(vi) Drawing No. 175–3800, Arm Assembly, Right, incorporated by reference in §§ 572.181, and 572.185;

(vii) Drawing No. 175–4000, Thorax Assembly with Rib Extensions, incorporated by reference in §§ 572.181 and 572.185;

(viii) Drawing No. 175–5000, Abdominal Assembly, incorporated by reference in §§ 572.181 and 572.186;

(ix) Drawing No. 175–5500, Lumbar Spine Assembly, incorporated by reference in §§ 572.181 and 572.187;

(x) Drawing No. 175–6000, Pelvis Assembly, incorporated by reference in §§ 572.181 and 572.188;

(xi) Drawing No. 175–7000–1, Leg Assembly—left incorporated by reference in § 572.181;

(xii) Drawing No. 175–7000–2, Leg Assembly—right incorporated by reference in § 572.181;

(xiii) Drawing No. 175–8000, Neoprene Body Suit, incorporated by reference in §§ 572.181 and 572.185; and,

(xiv) Drawing No. 175–9000, Headform Assembly, incorporated by reference in §§ 572.181, 572.183, 572.187;

* * * * *

(c) * * *

(1) The Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re) referred to in paragraph (a)(1) of this section, the Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version) referred to in paragraph (a)(2) of this section, and the PADI document referred to in paragraph (a)(3) of this section, are available in electronic format through Regulations.gov and in paper format from Leet-Melbrook, Division of New RT, 18810 Woodfield Road, Gaithersburg, MD 20879, telephone (301) 670–0090.

* * * * *

■ 4. Section 572.181 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 572.181 General description.

(a) The ES–2re Side Impact Crash Test Dummy, 50th Percentile Adult Male, is defined by:

(1) The drawings and specifications contained in the "Parts List and Drawings, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES–2re, Alpha Version), September 2009," (incorporated by reference, see § 572.180), which includes the technical drawings and specifications described in Drawing 175–0000, the titles of which are listed in Table A;

TABLE A

Component assembly	Drawing No.
Head Assembly	175–1000
Neck Assembly Test/Cert	175–2000
Neck Bracket Including Lifting Eyebolt.	175–2500
Shoulder Assembly	175–3000
Arm Assembly-Left	175–3500
Arm Assembly-Right	175–3800
Thorax Assembly with Rib Extensions.	175–4000
Abdominal Assembly	175–5000
Lumbar Spine Assembly	175–5500
Pelvis Assembly	175–6000
Leg Assembly, Left	175–7000–1
Leg Assembly, Right	175–7000–2
Neoprene Body Suit	175–8000

(2) "Parts/Drawings List, Part 572 Subpart U, Eurosid 2 with Rib Extensions (ES2re), September 2009," containing 9 pages, incorporated by reference, see § 572.180,

(3) A listing of available transducers-crash test sensors for the ES–2re Crash Test Dummy is shown in drawing 175–0000 sheet 4 of 6, dated February 2008, incorporated by reference, see § 572.180,

(4) Procedures for Assembly, Disassembly and Inspection (PADI) of the ES–2re Side Impact Crash Test Dummy, February 2008, incorporated by reference, see § 572.180,

(5) Sign convention for signal outputs reference document SAE J1733 Information Report, titled "Sign Convention for Vehicle Crash Testing" dated December 1994, incorporated by reference, see § 572.180.

(b) Exterior dimensions of ES–2re test dummy are shown in drawing 175–0000 sheet 3 of 6, dated February 2008, incorporated by reference, see § 572.180.

(c) Weights of body segments (head, neck, upper and lower torso, arms and upper and lower segments) and the center of gravity location of the head are shown in drawing 175–0000 sheet 2 of 6, dated February 2008, incorporated by reference, see § 572.180.

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Issued: May 24, 2011.

David L. Strickland,

Administrator.

