Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 7	At the confluence with West Fork Sandy Run	None	+825	Rutherford County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with West Fork Sandy Run.	None	+842	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Bostic

Maps are available for inspection at the Bostic Town Hall, 104 Pearidge Road, Bostic, North Carolina.
Send comments to The Honorable Mitch Harrill, Mayor of the Town of Bostic, 177 South Main Street, Bostic, North Carolina 28018.

Town of Forest City

Maps are available for inspection at the Forest City Town Hall, 128 North Powell Street, Forest City, North Carolina.
Send comments to Mr. Charles Summey, II, Forest City Town Manager, P.O. Box 728, Forest City, North Carolina 28043.

Town of Lake Lure

Maps are available for inspection at the Lake Lure Town Hall, 2948 Memorial Highway, Lake Lure, North Carolina.
Send comments to The Honorable James Proctor, Mayor of the Town of Lake Lure, P.O. Box 255, Lake Lure, North Carolina 28746.

Town of Ruth

Maps are available for inspection at the Ruth Town Hall, 199 Northview-Dorsey Street, Ruth, North Carolina.
Send comments to The Honorable Don Baynard, Mayor of the Town of Ruth, 108 Northview-Dorsey Street, Ruth, North Carolina 28139.

Town of Rutherfordton

Maps are available for inspection at the Rutherfordton Town Hall, 129 North Main Street, Rutherfordton, North Carolina.
Send comments to The Honorable Sally Lesher, Mayor of the Town of Rutherfordton, 447 North Washington Street, Rutherfordton, North Carolina.

Town of Spindale

Maps are available for inspection at the Spindale Town Hall, 104 Reveley Street, Spindale, North Carolina.
Send comments to The Honorable Mickey Bland, Mayor of the Town of Spindale, P.O. Box 186, Spindale, North Carolina 28160.

Unincorporated Areas of Rutherford County

Maps are available for inspection at the Rutherford County Building and Inspections Department, 289 North Main Street, Rutherfordton, North Carolina.
Send comments to Mr. John Condrey, Rutherford County Manager, 289 North Main Street, Rutherfordton, North Carolina 28139.

Village of Chimney Rock

Maps are available for inspection at the Village of Chimney Rock Office, 109 Terrace Drive, Chimney Rock, North Carolina.
Send comments to The Honorable Barbara Melisky, Mayor of the Village of Chimney Rock, P.O. Box 300, Chimney Rock, North Carolina 28720.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: April 10, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–7593 Filed 4–19–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 070319062–7062–01; I.D. 021607C]

RIN 0648–XB64

Endangered and Threatened Species; Proposed Endangered Status for the Cook Inlet Beluga Whale

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review of the Cook Inlet population of beluga whale (*Delphinapterus leucas*) under the Endangered Species Act (ESA). Based on the findings from the status review and consideration of the factors affecting this species, we have concluded the Cook Inlet beluga whale constitutes a distinct population segment (DPS) that is in danger of extinction throughout its range. Accordingly, we are now issuing a proposed rule to list the Cook Inlet beluga whale DPS as an endangered species. We are soliciting information on issues relevant to the listing of the Cook Inlet beluga whale DPS under the ESA. Although we are not proposing to designate critical habitat at this time, we are also soliciting information on essential physical and biological features of Cook Inlet beluga whale habitat.

DATES: Comments on this proposed rule must be received by close of business on June 19, 2007. Requests for public

hearings must be made in writing by June 4, 2007.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- E-mail: *CIB-ESA-Endangered@noaa.gov*. Include in the subject line the following document identifier: Cook Inlet Beluga Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.
- Mail: NMFS, P. O Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : NMFS, 709 W. 9th Street, Juneau, AK.
- Fax: (907) 586–7012

The proposed rule, status review, maps, a list of the references cited in this document, and other materials relating to this proposal can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1999, we received two petitions to list the Cook Inlet population of beluga whales as endangered under the ESA. The petitioners requested that we promulgate an emergency listing under section 4(b)(7) of the ESA, designate critical habitat for Cook Inlet beluga whales, and take immediate action to implement rulemaking to regulate the harvest of these whales. We issued a Final Rule on May 31, 2000 (65 FR 34590), designating Cook Inlet beluga whales as depleted within the meaning of section 3(1) of the Marine Mammal Protection Act, as amended (MMPA) (below its Optimum Sustainable Population), and codified at 16 U.S.C. 1362(1), and the underlying regulations codified at 50 CFR Part 216. However, at that time, we determined that the Cook Inlet beluga whale DPS was not threatened or endangered under the ESA (65 FR 38778; June 22, 2000) because legislative and management actions had been taken to reduce subsistence harvests to levels that would allow recovery, such that the DPS did not meet the definition of threatened or endangered.

The 2000 determination that ESA listing was not warranted was premised on at least two findings that justify further review. First, the only factor then known to be responsible for the decline in beluga abundance was subsistence harvest. Second, the 2000 Status Review used simulation modeling efforts that demonstrated this DPS was not likely to decline further if the harvest was reduced and an annual increase of 2 to 6 percent were assumed. Abundance estimates since harvest management began in 1999 have declined at an average rate of 4.1 percent per year, challenging the original findings.

In addition, the International Union for the Conservation of Nature and Natural Resources (IUCN) assessed the status of the Cook Inlet beluga whale in 2005 (Lowry *et al.*, 2006). The IUCN determined that this population had a 71 percent probability of having a negative growth rate (in 2005) and met its criteria for critically endangered status.

