbicides used to manage competing vegetation enter waterways and adversely affect salmon. While historic forest practices have had harmful effects on Atlantic salmon in certain watersheds, numerous state and Federal laws now exist to prevent adverse impacts to Atlantic salmon and other aquatic species. Current forest practices are not considered a major threat to Atlantic salmon.

Another significant land use in eastern Maine watersheds is lowbush blueberry agriculture. Water extraction and diversion from rivers and streams for blueberry cultivation can make habitat unsuitable for Atlantic salmon. The herbicide hexazinone (velpar) is applied to blueberry fields to control competing vegetation. Blueberry barrens are also treated with fungicides and insecticides to prevent disease and control insect pests. Such chemical spraying can cause direct mortality of juvenile Atlantic salmon or adversely affect salmon if chemicals drain into waterways and reduce populations of aquatic insects, an important food source for salmon. With assistance from the Cooperative Extension Services of the University of Maine and the Natural Resource Conservation Service, numerous measures are being implemented to reduce the potential for contamination of waterways from blueberry cultivation. Current agricultural practices are not considered a major threat to Atlantic salmon.

Many of the eastern Maine rivers have deposits of peat within their watersheds. Commercial peat mining has the potential to adversely affect salmon habitat through the release of peat fibers, arsenic, and other chemical residues present in peat deposits. Further study is necessary to determine the impacts, if any, of peat mining on Atlantic salmon and Atlantic salmon habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, the marine exploitation of U.S.-origin Atlantic salmon occurred primarily in foreign fisheries. U.S.-origin Atlantic salmon have been documented in the harvests of West Greenland, New Brunswick, Nova Scotia, Newfoundland, and Labrador fisheries. The Newfoundland and Labrador fisheries constituted the majority of the harvest and intercepted the highest percentages of U.S.-origin Atlantic salmon. In the absence of West Greenland and Canadian interception fisheries, returns of U.S. Atlantic salmon could potentially increase two-fold. In Canada, a 5-year moratorium is in place in Newfoundland and licenses are being purchased by the government. The Labrador fishery is now managed by quotas, and the 1993 quota represents a reduction of 92 percent from that of the 1990 quota level. In 1982, the North Atlantic Salmon Conservation Organization (NASCO) was formed for the purpose of managing salmon through a cooperative program of conservation, restoration and enhancement of North Atlantic stocks. NASCO accepted an agreement in 1993 that set quotas on the harvest off West Greenland with the goal of reaching target spawning escapements for North American stocks. During the next three years of the management plan, the number of spawners needed to sustain North American stocks of Atlantic salmon (194,000) will be protected by adjusting the West Greenland quota.

In 1987 the New England Fishery Management Council prepared a Fishery Management Plan (FMP) to establish explicit U.S. management authority over all Atlantic salmon of U.S. origin in Federal waters. The FMP prohibits the possession of Atlantic salmon in the exclusive economic zone, the area between 3 and 200 miles off the U.S. coastline. During the 1970s, recreational fishermen were harvesting as much as 15 to 25 percent of the Atlantic salmon returning annually to home waters. Currently state law allows only a catch and release fishery for Atlantic salmon, and no salmon fishing is authorized on the Pleasant River. Multi-sea-winter salmon incur some mortality from catch-and-release fishing and parr are vulnerable to incidental hooking mortality or illegal harvest by trout anglers. Poaching also poses a serious threat to depressed populations of Atlantic salmon in New England rivers.

C. Disease or Predation

During their various life stages, Atlantic salmon are preyed upon by numerous species of fish, birds, and mammals and also compete with other species of fish. Major freshwater predators on Atlantic salmon include brook trout, brown trout, eel, burbot, northern pike, chain pickerel, smallmouth bass, belted kingfisher, heron, common and red-breasted merganser, osprey, herring and greater black-backed gull, otter and mink. Documented predators in the estuarine and marine environments include striped bass, shark, skate, ling and Atlantic cod, pollock, whiting, garfish, double-crested cormorant, European cormorant, harbor seal, gray seal, harp seal, and ringed seal. The effects and magnitude of competition and predation in the riverine, estuarine, and marine environments are not known.

Atlantic salmon are susceptible to a number of diseases and parasites that can result in high mortality. Freshwater external parasites of Atlantic salmon are the gill maggot, freshwater louse, leaches, and the skin parasite *Gyrodactylus salaris*, while internal parasites include flukes, tapeworms, spiny-headed worms and roundworms. Ocean parasites include the sea louse and sea lamprey. Atlantic salmon are susceptible to numerous bacterial, viral and fungal diseases, including furunculosis, bacterial kidney disease and vibriosis. Disease-related mortality is primarily documented for hatcheries and aquaculture facilities. Disease epizootics in wild salmon are uncommon. In New England, furunculosis is the only known source of disease-related mortality in wild Atlantic salmon.