[FR Doc. 2011–13413 Filed 6–1–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2008–0119; 92220–1113–0000–C6]

RIN 1018–AX01

Endangered and Threatened Wildlife and Plants; Reclassification of the Tulotoma Snail From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), reclassify the tulotoma snail (*Tulotoma magnifica*) from endangered to threatened, under the authority of the Endangered Species Act of 1973, as amended (Act). This action is based on a review of the best available scientific and commercial data, which indicates that the endangered designation no longer correctly reflects the status of this snail.

DATES: This final rule is effective on July 5, 2011.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Jackson Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213 (telephone 601–321–1122; facsimile 601–965–4340).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213–7856 (telephone 601–321–1122; facsimile 601–965–4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: This document consists of a final rule to reclassify the tulotoma snail (*Tulotoma magnifica*) from endangered to threatened, under the authority of the Act.

Background

It is our intent to discuss only those topics directly relevant to the reclassification of the tulotoma snail from endangered to threatened. For information on our proposed

determination, refer to the proposed rule published in the **Federal Register** on June 22, 2010 (75 FR 35424).

The tulotoma snail (*Tulotoma magnifica*), henceforth "tulotoma," is a gill-breathing, operculate snail in the family Viviparidae. Operculate means that the snail has a rounded plate that seals the mouth of the shell while the snail is inside. The shell is spherical and can reach a size somewhat larger than a golf ball, and typically ornamented with spiral lines of knob-like structures (Herschler *et al.* 1990, p. 815). Its adult size and ornamentation distinguish it from all other freshwater snails in the Coosa-Alabama River system.

The tulotoma is found only in the State of Alabama. It was described from the Alabama River in 1834 by T.A. Conrad, and collection records indicate a historical range of around 563 kilometers (km) (350 miles (mi)) in the Coosa and Alabama River drainages of Alabama from the Coosa River in St. Clair and Calhoun Counties, Alabama, to the Alabama River in Monroe County, Alabama (Herschler *et al.* 1990, pp. 815–817). Historical collection localities in the Coosa River system included numerous sites on the river itself as well as the lower reaches of several of its large tributaries in St. Clair, Calhoun, Talladega, Shelby, Chilton, Coosa, and Elmore Counties, Alabama (Herschler *et al.* 1990, pp. 815–817). In the Alabama River system, the tulotoma was recorded only from two collection localities: The type locality near Claiborne, Monroe County, Alabama, and Chilachee Creek southwest of Selma, Dallas County, Alabama (Herschler *et al.* 1990, p. 815).

Tulotoma occur in cool, well-oxygenated, clean, free-flowing streams, including rivers and the lower portions of the rivers' larger tributaries (Herschler *et al.* 1990, p. 822). This species is generally found in shoals (a shallow place in a body of water) and riffles (a rocky shoal lying just below the surface of the water) with moderate to strong currents. Although this species is typically associated with shoals and riffles, it inhabits rivers that rise and fall, and tulotoma have been collected at depths more than 5 meters (m) (15 feet (ft)) (Hartfield 1991, p. 7). The species is strongly associated with boulder, cobble, and bedrock stream bottoms and is generally found clinging tightly to the underside of large rocks or between cracks in bedrock (Christman *et al.* 1996, p. 28). Historical habitats included large coastal plain river, large high-gradient rivers, and multiple upland tributary streams.

Based on a study of the tulotoma life history in the Coosa River below Jordan Dam, Elmore County, Alabama, tulotoma produce live-born offspring year round, but reproduction peaks during the months of May to July, and at sizes of about 3 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) height of last whorl (HLW) or coil in a tulotoma shell (Christman *et al.* 1996, pp. 45–59). They grow rapidly during their first year reaching sizes of 11 to 14 mm (0.4 to 0.5 in), with females producing an average of 16 offspring in their second year (Christman *et al.* 1996, pp. 45–59). Females that live beyond their second year grow more slowly and produce an average of 28 juveniles per year (Christman *et al.*1996, pp. 45–59); few tulotoma survived longer than 2 years of life in the lower Coosa River (Christman *et al.* 1996, p. 61).