In consideration of the factors described above, we initiated a second Status Review for the Cook Inlet beluga whale (71 FR 14836; March 24, 2006). In the 2006 Status Review, we developed population models that considered various types of mortality and fecundity effects in terms of the decline or growth and recovery of the Cook Inlet beluga whale DPS. In these models, NMFS scientists considered several effects, including: (1) An Allee effect on fecundity at small population sizes; (2) a depressed per capita fecundity or survival, as might occur from habitat degradation or pollution; (3) a constant mortality effect independent of population size, as would occur from predation; (4) a random mortality effect, as would result from environmental perturbations or catastrophic events such as oil spills or volcanic activity; and (5) demographic stochasticity due to reduced population size. Models with these different effects were compared to the beluga population estimates from 1994 to 2005 to determine which model best matched the data, and likely outcomes were determined for the population.

Subsequently, we received a third petition to list the Cook Inlet beluga as an endangered species on April 20, 2006. That petitioner requested that we list the Cook Inlet beluga whale as endangered and designate critical habitat. The petitioner reviewed the biology and ecology of this population, its abundance and distribution, its designation as a DPS established through rulemaking in June 2000 (65 FR 38780), and the reasons for the Cook Inlet beluga whale's status (organized by the factors listed in section 4(a) (1) of the ESA). In response to this petition, we published a 90–day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006). The second Status Review (NMFS, 2006) has now been completed and underlies this proposed rule.

Description, Taxonomy, and Distribution

Beluga whales, members of the Family Monodontidae, are small, toothed whales that are white in color as adults. They are extremely social animals that are often found in groups numbering from ten to several hundred. Beluga whales are circumpolar in distribution and occur in seasonally ice-covered arctic and subarctic waters. Beluga whales occur along the coast of Alaska, except the Southeast panhandle region and the Aleutian Islands. Five distinct stocks are currently recognized in Alaska: Beaufort Sea, eastern Chukchi Sea, eastern Bering Sea, Bristol Bay, and Cook Inlet (Angliss and Outlaw, 2005).

Abundance and Trends

The Cook Inlet population of beluga whales has probably always numbered fewer than several thousand animals, but has declined significantly from its historical abundance. It is difficult to accurately determine the magnitude of decline because there is no available information on the beluga whale population that existed in Cook Inlet prior to development of the south-central Alaska sub-Region, or prior to modern subsistence whaling by Alaska Natives. With no reliable abundance surveys conducted prior to the 1990s, scientists must estimate historical abundance. Portions of Cook Inlet surveyed during 1979 resulted in an abundance estimate of 1,293 beluga whales (Calkins, 1989). Those data represent the best available information on historical abundance.

We began comprehensive, systematic aerial surveys on beluga whales in Cook Inlet in 1993. These surveys documented a decline in abundance of nearly 50 percent between 1994 and 1998, from an estimate of 653 whales to 347 whales (Hobbs *et al.*, 2000).

After legislative measures were established in 1999 to regulate subsistence harvests, we had expected the population to grow at a rate between 2 and 6 percent. However, abundance estimates from aerial surveys (1999–2006) indicate this level of growth did not occur. Differences in survey methods and analytical techniques prior

to the 1994 survey rule out a precise statistical assessment of trends using the available population estimate from 1979. However, a comparison of the 1,293 beluga estimate in 1979 to 302 belugas in 2006 indicates a 77 percent decline in 27 years, but with unspecified confidence. This decline was mostly attributed to the subsistence harvest (through 1998); however, even with the restrictions on this harvest, the population continued to decline 4.1 percent per year.

Review of ''Species'' Identification Under the ESA

The ESA requires the Secretary of Commerce to determine whether species are endangered or threatened. The authority to list a ''species'' under the ESA is not restricted to species as recognized in formal taxonomic terms, but extends to subspecies and, for vertebrate taxa, to DPSs. NMFS and U.S. Fish and Wildlife Service (USFWS) issued a joint policy to clarify their interpretation of the phrase ''distinct population segment'' for the purposes of listing, de-listing, and reclassifying species under the ESA (61 FR 4722; February 7, 1996). The policy describes two elements to be considered in deciding whether a population segment can be identified as a DPS under the ESA: (1) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment in relation to the remainder of the species to which it belongs.

DPS Analysis

Under the first element of the joint DPS policy, we found during our previous status review that the Cook Inlet beluga whale population is discrete because it is markedly separated from other populations of the same species (65 FR 38778; June 22, 2000). Of the five stocks of beluga whales in Alaska, the Cook Inlet population was considered to be the most isolated, based on the degree of genetic differentiation and geographic distance between the Cook Inlet population and the four other beluga stocks (O'Corry-Crowe *et al.*, 1997; 2002). This suggested that the Alaska Peninsula is an effective physical barrier to genetic exchange. The lack of beluga observations along the southern side of the Alaska Peninsula (Laidre *et al.*, 2000) also supported this conclusion. Murray and Fay (1979) stated that the Cook Inlet beluga population has been isolated for several thousand years, an idea that has since been corroborated by genetic data (O'Corry-Crowe *et al.*, 1997).

Under the second element, two factors we considered in determining whether this discrete population segment was significant to the remainder of the species were: (1) persistence in an ecological setting that is unique; and (2) whether the loss of the discrete population segment would result in a significant gap in the range of the species.