D. Inadequacy of Existing Regulatory Mechanisms

Many Federal and state laws and programs have affected the abundance, health and survival of anadromous Atlantic salmon populations in the United States. However, they have not prevented the decline of the species. The effectiveness of certain existing laws and regulations, which are summarized in the status review, could be strengthened by more stringent implementation and enforcement. Aquaculture facilities are located within 20 kilometers (km) (12 miles) of the mouths of five of the rivers within the DPS. Atlantic salmon that have been released or that have escaped from aquaculture pens are known to have entered some of these rivers. The escape of fish from Atlantic salmon aquaculture operations could pose a threat to the

genetic integrity of Atlantic salmon within the DPS. In addition, concentrations of aquaculture salmon increase the vulnerability of wild stocks to disease. Also, escape of juvenile Atlantic salmon from nearby fish hatcheries may cause a genetic or disease threat to wild salmon.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Scientific evidence suggests that low natural survival in the marine environment is a major factor contributing to the decline of Atlantic salmon throughout North America. Recent research indicates that major seasonal events influence post-smolt survival of Atlantic salmon. It appears that survival of the North American stock complex of Atlantic salmon is at least partly explained by sea surface water temperature, during the period when Atlantic salmon concentrate in winter months in habitat at the mouth of the Labrador Sea and east of Greenland. Until more direct observation can be made on the marine ecology of post-smolts during the winter, the exact mode of mortality will be unknown. Currently, researchers speculate that a combination of factors related to slow growth and increased predation contribute to marine mortality.

Potential genetic impacts of hatchery practices include inbreeding depression, outbreeding depression and domestication. Potential ecological impacts of hatchery practices include competition and predation, displacement of wild fish, altered migratory and spawning behavior, and disease transfer. The practice of stocking fry transferred from other rivers may have exacerbated the decline of the wild population by displacing wild fish. For six of the seven rivers, the average percentage of the run that was of natural origin (wild) was higher during years not influenced by the stocking of fry transferred from other rivers. However, the Services do not believe that stock transfers in the DPS rivers have eliminated all historic characteristics of wild Atlantic salmon. Although past stocking practices may have contributed to the decline of Atlantic salmon in the seven rivers, the Services are committed to ensuring that future hatchery practices contribute to recovery of each river population. Use of river-specific fry stocking on the Penobscot River has boosted the percentage of natural origin fish and is a tool for recovery of the DPS rivers.

In summary, there are basically three major factors which continue to threaten the continued survival of Atlantic salmon within the DPS—poaching, low natural survival of fish during the first winter at sea, and potential impacts from Atlantic salmon aquaculture operations and fish hatcheries to the genetic integrity and disease vulnerability of the DPS.

Basis for Determination

Section 4(b)(1)(A) of the Act states that determinations required by the Act will be made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas. The status of the populations of Atlantic salmon in these seven rivers was analyzed by looking at historic and current angler catch, trap data, and redd counts, all of which are experiencing a downward trend. Then, the escapement goal for each river was calculated by estimating the total number of adults that would be required to fully seed the potential habitat. The documented return to these seven rivers was then compared to the escapement goal to arrive at a comparable measure of the status of the stock. Recent downward trends in abundance have placed all of the rivers at less than 10 percent of their escapement goals, with the exception of the Narraguagus which in recent years has ranged from 6 to 19 percent. The combination of low relative abundance and the low numbers relative to escapement goals indicates that these populations are in peril.

The second step was then to examine efforts currently being undertaken on behalf of the species. There are numerous measures underway to prevent the loss of any of the river populations of Atlantic salmon within the DPS. Collectively, these measures have the potential to reduce the likelihood of extinction and enable the Services to propose listing the DPS as threatened rather than endangered. This designation includes all wild and river specific hatchery stock of DPS origin. For purposes of delisting, the DPS is composed of wild fish and hatchery-reared fish that have returned to spawn naturally and successfully in their river of origin. If these measures are not continued or recent downward trends in abundance are not reversed, then the DPS may reach the point of being in danger of extinction and the designation would have to be changed to endangered. Actions underway include the following:

1. Continued development of river specific populations for broodstock and stocking in subsequent years. Currently stocks exist for five of the seven rivers at the Craig Brook National Fish Hatchery.
2. Progeny are being outplanted to specific rivers. In 1995, over 100,000 fry will be stocked into the Dennys, Narraguagus, and Machias rivers.
3. The National Biological Service is conducting a comprehensive genetic study of Atlantic salmon populations throughout North America to identify differences in river populations and to compare wild and hatchery stock.
4. In 1993, the West Greenland Commission of the NASCO accepted the West Greenland Fishery Regulatory Measure. This agreement resulted in the setting of quotas with the goal of reaching target spawning escapements for North American stocks.
5. A private-State-Federal task force has been established to make recommendations on how to reduce threats to wild Atlantic salmon posed by nearby aquaculture operations.
6. An intensive study of the population dynamics and the condition of the freshwater habitat of Atlantic salmon in the Narraguagus River is ongoing. Key objectives include the following: estimate the number of adults returning to the river; determine the level of effort necessary to estimate the number of parr; inventory habitat; determine the abundance and diversity of macroinvertebrates; and monitor trends in water quality.
7. NMFS is conducting research on the early marine life history of Atlantic salmon populations in the State of Maine's nearshore and marine waters. The key objective of the study is to better understand the behavior and feeding relationships of post-smolts during their first few weeks at sea.
8. Recent research conducted by the NMFS Northeast Fisheries Science Center in coordination and participation with the International Council for the Exploration of the Seas, indicates that major seasonal events influence post-smolt survival. Additional research is ongoing to identify the processes involved.
9. A number of private land management agencies in Downeast Maine have formed a non-profit entity called Project SHARE (Salmon Habitat and River Enhancement). The group, which includes major forest and agriculture industry representatives, is committed to improving freshwater habitat for the Atlantic salmon in eastern Maine.

10. The State of Maine, FWS, and the National Fish and Wildlife Foundation have joined to fund habitat monitoring and improvement projects in the rivers, including spawning barrier removal, replacement of water control structures, temperature and water quality monitoring, and riparian zone protection and rehabilitation.

Proposed Determination

The Act defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1)(a) of the Act requires that determinations regarding whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

The Services propose to list the populations of anadromous Atlantic salmon in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys rivers as threatened under the Act. Both the naturally reproducing populations of Atlantic salmon in these seven rivers and the river specific hatchery populations for these seven rivers are included in the DPS.

Prohibitions and Proposed Protective Measures

With respect to the seven populations of Atlantic salmon proposed for listing, the Services propose to adopt joint regulations which apply all prohibitions of 50 CFR 17.31 to the DPS, allowing exceptions for incidental take under sections 4(d) and 10 of the Act. This regulation applies most section 9 prohibitions and exceptions to threatened species, including protective measures to prohibit taking, interstate commerce, and other Act prohibitions applicable to endangered species, with the exceptions provided under section 10 of the Act. The Services also propose to adopt specific regulations under section 4(d) that will apply to the DPS of Atlantic salmon identified as threatened (see Special Rule).

These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions (codified at 50 CFR 17.21 for endangered fish or wildlife), in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 17.31 of 50 CFR prohibits certain activities that directly or indirectly affect threatened species. The proposed rule provides that any violation of applicable State law or regulation concerning the taking of Atlantic Salmon will also be a violation of Federal law. By including this provision, the Services intend to notify the public that any State law or regulation concerning the ''take'' of Atlantic Salmon which is more specific or more protective of a listed species than existing federal law, may be enforced as if it were Federal law pursuant to the Act.

As announced in a recent joint policy (59 FR 34272, July 1, 1994), the Services will identify at the time a final rule is published, to the maximum extent practicable, 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 the listing on proposed and ongoing activities within the range of a species. Activities that the Services believe could result in ''take'' of anadromous Atlantic salmon within the DPS include, but are not limited to, the following:

(1) Targeted recreational and commercial fishing, bycatch associated with commercial and recreational fisheries, and poaching;

(2) Introduction of non-indigenous Atlantic salmon stock or other species not indigenous to the DPS rivers;

(3) Discharges (point and non-point sources) or dumping of toxic chemicals, silt, fertilizers, pesticides, herbicides, heavy metals, oil, organic wastes or other pollutants into waters supporting the species;

(4) Blockage of migration routes;

(5) Destruction/alteration of the species' habitat (i.e. instream dredging, rock removal, channelization, discharge of fill material, operation of heavy equipment within the stream channel, manipulation of river flow, etc.);

(6) Hatchery practices that are likely to cause genetic, disease, or ecological impacts to the DPS.

The Services believe that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Fishing for other species if conducted in conformance with the Atlantic salmon conservation plan required by the special rule and approved by the Services;

(2) Harvest of landlocked Atlantic salmon at locations delineated by the Maine Department of Inland Fisheries and Wildlife; and

(3) Unavoidable losses in river specific hatchery stocks due to standard culture techniques.