At the time of listing in 1991, the tulotoma was known from five localized areas in the lower Coosa River drainage (56 FR 797; January 9, 1991). These included approximately a 3-kilometer (km) (1.8-mile (mi)) reach (section of river) of the lower Coosa River between Jordan Dam and the City of Wetumpka (Elmore County, Alabama) and short reaches of four tributaries: 2 km (1.2 mi) of Kelly Creek (St. Clair and Shelby Counties, Alabama), 4 km (2.4 mi) of Weogufka Creek, and 3 km (1.8 mi) of Hatchet Creek (Coosa County, Alabama), and from a single shoal on Ohatchee Creek (Calhoun County, Alabama) (Herschler *et al.* 1990, p. 819). Each river reach is considered a population, and a population can contain one or more colonies. A colony is defined as the tulotoma found under one rock or several adjacent rocks. A site is considered a specific location within the river reach, where specific colonies are located.

Spatial distribution and trends of four of these five tulotoma populations (all populations except Ohatchee Creek) were monitored annually between 1992 and 1995, and again in 1999, and 2004 (DeVries 2005, p. 3). The lower Coosa River population has expanded throughout a 10-km (6-mi) reach (Hartfield 1991, Christman *et al.* 1996, pp. 23–25; DeVries 2005, p. 14), and the species' numbers in this reach are estimated at more than 100 million tulotoma (Christman *et al.* 1996, p. 59). Habitat in the Coosa River below Jordan Dam has improved and expanded due to implementation of a minimum flow regime below the dam and installation of an aeration system (Christman *et al.* 1996, p. 59; Grogan 2005, p. 3).

Colony size and distribution of tulotoma within the tributaries have been monitored and appear to be stable within a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005, pp.11–13). Habitat conditions within these three tributaries appear to have remained stable since listing (DeVries 2005, p. 4; 2008, pp. 5–9). The Kelly Creek tulotoma population has expanded into suitable habitat in an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Powell 2005, Lochamy 2005), likely as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008).

No tulotoma have been rediscovered from the Ohatchee Creek shoal population for 15 years, and it is now believed to be extirpated (DeVries 2005, pp. 10). Impacts of nonpoint source pollution at the Ohatchee shoal, including excessive sedimentation and algal growth, have been observed (Hartfield 1992).

Since its listing in 1991, tulotoma populations have also been located at six additional locations: Three in the Coosa River drainage and three in the Alabama River. (Garner 2003, 2006, 2008; DeVries 2005, p. 7; Johnson 2008). In the lower Coosa River drainage the tulotoma has been discovered surviving in a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). The tulotoma population's range, colony size, and habitat in Choccolocco Creek have remained relatively stable since monitoring began in 1995 (DeVries 2005, p. 4). Tulotoma colony sizes in Weoka Creek have reached higher densities than any other tributary population; however, population trends have been monitored for only 3 years (DeVries 2005, p. 5). The Yellowleaf Creek tulotoma population is extremely localized (found in a small area in the creek that is isolated from other populations) and has not been monitored; however, occasional spot checks show the species continues to persist (Johnson 2006).

The other three new populations were discovered in the Alabama River, one below each of three dams: Claiborne Lock and Dam (one colony), R.F. Henry Lock and Dam (three colonies), and Millers Ferry Lock and Dam (one colony). A single localized colony was discovered near the type locality in the lower Alabama River below Claiborne Lock and Dam, Monroe County, Alabama (Garner 2006). Additionally, dead tulotoma shells were found in appropriate habitat over a 1.6-km (1.0-mi) reach of the Alabama River (Garner

2006). During the summer of 2008, two colonies were located near Selma, Dallas County, Alabama (Johnson 2008), and a single robust (healthy or vigorous) colony containing approximately 150 tulotoma was discovered below R.F. Henry Lock and Dam, Autauga and Lowndes Counties, Alabama (Garner 2008). Both juvenile and adult tulotoma were present at the three sites. A single localized colony was also discovered below Millers Ferry Lock and Dam, Wilcox County, Alabama (Powell 2008). For additional details about the expansion of the tulotoma range, see the Summary of Factors Affecting the Species section, below.