Cook Inlet is a unique biological setting in terms of these belugas because it supports the southernmost of the five extant beluga populations in Alaska, and is the only water south of the Alaska Peninsula, or within the Gulf of Alaska, which supports a viable population of beluga whales. The ecological setting of Cook Inlet is also unique in that it is characterized as an incised glacial fjord, unlike other beluga habitats to the north. Cook Inlet experiences large tidal exchanges and is a true estuary, with salinities varying from freshwater at its northern extreme to marine near its entrance to the Gulf of Alaska. No similar beluga habitat exists in Alaska or elsewhere in the United States.

In the 2000 Status Review, the Cook Inlet beluga whale population segment was considered to be the only beluga population that inhabits the Gulf of Alaska, and genetic data showed no mixing with other beluga population segments. Therefore, we determined that the loss of the Cook Inlet beluga population segment may result in the complete loss of the species in the Gulf of Alaska, with little likelihood of immigration from other beluga population segments into Cook Inlet.

Because we found that the Cook Inlet beluga whale population was discrete and significant, we determined that it constituted a DPS under the ESA (65 FR 38778; June 22, 2000).

Research to Support Isolation Between the Cook Inlet DPS and Yakutat Belugas

New research has become available since the species determination in the 2000 Status Review regarding the beluga whales that occur in Yakutat Bay, Alaska. These whales were included in the previous Cook Inlet beluga whale DPS. The Yakutat group consists of 12 belugas that are regularly observed in Yakutat Bay and have existed there as early as the 1930s (G. O'Corry-Crowe *et al.*, 2006). Since the 2000 Status Review, we have obtained biopsy samples from five individual whales that provide genetic information on their relationship to other Alaska belugas. That evidence (NMFS, unpublished data) shows the Yakutat group demonstrates a high degree of similarity in genetic markers, indicating that members of the Yakutat group likely comprise a single lineage or family (O'Corry-Crowe *et al.*, 2006). All five individuals possessed a common mtDNA haplotype (#2), a maternal lineage that is also found within other Alaska beluga whale stocks, including the Cook Inlet DPS. While small sample size precluded meaningful statistical analyses of differentiation, Haplotype #2 occurs at a much lower frequency in Cook Inlet and other stocks. The samples were also analyzed for polymorphism at 8 independent microsatellite loci. Preliminary DNA fingerprint analysis of the samples from the five individuals indicates that these individuals share, on average, a higher proportion of alleles at these loci than the average for belugas in other areas, suggesting that the Yakutat whales may be relatively more closely related to each other than to belugas in other areas. As with the mtDNA analysis, small sample size precluded meaningful analyses of population structure. However, these genetic results indicate that the sampled whales differ from a random sample of the Cook Inlet population. This, taken with the sighting data and behavioral observations, suggests that a small group of beluga whales may reside in the Yakutat Bay region year-round, and that these whales are reproductive, have a unique ecology, and a restricted seasonal home range.

Pursuant to the DPS Policy, geographic separation can also provide an indicator that population segments are discrete from each other. There is a large geographic separation (approximately 621 mi (1000 km)) between the Yakutat beluga group and the Cook Inlet beluga population segment, and no records exist that show any association between these whales. Therefore, we conclude that the Cook Inlet beluga population segment is discrete from this Yakutat beluga group.

NMFS considers the viability of an isolated group of 12 belugas to be low. Therefore, the loss of the Cook Inlet beluga population segment may result in the complete loss of the species in the Gulf of Alaska, with little likelihood of immigration from other beluga population segments into Cook Inlet.

Other beluga whale sightings have been recorded from the Gulf of Alaska, including Sitka, Prince William Sound, and Kodiak Island. However, none of these individuals represent persistent groups, and, therefore, are not considered part of the Cook Inlet DPS. We have insufficient information at this time to determine whether these whales are part of the Cook Inlet DPS.

DPS Conclusion

Based on the best available scientific information, we had previously determined that Cook Inlet beluga whale is a DPS, and, therefore, a species under section 3(15) of the ESA (65 FR 38778; June 22, 2000). At the time, the data were insufficient to distinguish the whales near Yakutat from the Cook Inlet population. However, genetic results and the fact that the 12 belugas in the Yakutat group are regularly observed in Yakutat Bay and not in Cook Inlet (O'Corry-Crowe, 2006) lead us to conclude that the Cook Inlet beluga whales are discrete from beluga whales near Yakutat. The conclusion reached in 2000 that the Cook Inlet population segment is significant to the beluga whale species remains valid for the same reasons mentioned in 2000, and is further supported by the information stated above regarding the low viability of the Yakutat group and the resultant potential for loss of beluga whales from Cook Inlet. Therefore, we conclude, given the best scientific information available, the Cook Inlet beluga whales comprise a DPS which is confined to waters of Cook Inlet, and does not include beluga whales found in Yakutat or other Gulf of Alaska waters beyond Cook Inlet. Through this rulemaking, we propose to modify the present description of the Cook Inlet beluga whale DPS, which is considered a species under the ESA, by removing those beluga whales occurring near Yakutat or outside Cook Inlet waters.