(4) Federally approved projects that involve activities, such as instream dredging, rock removal, channelization, discharge of fill material, operation of heavy equipment within the stream channel, or manipulation of river flow, when such activity is conducted in accordance with any reasonable and prudent measures given by the Services in accordance with section 7 of the Act.

Permits may be issued, under section 10 of the Act, to carry out otherwise prohibited activities involving endangered or threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, 17.31, 222.22, and 222.23 for threatened and endangered fish and wildlife. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for educational purposes, and/or for incidental take in the course of otherwise lawful activities. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Chief, Division of Endangered Species in the FWS Hadley, Massachusetts, office, or the Chief, Protected Resources Division, in the NMFS Gloucester, Massachusetts, office (see **ADDRESSES**).

Special Rule

The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31 and 50 CFR 222.21), except when a special rule promulgated pursuant to section 4(d) applies (50 CFR 17.31 (c)). Section 4(d) of the Act provides that whenever a species is listed as a threatened species, the Services shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Conservation means the use of all methods and procedures necessary to bring the species to the point at which the protections of the Act are no longer necessary. Section 4(d) also states that the Services may, by regulation, extend

to threatened species all prohibitions provided for endangered species under section 9(a) of the Act.

Pursuant to section 4(d) of the Act and 50 CFR 17.31(c), the Services propose to define the conditions under which the incidental take of Atlantic salmon resulting from activities regulated by State and local governments would not violate section 9 of the Act. Under the special rule, incidental take of Atlantic salmon when conducting otherwise lawful activities addressed in an Atlantic salmon conservation plan prepared by the State of Maine and approved by the Services, would not be considered a violation of section 9 of the Act, provided the Services determine that such a plan is consistent with the criteria for an ''incidental take'' permit pursuant to section 10(a)(2)(B) of the Act, 50 CFR 17.32(b)(2), and 50 CFR 222.22(c)(2).

The intent of the special rule is to provide the State of Maine an opportunity to maintain the lead role in the management of activities that could impact Atlantic salmon in the DPS. The Services are encouraging the State to identify such activities and include them in a conservation plan to be submitted to the Services any time after the publication of this notice. Once the plan is received, the Services will publish a notice of availability and accept public comments on that plan. The Services will consider public comments and the criteria outlined in this section to determine whether the plan will reduce threats and promote the conservation of Atlantic salmon in the DPS. The Services will work closely with Maine officials to revise or strengthen sections of the plan as may be necessary prior to plan approval.

The Services recommend that the Atlantic salmon conservation plan contain, but not be limited to, the following sections—(1) a discussion of the lawful activities having the potential to incidentally take Atlantic salmon, (2) activities such as recreational fishing targeting species other than Atlantic salmon, habitat modification, and aquaculture, and (3) the potential impacts to the DPS and provisions to minimize those impacts.

Using recreational fishing as an example, the State could identify various ongoing fishing activities in the seven rivers (bass, trout, etc.) and the likelihood of each to incidentally catch an Atlantic salmon adult or juvenile. The plan would address the time of year of each fishery, location, and gear used. The plan should identify acceptable levels of incidental take, measures that will be implemented to monitor incidental take, and measures to further restrict the fishing activity should such take exceed that allowed. State law enforcement activities to protect Atlantic salmon in the seven rivers should be identified. In addition, the plan should include outreach activities that will be conducted to enlist angler support and educate anglers on the proper method for releasing incidentally caught Atlantic salmon.

If aquaculture is included in the plan, then the plan should include an evaluation of the potential for incidental take to occur. A take could result, for example, from the interbreeding of escaped net-pen reared salmon and DPS salmon, the transfer of disease, or the disruption of wild redds. An assessment of the likelihood of interaction should include information on past escapement of Atlantic salmon either from cages or hatcheries, and any documentation as to the presence of the aquaculture fish in the seven rivers identified. Measures that will be required by the State to minimize interactions between DPS and net-pen reared Atlantic salmon should be identified and could include such provisions as cage monitoring and reporting of escapees and the subsequent monitoring of rivers, improved cage design, placement of weirs in the seven rivers, disease certification, siting constraints, broodstock selection, sterilization, marking of net-pen fish, and law enforcement activities.