Geographic Range of the Species

The range of Cook Inlet belugas has been previously defined as the waters of the Gulf of Alaska north of 58° N and freshwater tributaries to these waters based on available scientific data in 2000 (65 FR 34590; May 31, 2000; MMPA Sec. 216.15(g)). There are few beluga sightings in the Gulf of Alaska outside Cook Inlet. Laidre *et al.* (2000) summarized available information on prehistoric to current distribution of belugas in the Gulf of Alaska, and, with the exception of Yakutat, sightings have been rare and sporadic given the extent of the survey efforts. Of 169,550 cetacean sightings recorded in the Gulf of Alaska prior to the year 2001, excluding Cook Inlet, only 44 were beluga (Laidre *et al.*, 2000), indicating they are extremely rare in the Gulf of Alaska outside Cook Inlet.

Calkins (1989) described belugas in Cook Inlet, Prince William Sound, Yakutat Bay, and throughout the coastal waters of the Gulf of Alaska, from the northern portions of Kodiak Island to Yakutat. In the 1970s and 1980s, beluga sightings occurred across much of mid- and upper Cook Inlet (Calkins, 1984), but in the 1990s the summer distribution diminished to only the northernmost portions of Cook Inlet (Rugh *et al.*, 2000). More of the Inlet was used by beluga whales during the spring, summer, and fall during the 1970s and 1980s than is presently used; for instance, sightings in the Kenai River area were common, and beluga concentrations were reported in Trading Bay and Kachemak Bay (Calkins, 1984). Such areas are rarely used by belugas at the present time, except perhaps in winter.

To identify Cook Inlet beluga habitat use, particularly in winter, NMFS researchers placed satellite positioning tags on 18 beluga whales between 1999 and 2002. Those tagged whales remained in Cook Inlet, indicating that belugas occupy Cook Inlet year round and do not display the seasonal migrations that northern beluga populations display. Considering this research and the genetic information discussed above, we conclude the present range of the Cook Inlet beluga is limited to Cook Inlet waters north of a line from Cape Douglas to Cape Elizabeth.

Extinction Risk Assessment

NMFS' Status Review includes an extinction risk assessment for this DPS through a detailed population viability analysis (PVA). The extinction risk analysis used population models developed specifically for the Cook Inlet beluga whale. These age and gender-structured models included parameters specific to this beluga population (e.g. reproductive age, calving intervals, natural mortality, random stranding events, killer whale predation, managed harvests, and episodic events such as oil spills). Ten thousand individual trials from the models were selected for analysis. From these, the ''baseline'' model (Model A in the Status Review), using no threshold effects, predicted a decline in 65 percent of the cases, and extinction within 300 years for 29 percent of the cases. The ''most likely'' model (Model H in the Status Review), which best approximated the current population (this assumed a single annual killer whale predation mortality and an unusual mortality event every 20 years), predicted the risk of extinction as 26 percent within 100 years (Shelden *et al.*, 2003). The risk analysis concluded that this probability would be much larger if the annual mortality rates assumed were increased by either killer whale predation or other means.

Small population viability is further compromised by the increased risk of inbreeding and the loss of genetic variability through drift, which reduces their resistance to disease and environmental change (Lacy, 1997; O'Corry-Crowe and Lowry, 1997). Estimates of genetic variation do not, at present, suggest that the Cook Inlet beluga whale DPS is highly inbred or that a critical amount of genetic variation has been lost through drift (O'Corry-Crowe *et al.*, 1997; Lowry *et al.*, 2006; G. O'Corry-Crowe, unpublished data), but this population is already at a population size where eventual loss of genetic variability is expected (Lowry *et al.*, 2006).

Summary of Factors Affecting Cook Inlet Beluga Whales

The ESA defines endangered species as a species ''in danger of extinction throughout all or a significant portion of its range.'' Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, whether a species is endangered or threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

A discussion of these factors follows.

The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Habitat for this species has been modified by municipal, industrial, and recreational activities in upper Cook Inlet, where belugas concentrate. It is possible that the range of Cook Inlet beluga whales has been diminished by these activities, either individually or cumulatively. Rugh *et al.* (2000) indicated that the summer occurrence of Cook Inlet beluga whales shifted to the upper Inlet in recent decades, whereas historically, belugas were also found in the mid- to lower Inlet. Such a change could be due to habitat alteration or development, but could also be attributed to other factors. For example, the population reduction may have resulted in Cook Inlet beluga whales inhabiting only the preferred feeding areas (i.e., the upper Inlet) within their normal range. Therefore, the change in distribution does not necessarily reflect any reduction in habitat or habitat

quality in the mid- to lower Inlet. No information exists that beluga habitat has been modified or curtailed to an extent that it is likely to have caused the population declines observed within Cook Inlet.

However, concern is warranted for the continued development within and along upper Cook Inlet and the cumulative effects on important beluga habitat. Several significant developments within the upper Inlet are permitted or planned, which may have adverse consequences. These include: (1) Major expansion to the Port of Anchorage, which requires filling more than 135 acres of intertidal and subtidal habitat, with increased in-water noise from pile driving, dredging, and expanded port operations; (2) Port McKenzie expansion as a commercial port facility directly across a narrow portion of upper Cook Inlet from the Port of Anchorage; (3) the proposed Knik Arm Bridge, which would increase in-water noise with both construction and operational activities and would occupy a portion of upper Cook Inlet that is presently undeveloped and provides important beluga feeding and other habitats; and (4) construction and operation of a large coal mine and marine terminal along the west side of upper Cook Inlet, near the Native Village of Tyonek. Ongoing activities that may impact this habitat include: (1) continued oil and gas exploration, development, and production; and (2) industrial activities that discharge or accidentally spill pollutants (e.g., petroleum, seafood processing, ship ballast, municipal wastewater treatment systems, runoff from urban, mining, and agricultural areas). The extinction risk assessment indicates that very small increases in mortality for this DPS have large effects on its continued existence. Destruction and modification of habitat may result in ''effective mortalities'' by reducing carrying capacity or fitness for individual whales, with the same consequence to the population survival as direct mortalities. Therefore, threatened destruction and modification of Cook Inlet beluga whale DPS habitat contributes to the proposed endangered status.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