Although the Status Review does not identify habitat modification in the seven rivers in the DPS as a major threat to Atlantic salmon, the State prepared conservation plan should discuss state authorized activities that could potentially modify habitat and incidentally take Atlantic salmon. This discussion should address impacts of water withdrawals and land use practices on spawning habitat, along with State efforts, both existing and planned, to reduce such impacts. This section might include a brief summary of existing regulations, permit review procedures, water quality monitoring activities, public outreach activities, and voluntary landowner efforts such as Project SHARE, which focus on habitat protection and improvement. Finally, the plan should include provisions for identifying and correcting any situations which are likely to be causing incidental take and monitoring the effects of such corrective actions. The conservation of the DPS must be the basis for all provisions of the plan.

The standards the Services will use to evaluate the State plan are consistent with those set forth in 50 CFR 17.32(b)(2) and 50 CFR 222.22(c)(2), which define the issuance criteria for obtaining a permit to incidentally take listed wildlife species under section 10(a)(1)(B) of the Act. The six criteria are:

(1) Any taking will be incidental to otherwise lawful activities and not the purpose of such activities. Any taking of Atlantic salmon in the seven rivers as described in the plan would have to occur inadvertently while conducting an activity whose purpose was not to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect Atlantic salmon from the seven river populations. The taking must not be deliberate and purposeful. The plan must include an analysis of alternatives that would not result in take and an explanation of why these are not being used. The plan should include the State regulations that govern these fisheries as well as information on how those regulations are promulgated, enforced, and modified.

(2) The plan should, to the maximum extent practicable, minimize and mitigate the impacts of any proposed incidental take. Compliance with this standard involves a planning strategy that emphasizes avoidance of impacts to Atlantic salmon, provides measures to minimize potential impacts by modifying practices (e.g. in the case of aquaculture it could include improved cage design, increased monitoring and reporting of escapees, etc.), and details compensation measures needed to offset unavoidable impacts (e.g., weirs or other means to recapture escapees).

(3) The plan should be adequately funded and contain provisions to deal with unforeseen circumstances. A summary of the funding that will be available to implement provisions of the plan, including enforcement and monitoring, should be provided. The plan should outline how it will be determined that there is an unforeseen problem and should include the specific steps that will be taken to correct that problem.

(4) Any taking allowed under the plan should not appreciably reduce the likelihood of survival and recovery of Atlantic salmon in the wild. This criterion is equivalent to the regulatory definition of ''jeopardy'' under section 7(a)(2) of the Act and means to engage in any activity that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of the DPS. In the case of incidental catch of Atlantic salmon, the plan must include an assessment of the potential for Atlantic salmon to be incidentally caught by anglers targeting other species, the likelihood of mortality to the Atlantic salmon that is caught and

released (including the potential for it to be caught more than once), and the resulting impact to the river population of Atlantic salmon. In the case of aquaculture, the plan must include an assessment of the potential for Atlantic salmon to be taken as a result of ongoing aquaculture operations and an assessment of the possible impacts to the affected river population of Atlantic salmon.

(5) The plan should ensure that other measures that the Services may require as being necessary or appropriate will be provided. These measures should become apparent during plan development through coordination among the Services, the State and any other plan participants and will likely include terms and conditions for monitoring implementation of the plan to ensure that its requirements and the requirements of the Act are met.

(6) The Services are assured that the plan will be implemented. The plan should specify how the State agencies will exercise their existing authorities to adhere to the commitments made in the plan. Any violations could be a basis for revocation of the Services' concurrence with the plan.

Once approved by the Services, the conditions contained in the approved plan will be the conditions, pursuant to section 4(d), under which the incidental take of Atlantic salmon in the seven rivers would not be a violation of section 9.

The Services and the State will monitor the implementation of the plan and will conduct annual reviews to assess progress, identify problems and recommend corrective action. If the Services determine that the plan is not being effectively implemented, they will discuss their concerns with appropriate State officials and jointly determine the nature and timing of corrective action. If corrective action is not taken within 90 days of such discussion, plan approval may be revoked either partially or completely. The Services will publish the findings for such revocation in the Federal Register and provide for a 30-day public comment period prior to revocation. Such revocation would result in reinstatement of the take prohibitions made applicable through 50 CFR 425.21(a)(1).

At this time, different procedures exist between the Services for authorizing the incidental take of listed species. The FWS provides such authorization through its Cooperative Agreement with the State of Maine under section 6 of the Act. The NMFS provides such authorization directly under section 10 of the Act. The language of the proposed rule at 50 CFR 425.21(b)(1) reflects the existing differences. It is the intent of the Services to ensure that these procedures are streamlined and to provide the public with a ''one-stop'' authorization process should this proposal be made final and an approved State Atlantic salmon conservation plan be implemented.

Available Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the Act include recovery actions, Federal agency consultation requirements, and prohibitions on taking. Recognition through listing promotes conservation actions by Federal and State agencies and private groups and individuals.