A brief commercial whaling operation existed along the west side of upper Cook Inlet during the 1920s, where 151 belugas were harvested in 5 years (Mahoney and Sheldon, 2000). There was also a sport (recreational) harvest for beluga whales in Cook Inlet prior to enactment of the MMPA in 1972. We have no record on this harvest level. The 1979 whale survey by the Alaska Department of Fish and Game (Calkins, 1989) provided an abundance estimate of 1,293 whales. Although we are uncertain of the level of depletion and exploitation in 1979, this remains the largest population abundance estimate for the Cook Inlet beluga DPS. Based on this estimate, we used 1,300 belugas as the carrying capacity in the PVA for the extinction risk assessment (Hobbs *et al.*, 2006). With protections offered by the MMPA, commercial and recreational beluga harvest no longer contribute to endangering the Cook Inlet beluga whale DPS.

Beluga whales are also taken for scientific purposes, but this work requires authorization under the MMPA and cannot have more than a negligible impact on the stock. Invasive research such as beluga capture and tagging, and boat survey work, may temporarily displace whales from important habitats, including feeding habitat, and may rarely result in injury or mortality. The magnitude of this impact cannot be reasonably estimated, but we believe it is not a reason that would support a listing determination.

We are not aware of any live Cook Inlet belugas currently in aquaria and used for educational purposes. Therefore, educational purposes do not contribute to the proposed endangered status.

Disease or Predation

A considerable amount of information now exists on the occurrence of diseases in beluga whales, including Cook Inlet belugas, and the effects of these diseases on the species. This information is described in our draft Conservation Plan (see *http://www.fakr.noaa.gov/protectedresources/whales/beluga/mmpa/draft/conservationplan032005.pdf*). Diseases and parasites occur in Cook Inlet beluga whales. Despite the considerable pathology that has been done on belugas, nothing indicates that the occurrence of diseases or parasites has had a measurable impact on their survival and health. Therefore, diseases and parasites are not known to be factors that have led to the current status of the Cook Inlet beluga whale DPS.

Transient killer whales are a natural predator on beluga whales in Cook Inlet. Killer whale sightings in the upper Inlet (18 reported sightings in 27 years) appear to be relatively infrequent, and not all killer whales prey on marine mammals. However, killer whales are thought to take at least one Cook Inlet beluga per year (Shelden *et al.*, 2003).

Assessing the impact of killer whale predation on Cook Inlet beluga whales is difficult. Anecdotal reports often highlight the more sensational mortalities on beluga whales due to killer whales, thereby overemphasizing their impact. Further, some reports are from the early 1980s when beluga whales were more abundant and more widely distributed. Consequently, the predation reports are of minimal value in evaluating current killer whale impacts to the Cook Inlet beluga whale DPS. The loss of more than one beluga whale annually could impede recovery, particularly if total mortality due to predation would be near the recruitment level in the DPS. The best available information does not allow us to accurately quantify the mortality level due to killer whale predation or its effect on the DPS. However, continued removal of belugas in excess of one per year would have a significant effect on the extinction probability for the Cook Inlet beluga whale.

While disease and predation occur in the Cook Inlet beluga population and may affect reproduction and survival, neither appears to be a likely contributor to the observed decline. However, the present low population abundance and the gregarious nature of beluga whales predispose the population to significant consequences from disease and predation, which contributes to the probability of extinction, and, therefore, to the proposed classification as endangered under the ESA.

The Inadequacy of Existing Regulatory Mechanisms

The MMPA exempts Alaska Natives from the prohibitions on the taking of marine mammals, including beluga whales. Sections 101(b)(3) and 103 of the MMPA provide for subsistence harvest regulations for marine mammal stocks designated as depleted under that Act, after notice and administrative hearings as prescribed by the MMPA. Excessive harvests occurred before May 1999 when Public Law 106–31 required such taking of Cook Inlet beluga whales occur pursuant to a cooperative agreement between NMFS and affected Alaska Native organizations. This law, later made permanent by Public Law 106–553, did not specify a harvest level, nor present a harvest management plan. In May 2000, we designated the Cook Inlet belugas as a depleted stock under the MMPA. We promulgated interim harvest regulations that provided a harvest management plan from 2001 through 2004 (69 FR 17973; April 6, 2004). The absence of legal authority to control subsistence harvest prior to 1999

is considered a contributing factor to the Cook Inlet beluga whale DPS decline.

Annual co-management agreements have been signed between NMFS and the Cook Inlet Marine Mammal Council in compliance with Public Laws 106–31 and 106–553. We have worked extensively with experts, including Native hunters, to use the best available science and traditional knowledge in our management and conservation efforts. This includes workshops by NMFS, the Alaska Beluga Whale Committee, the Alaska Scientific Review Group, and the Cook Inlet Marine Mammal Council. A technical working group was appointed by an administrative law judge in 2005 to consider a Cook Inlet beluga harvest management plan for 2005 and subsequent years that would recover Cook Inlet belugas and allow for traditional subsistence. Harvests from this population have been restricted to zero, one, or two whales annually since 1999, due to cooperative efforts by Native hunters and NMFS. We are currently preparing a Draft Supplemental Environmental Impact Statement (SEIS) on the subsistence harvest management of Cook Inlet belugas. This Draft SEIS will be followed by a Final SEIS and harvest regulations. Harvest regulations will propose a harvest strategy based on the abundance and growth of the population and a population abundance ''floor'' below which no harvest would occur. Despite the limited harvests since 1999 (five belugas in 8 years), the Cook Inlet beluga whale DPS has declined 4.1 percent per year.

Other Natural or Manmade Factors Affecting its Continued Existence

Impacts of Past Subsistence Harvest Efforts

The Cook Inlet beluga whale has been hunted by Alaska Natives for subsistence purposes and for traditional handicrafts. The subsistence provisions under the MMPA allow the sale of edible products and traditional handicrafts from marine mammals in Alaska Native villages, including Anchorage, or for Alaska Native consumption. Muktuk (whale skin and underlying blubber layer) from Cook Inlet belugas was sold in Anchorage markets prior to 1999, after which the practice was prohibited by co-management agreements between NMFS and the Cook Inlet Marine Mammal Council. Alaska Natives have legally harvested Cook Inlet beluga whales prior to and after passage of the MMPA in 1972. The effect of past harvest practices on the Cook Inlet beluga whale is significant. While subsistence harvest occurred at unknown levels for decades, the observed decline from 1994 through 1998 and the reported harvest (including estimates of whales which were struck but lost, and assumed to have perished) indicated these harvest levels were unsustainable.

Annual subsistence take by Alaska Natives during 1995–1998 averaged 77 whales (Angliss and Lodge, 2002). The harvest, which was as high as 20 percent of the population in 1996, was sufficiently high to account for the 14 percent annual rate of decline in the population during 1994 through 1998 (Hobbs *et al.*, 2000). In 1999 there was no harvest as the result of a voluntary moratorium by the hunters and Public Law 106–31. Harvests have been greatly reduced since 1998, with only five whales taken between 1999 and 2006. However, the subsistence removals reported during the 1990s are sufficient to account for the declines observed in this population and must be considered as a factor in the proposed classification of the Cook Inlet beluga whale DPS as endangered.

Impacts of Stranding Events

Cook Inlet beluga whales are known to become stranded along the shorelines and mudflats of Cook Inlet. These stranding events are not uncommon. NMFS has reports of 804 stranded whales (some of which were involved in mass stranding events) in upper Cook Inlet since 1988 (Vos and Shelden, 2005). Mass stranding events occurred most frequently along Turnagain Arm, and often coincided with extreme tidal fluctuations (''spring tides'') and/or killer whale sighting reports (Shelden *et al.*, 2003). Other mass strandings have been reported in the Susitna Delta (Vos and Shelden, 2005) and most recently on September 12, 2006, in Knik Arm (B. Mahoney, NMFS Alaska Region Office, unpublished data). Belugas are usually able to survive a stranding event and escape to deeper water on the rising tide. However, some deaths during these events do occur. For example, in one unusual case in August 2003, at least 46 belugas stranded in Turnagain Arm for over 10 hours, and of these, at least five whales are known to have died. In a more typical case, another 58 belugas stranded in two events in Turnagain Arm the following month with no identified mortalities (Vos and Shelden, 2005).

Catastrophic mortality (the deaths of a large number, such as 20 percent of the population) due to a mass stranding event or other events such as ice entrapment, oil spill, or volcanic activity was considered in simulations of the Cook Inlet beluga and assigned a probability of 5 percent per year for purposes of the status review (NMFS, 2006). Such mortality, if it occurred, could significantly impede recovery or force the population below a threshold to which it would not otherwise be vulnerable and from which it could not recover; however, such catastrophic mortality has not been reported in Cook Inlet. Although live mass strandings have occurred, between 1988 and 2000 only12 belugas were reported dead out of 650 belugas that stranded (Vos and Shelden, 2005). Mass stranding events are not believed to be a factor that has caused, or had a significant role in, the decline of the Cook Inlet beluga whale DPS.

Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect such species. Such efforts would include measures by Native American tribes and organizations and local governments, and may also include efforts by private organizations. Also, Federal, tribal, state, and foreign recovery actions (16 U.S.C. 1533(f)) constitute conservation measures. On March 28, 2003, NMFS and USFWS published the final Policy for Evaluating Conservation Efforts (PECE)(68 FR 15100). The PECE provides guidance on evaluating current protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented or have been implemented but have not yet demonstrated effectiveness. The PECE establishes two basic criteria for evaluating current conservation efforts: (1) the certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. The PECE provides specific factors under these two basic criteria that direct the analysis of adequacy and efficacy of existing conservation efforts.