Section 7(a)(4) of the Act requires that Federal agencies confer with the Services on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions resulting in destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Services. Consultations will be conducted on a river-specific basis pursuant to identification of river specific recovery units within the DPS.

Examples of Federal actions that may be affected by this proposal include U.S. Army Corps of Engineers (COE) section 404 permitting activities under the Clean Water Act, and COE section 10 permitting activities under the Rivers and Harbors Act.

In addition to the actions identified under Basis for Determination, the following general conservation measures could be implemented to help conserve the species. This list does not constitute the Services' interpretation of the entire scope of a recovery plan under section 4(f) of the Act.

(1) Further efforts could be made to ensure that water extractions and diversions for agriculture do not adversely affect habitat of DPS Atlantic salmon. In addition, all water diversion intake structures available to downstream migrating Atlantic salmon could be screened.

(2) Atlantic salmon aquaculture facilities located less than 20 km (12 miles) from the mouths of the Narraguagus, Pleasant, Machias, East Machias and Dennys rivers could be encouraged to implement stringent disease protocols, sterilize fish, change broodstock origin, mark net pen reared fish, install and maintain weirs at the mouths of rivers to exclude escaped aquaculture fish, and/or develop and implement plans to safeguard against the accidental release (escape) of aquaculture fish.

(3) Predator species could be controlled.

(4) For candidate species, or species of concern for FWS (see 60 FR 14410, March 17, 1995), restoration efforts will continue on the Penobscot and St. Croix rivers. Studies will be conducted to determine the presence, origin, and genetic composition of wild Atlantic salmon in the Kennebec, Penobscot, and St. Croix rivers, and Tunk Stream. An intensive survey of the Tunk Stream watershed is needed to determine if Atlantic salmon are still present. Better documentation of wild abundance and natural reproduction of Atlantic salmon is required for all four rivers.

Should the proposed listing be made final, protective regulations under the Act would be put into effect and a recovery program would be implemented. The Services recognize that to be successful, protective regulations and recovery programs for Atlantic salmon will need to be developed in the context of conserving aquatic ecosystem health. The Services, the State of Maine, and the private sector must cooperate to conserve the listed populations and the ecosystems upon which they depend. The Services encourage non-federal landowners to assess the impacts of their actions on Atlantic salmon. In particular, the Services acknowledge and fully support the ongoing efforts to involve stakeholders (industry representatives, landowner representatives, local and state governments and Federal biologists) through Project SHARE and the ad hoc task force to address aquaculture and wild stock interactions.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at that time it is listed upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3)(a) of the Act requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat. While the Team has completed its analysis of the biological status of anadromous Atlantic salmon in the United States, it has not been able to address either the prudency or determinability of critical habitat designation. Therefore, during the comment period for this listing proposal the Services will seek additional agency and public input on critical habitat, along with information on the proposed listing of Atlantic salmon in the DPS rivers. The Services will use this and other information in formulating a decision on critical habitat designation for the Atlantic salmon.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, the Services are soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Specifically, the Services are soliciting information regarding: (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species; (2) the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act; (3) additional information concerning the range, distribution, and population size of this species; (4) current or planned activities in the subject area and their possible impacts on this species; (5) additional efforts being made to protect native, naturally-reproducing populations of Atlantic salmon; (6) relationship of existing hatchery populations to natural populations within the DPS and in the four river populations designated as candidate species (60 FR 14410, March 17, 1995), or species of concern, for FWS; (7) the development of a special section 4(d) regulation to allow incidental take of Atlantic salmon in accordance with an approved State conservation plan; and (8) additional information on the status and threats to the anadromous Atlantic salmon in the Penobscot, Kennebec, and St. Croix rivers and Tunk Stream.

The Services are also requesting information on areas that may qualify as critical habitat for the identified DPS of Atlantic salmon. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential for the conservation of the species. Essential features should include, but are not limited to: (1) Space for individual and population growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, the Services are requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of restrictions on Federal activities that are likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the Act is the probable economic impact ''of the (critical habitat) designation upon proposed or ongoing activities'' (50 CFR 424.19). The Services must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the Act to avoid jeopardy to the species and from the taking prohibitions under section 9 of the Act. Comments concerning economic impacts should distinguish between the costs of listing from the incremental costs that can be directly attributable to the designation of specific areas as critical habitat.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Services, and such communications may lead to a final regulation that differs from this proposal.

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. The notice for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244). Sections 4(b)(1) of the Act restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F.2d 829 (6 Cir. 1981), the NMFS has determined that listing actions under the Act are excluded from the normal requirements of the NEPA.

Classification

The Conference Report on the 1982 amendments to the Act notes that economic considerations have no relevance to determinations regarding the status of species, and that the Regulatory Flexibility Act and the Paperwork Reduction Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 12612 and are exempt from review under Executive Order 12866.

The proposed special rule in 50 CFR part 425 was reviewed under Executive Order 12866. The Services certify that the proposed revisions to 50 CFR 425 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Significant adverse impacts are not expected as a result of the proposed rule because the rule is intended to reduce the likelihood of persons conducting otherwise lawful activities being in violation of section 9 of the Act. No direct costs, enforcement costs, information collection, or recordkeeping requirements are required by this proposed rule beyond those already required by existing regulations. The proposed rule does not contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects described in that order. Finally, the Services have determined that the proposed regulation does not require the preparation of a Takings Implication Assessment under the requirements of Executive Order 12630, ''Government Actions and Interference with Constitutionally Protected Property Rights.''

Authors

Authors of this document are Mary Colligan of the NMFS and Paul Nickerson of the FWS.

List of Subjects in

50 CFR Part 17

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

50 CFR Part 227

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

50 CFR Part 425

Administrative practice and procedure, and Endangered and threatened species.

Proposed Regulation Promulgation

Accordingly, the Services hereby propose to amend part 17, subchapter B of chapter I and part 227, subchapter C; to add part 425, subchapter B, title 50 of the Code of Federal Regulations, as set forth below. The FWS amendments to part 17 are listed first, followed by the NMFS amendments to part 227. The new part 425 is listed last.

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife to read as follows:

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
FISHES							
*	*	*	*	*	*	*	*
Salmon, Atlantic	*Salmo salar*	U.S.A., Canada, Greenland, western Europe.	U.S.A. (ME) Natural and river-specific hatchery populations in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, Ducktrap Rivers.	T	NA	NA	17.44(v), 227.13, 425.21
*	*	*	*	*	*	*	*

3. In § 17.44 a new paragraph (v) is added to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(v) Atlantic salmon (*Salmo salar*). All prohibitions and exceptions thereto regarding the distinct population segment of Atlantic salmon listed at 50 CFR 17.11 and 50 CFR 227.4(m) are specified in regulations jointly promulgated by the Fish and Wildlife Service and the National Marine Fisheries Service at 50 CFR 425.21.

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

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

2. In § 227.4 a new paragraph (m) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(m) Natural and river-specific hatchery populations of Atlantic salmon (*Salmo salar*) in the Dennys, Ducktrap, E. Machias, Machias, Narraguagus, Pleasant and Sheepscot rivers, Maine.

3. In part 227 a new § 227.13 is added to read as follows:

§ 227.13 Atlantic Salmon.

All prohibitions and exceptions thereto regarding the distinct population segment of Atlantic salmon listed at 50 CFR 17.11 and 50 CFR 227.4(m) are specified in regulations jointly promulgated by the Fish and Wildlife Service and National Marine Fisheries Service at 50 CFR 425.21.

1. Part 425 is added to read as follows:

PART 425—JOINT REGULATIONS FOR ENDANGERED AND THREATENED SPECIES

Subpart A—General Provisions

Sec.
425.1 Purpose.
425.2 Scope.
425.3 Definitions.
425.4 Enumeration of jointly listed endangered and threatened species.

Subpart B—[Reserved]

Subpart C—Joint Regulations Governing Jointly Listed Threatened Species

425.21 Atlantic salmon.

Authority: The Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

Subpart A—General Provisions

§ 425.1 Purpose.

The regulations contained in this part identify the species under the joint jurisdiction of the Secretary of Commerce and the Secretary of the Interior which have been determined to be endangered or threatened species under the Endangered Species Act of 1973 and establish rules and procedures to govern activities involving the species.

§ 425.2 Scope.

(a) The regulations contained in this part apply only to the endangered and threatened species enumerated in § 425.4.

(b) The provisions of this part are in addition to, and not in lieu of, other applicable regulations of Chapters I and II (title 50).

§ 425.3 Definitions.

(a) Act means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(b) Atlantic salmon means the distinct population segment of Atlantic salmon listed in § 425.4(b).

(c) The Services means the Director of the Fish and Wildlife Service and the

Assistant Administrator for Fisheries, National Marine Fisheries Service.

§ 425.4 Enumeration of jointly listed endangered and threatened species.

(a) [Reserved]

(b) Threatened species—A distinct population segment of Atlantic salmon composed of natural and river-specific hatchery populations from the Dennys, Ducktrap, East Machias, Machias, Narraguagus, Pleasant, and Sheepscot rivers, Maine.