Cook Inlet beluga whales benefit from protections afforded by the MMPA. The Cook Inlet beluga whale was designated as a depleted stock under the MMPA in 2000, and a draft Conservation Plan was published (70 FR 12853; March 16, 2005). That conservation plan is comprehensive and provides recommendations to foster recovery. While some recommendations are funded, many recommendations are

unfunded. Therefore, it is uncertain whether these beluga conservation measures will be implemented. Federal law (Public Law 106–553) prohibits the taking of Cook Inlet beluga whales except through a cooperative agreement between NMFS and affected Alaska Native organizations. Presently, co-management agreements are signed annually with the Cook Inlet Marine Mammal Council to establish strike (harvest) limits and set forth requirements intended to minimize waste and prevent unintentional harassment. Harvest regulations are being considered to address the management of Cook Inlet beluga subsistence hunting. Once implemented, these regulations will constitute an effective conservation plan regarding Alaska Native subsistence harvest. They will not, however, be comprehensive in addressing the many other issues now confronting Cook Inlet belugas.

We are not aware of conservation efforts undertaken by foreign nations specifically to protect Cook Inlet beluga whales. We support all conservation efforts currently in effect; however, these efforts lack the certainty of implementation and effectiveness so as to have removed or reduced threats to Cook Inlet belugas. In developing our final listing determination, we will consider the best available information concerning these conservation efforts and any other protective efforts by states or local entities for which we have information (See description of PECE above).

Proposed Listing Determination

We have reviewed the extinction risk analysis for the Cook Inlet beluga whale, considered the factors in section 4(a)(1) of the ESA, and taken into account conservation efforts to protect the species. We conclude that the Cook Inlet beluga whale is in danger of extinction throughout all of its range because of: present or threatened destruction, modification or curtailment of habitat or range; the inadequacy of existing regulatory mechanisms (largely the past absence of regulations on subsistence harvests); disease and/or predation (further predation by killer whales can be shown to have a significant impact on survival); and other natural and manmade factors affecting its continued existence (effects of past subsistence removals). See the ''Factors Affecting the Species'' section above for a description of the specific risks associated with section 4(a)(1). This endangered determination is supported by the results of population modeling which indicate a probability of extinction (for what is considered the most realistic scenario) of 26 percent within the next 100 years.

We convened a workshop in February 2000 to develop ESA recovery criteria for large whales. That workshop concluded that a reasonable, conservative definition for endangered status would be a probability of extinction greater than or equal to 1 percent in 100 years. While that threshold may be conservative, the significantly greater extinction risk of 26 percent in 100 years modeled for the Cook Inlet beluga provides a strong justification for endangered status. Further, the factors confounding recovery have not been thoroughly identified and may continue to persist until more is known and corrective actions can be taken. We also conclude that, at present, no protective or conservation measures are in place that will substantially mitigate the factors affecting the future viability and recovery of the Cook Inlet beluga whale DPS.

Based on the best available scientific and commercial information, we propose that the Cook Inlet beluga whale be listed under the ESA as an endangered species.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Section 7(a)(2) of the ESA requires Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify critical habitat. Under Section 7(a)(4), Federal agencies must confer with us on any of these activities to ensure that any such activity is not likely to jeopardize the continued existence of a species proposed for listing or destroy or adversely modify proposed critical habitat. Examples of Federal actions that may affect the Cook Inlet beluga whale include permits and authorizations relating to coastal development and habitat alteration, oil and gas development (including seismic exploration), toxic waste and other pollutant discharges, Federal fishery management plans, and cooperative agreements for subsistence harvest.

Sections 10(a)(1)(A) and (B) of the ESA authorize NMFS to grant exceptions to the ESA's Section 9 take prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. Activities potentially requiring a section 10(a)(1)(A) research/enhancement permit if Cook Inlet beluga whales are listed include scientific research that targets Cook Inlet beluga whales. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, provided that the requirements of section 10(a)(2) are met.

Critical Habitat

Section 3 of the ESA defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed....on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed...upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of the species.

In determining what areas qualify as critical habitat, 50 CFR 424.12(b) requires that NMFS ''consider those physical or biological features that are essential to the conservation of a given species including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or

physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.'' The regulations further direct NMFS to ''focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species,'' and specify that the ''known primary constituent elements shall be listed with the critical habitat description.'' The regulations identify primary constituent elements (PCEs) as including, but not limited to: ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.''

The ESA directs the Secretary of Commerce to consider the economic impact of designating critical habitat, and under section 4(b)(2) the Secretary may exclude any area from such designation if the benefits of exclusion outweigh those of inclusion, provided that the exclusion will not result in the extinction of the species. We are considering proposal of critical habitat for the Cook Inlet beluga whale in a separate rulemaking. To assist us with that rulemaking, we specifically request information on the economic attributes within the Cook Inlet region that could be impacted by critical habitat designation, as well as identification of the PCEs or ''essential features'' of this habitat and to what extent those features may require special management considerations or protection.

Public Comments Solicited

We request interested persons to submit comments, information, and suggestions concerning this proposed rule. We solicit comments or suggestions from the public, other concerned governments and agencies, Alaska Natives, the scientific community, industry, or any other interested party. Comments are particularly sought concerning:

(1) The current population status of the Cook Inlet beluga whale;

(2) Biological or other information regarding the threats to this species;

(3) Information on the effectiveness of ongoing and planned conservation efforts by states or local entities;

(4) Information related to the identification of critical habitat and essential physical or biological features for this species; and

(5) Economic or other relevant impacts of designation of critical habitat.