Subpart B—[Reserved]

Subpart C—Joint Regulations Governing Jointly Listed Threatened Species

§ 425.21 Atlantic salmon.

The following provisions shall govern the activities involving Atlantic salmon:

(a) *Prohibitions.* (1) Except as provided in paragraph (b) of this section, all provisions of 50 CFR 17.31(a–b) shall apply to the distinct population segment of Atlantic salmon enumerated at 50 CFR 425.4(b). For the purposes of this section, any reference to the ''Director'' or the Fish and Wildlife Service shall mean ''Services'' as defined at 50 CFR 425.3(c). Reports required under § 17.21(c)(4) should also be sent to National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of the species will also be a violation of the Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import or export, by any means whatsoever, any such species taken in violation of applicable State fish and wildlife laws or regulations.

(4) No person shall attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (a) (1) through (3) of this section.

(b) *Exceptions.* (1) The Services may issue incidental take permits or permits authorizing activities which would otherwise be unlawful under paragraphs (a) (1) through (4) of this section for education purposes, scientific purposes, the enhancement or propagation for survival of Atlantic salmon, zoological exhibition, and other conservation purposes consistent with the Act in accordance with 50 CFR 17.32 and 50 CFR part 222, subpart C, Endangered Fish and Wildlife Permits, and pursuant to a section 6 Cooperative Agreement with the State of Maine, if applicable.

(2) Incidental take of Atlantic salmon will not be considered unlawful under paragraphs (a) (1) through (4) if it results from activities conducted in accordance with:

(i) A State plan to conserve Atlantic salmon that is approved by the Services pursuant to paragraph (b)(3) of this section, and

(ii) Implementing State regulations specified in paragraph (b)(3)(iii) of this section.

(3) State plan.

(i) Upon receipt of a State plan, the Services will publish a notice of availability and allow for a 60-day comment period.

(ii) In determining whether to approve a State plan to conserve the Atlantic salmon, the Services shall consider public comments received and evaluate whether the plan meets the criteria in § 17.32(b)(2) and 50 CFR Part 222, subpart C, Endangered Fish and Wildlife Permits for determining whether to issue an incidental take permit. At a minimum, the plan should contain the following information:

(A) Description of the legal activities having a potential to incidentally take Atlantic salmon;

(B) Description of the potential impact of these activities to Atlantic salmon;

(C) Provisions for minimizing the potential impact on and for promoting the conservation of Atlantic salmon;

(D) Necessary oversight requirements; and

(E) Conditions or criteria that would trigger the immediate cessation of such activities because of the potential negative impact on Atlantic salmon.

(iii) The Services will not approve the plan until activities which are authorized and activities which are prohibited are codified into the State's fish and wildlife regulations.

(iv) The Services will monitor the implementation of the plan and will conduct annual reviews to assess progress, identify problems, and recommend corrective action. If the Services determine that the plan is not being effectively implemented, the concerns will be discussed with appropriate State officials and the nature and timing of corrective action will be jointly determined. If corrective action is not being implemented within 90 days of such discussions, plan approval and authorization for any exceptions to prohibitions on the taking of Atlantic salmon may be revoked either partially or completely. The Services will publish the findings for such revocation in the Federal Register and provide for a 30-day public comment period prior to revocation.

Dated: September 26, 1995.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: September 21, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–24319 Filed 9–28–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[I.D. 092595A]

Endangered and Threatened Species; Proposed Status for the West Coast Coho Salmon; Public Hearing

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

ACTION: Notice of public hearings.

SUMMARY: NMFS is announcing dates and locations for public hearings concerning the proposed threatened listing of west coast coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). Hearings on the proposed listings will provide the opportunity for the public to give comments and will permit an exchange of information and opinion among interested parties.

DATES: Written comments will be accepted until October 23, 1995. The meetings on the proposed listings will be held in October. See **SUPPLEMENTARY INFORMATION** for the specific dates and times of the hearings.

ADDRESSES: Send written comments to Garth Griffin, Environmental and Technical Services Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232-2737. Public hearings on the proposed listings will be held in Oregon, Washington, and California. See **SUPPLEMENTARY INFORMATION** for the specific locations of the hearings.

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

SUPPLEMENTARY INFORMATION: On July 25, 1995, NMFS issued a proposed rule to list three evolutionarily significant units (ESUs) of west coast coho salmon (*Oncorhynchus kisutch*) as threatened under the ESA (60 FR 38011). The three coho salmon ESUs proposed for listing include: (1) Oregon coast, (2) southern