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The proposed rule, maps, and other materials relating to this proposal can be found on the NMFS Alaska Region website at *http://www.fakr.noaa.gov/*. Comments and information received during the comment period on this proposed rule will be considered in the final decision whether to list the Cook Inlet beluga whale DPS as endangered and any future proposal to designate critical habitat.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing, if requested, within 45 days of publication of a proposed regulation to list a species under the ESA. Requests for public hearing must be made in writing (see **ADDRESSES**) by June 4, 2007. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. (See NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analyses required by the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This proposed rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13132, Federalism

Recognizing the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, and in keeping with Department of Commerce policies, we request information from, and will coordinate development of, this proposed ESA listing with appropriate State resource agencies in Alaska.

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, which 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 - Consultation and Coordination with Indian Tribal Governments - outlines the responsibilities of the Federal Government in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108- 447 (118 Stat. 3267), directs all Federal agencies to consult with Alaska Native corporations on the same basis as Indian tribes under E.O. 13175.

We will contact any tribal governments or Native corporations which may be affected by the proposed action, provide them with a copy of this proposed rule, and offer the opportunity to comment on the proposed rule and discuss any concerns they may have.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects in 50 CFR Part 224

Endangered and threatened species.

Dated: April 16, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 224, title 50 of the Code of Federal Regulations as set forth below:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

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

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

§ 224.101 [Amended]

2. In § 224.101, amend paragraph (b) by adding, ''Cook Inlet distinct population segment of beluga whale (*Delphinapterus leucas*)'' in alphabetical order.

[FR Doc. E7–7577 Filed 4–19–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070227047–7047–01; I.D. 020405C]

RIN 0648–AS96

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 14; Essential Fish Habitat Descriptions for Pacific Salmon

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 14 to the Pacific Salmon Fishery Management Plan (Salmon FMP) to identify and describe essential fish habitat (EFH) for Pacific salmon. The intent of this proposed rule is to codify the EFH identifications and descriptions for freshwater and marine habitats of Pacific salmon managed under the Salmon FMP, including Chinook, coho, and pink salmon. This proposed rule complies with an order issued by the U.S. District Court of Idaho directing NMFS to codify the EFH identifications and descriptions contained in the Salmon FMP. This proposed EFH rule is separate and distinct from the December 2004 proposed critical habitat rules in which NMFS proposed critical habitat for seven groupings of Chinook and coho salmon listed as threatened or endangered species under the Endangered Species Act (ESA). Where EFH and critical habitat overlap, NMFS will generally merge the results of both consultations into one response package to maximize regulatory efficiencies whenever possible.

DATES: Comments must be received by July 19, 2007.

ADDRESSES: You may submit comments or obtain a supplemental regulatory impact review to amendment 14 to the Pacific Salmon Fishery Management Plan by any of the following methods:

- *E-mail: EFH.salmon@NOAA.gov*. Include in the subject line the following identifier ''RIN 0648–AS96.''
- *Federal e-Rulemaking Portal: http://www.regulations.gov*.
- *Mail:* For submitting paper, disk or CD ROM comments. Frank Lockhart, NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115.
- *Fax:* 206–526–6736.

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at 206–526–6142.

SUPPLEMENTARY INFORMATION: Among other things, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes development of Federal Fishery Management Plans (FMPs), and Federal regulation of domestic fisheries under those FMPs, within the 200–mile U.S. Exclusive Economic Zone (EEZ). 16 U.S.C. 1811, 1853. To assist the Secretary of Commerce (Secretary) in carrying out specific management and conservation duties, the Magnuson-Stevens Act created eight regional fishery management councils. Under the Magnuson-Stevens Act, an FMP and any amendments are usually originated by one of the eight regional fishery management councils, 16 U.S.C. 1852, and must then be approved by the Secretary of Commerce. 16 U.S.C. 1854.

Essential Fish Habitat

The Magnuson-Stevens Act, originally enacted in 1976, has been amended several times. In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Act adding provisions aimed at halting overfishing and rebuilding overfished fisheries, reducing bycatch, and assessing and minimizing the impacts of management measures on fishing communities. Congress articulated in its findings that:

> one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States. 16 U.S.C. 1801(a).

In making such findings, Congress declared one of the purposes of the Magnuson-Stevens Act to be the promotion of ''the protection of [EFH] in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.'' 16 U.S.C. 1802(b)(7). To ensure habitat considerations receive increased attention for the conservation and management of fishery resources, the amended Magnuson-Stevens Act required each existing, and any new, FMP to:

> describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 1855(b)(1)(A) of this title, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat. 16 U.S.C. 1853(a)(7).

''EFH'' is defined in the Magnuson-Stevens Act as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' 16 U.S.C. 1802(10).

The EFH regulations (50 CFR 600.815) establish additional guidance to the Councils on how to identify and describe EFH. The regulations indicate that Councils should:

> obtain information to describe and identify EFH from the best available sources, including peer reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information.

The regulations identify four classification levels to organize available information relevant to EFH identifications and descriptions. Level 1 information is limited to species distributional data; level 2 information includes habitat-related densities; level 3 includes growth, reproduction or survival rates within habitats; and level 4 consists of production rates by habitat. Councils are encouraged to identify and describe EFH based on the highest level of detail (i.e., level 4). Readers are encouraged to see the EFH regulations (50 CFR 600.815, subpart J) for a complete description of each of these levels as well as guidance on how the Councils should analyze the available information. In determinating EFH, the regulations advise the Councils to interpret the available information in a ''risk-averse fashion to ensure adequate areas are identified as EFH for managed species.'' 50 CFR 600.815(a)(1)(iv)(A). For Pacific salmon, the Pacific Fishery Management Council (Pacific Council) obtained information at all four levels