Previous Federal Actions

Federal actions for this species prior to June 22, 2010, are outlined in our proposed rule for this reclassification (75 FR 35424). Publication of the proposed rule opened a 60-day comment period, which closed on August 23, 2010.

Recovery Achieved

Recovery plans are not regulatory documents and are instead intended to establish goals for long-term conservation of listed species, define criteria that may be used to determine when recovery is achieved, and provide guidance to our Federal, State, other governmental and nongovernmental partners on methods to minimize threats to listed species. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to reclassify from endangered to threatened or to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

In 1994, the recovery goal, criteria, and tasks for the tulotoma were first proposed in the Technical/Agency Draft Mobile River Basin Aquatic Ecosystem Recovery Plan (Technical Draft Recovery Plan) (U.S. Fish and Wildlife Service 1994, p. 21). The Technical Draft Recovery Plan stated that the tulotoma could be reclassified to threatened status when a population study, in progress at the time, documented a stable or increasing population size due to flow and habitat improvements in the Coosa River below Jordan Dam (Devries 2005).

The 1994 draft plan received wide review and interest, which resulted in the formation of the Mobile River Aquatic Ecosystem Coalition (Ecosystem Coalition), formed by representatives of State and Federal agencies, and business and citizen groups from throughout the Mobile River Basin. The first task of the Ecosystem Coalition was to produce a draft of an ecosystem plan addressing all listed aquatic species in the Mobile River Basin. By the time the final Mobile River Basin Aquatic Ecosystem Recovery Plan (Recovery Plan) was published (U.S. Fish and Wildlife Service 2000), studies had been completed showing that the status of tulotoma in the Coosa River had improved considerably due to habitat improvements (Christman *et al.* 1996, DeVries 2005). Therefore, the recovery criterion for reclassification of tulotoma to threatened status was modified to recommend reclassification to threatened status upon completion of a status review confirming a stable or increasing population of tulotoma in the Coosa River below Jordan Dam (U.S. Fish and Wildlife Service 2000, p. 21).

Our recent 5-year review of the tulotoma documented an increase in the extent and size of tulotoma populations in the Coosa River below Jordan Dam, an increase in range and number of colonies and individuals in 3 of 4 tributary populations known at the time of listing, and discovery of 6 previously unknown populations (U.S. Fish and Wildlife Service 2008).

The 2000 Recovery Plan addressed protecting habitat integrity and improving habitat quality, reducing impacts from permitted activities, promoting watershed stewardship, conducting basic research, establishing propagation programs if necessary, and monitoring species' population size and distribution for all species addressed in the Recovery Plan. Some recovery actions accomplished in the Coosa River under this plan include the establishment of minimum flows below Jordan Dam to improve habitat conditions in that reach and the implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen in that reach. Watershed management plans have also been developed to address nonpoint source pollution in the lower Coosa Basin and the Alabama River Basin. These and other recovery accomplishments addressing threats to the tulotoma are presented in more detail in the Summary of Factors Affecting the Species section, below.

Summary of Opportunity for Public Input

During the open comment period for the proposed rule (75 FR 35424), we requested that all interested parties submit comments or information concerning the proposed reclassification of tulotoma from endangered to threatened. We directly notified and requested comments from the State of Alabama. We contacted all appropriate State and Federal agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment. We also published newspaper notices inviting public comment in the following newspapers: *Daily Home,* Talladega, Alabama; *Monroe Journal,* Monroe, Alabama; *Montgomery Advertiser,* Montgomery, Alabama; and *Selma Times Journal,* Selma, Alabama. During the comment period, we received no public comments.

Peer Review

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270) and the Office of Management and Budget's (OMB) December 16, 2004, Final Information Bulletin for Peer Review (OMB 2004), we requested the independent opinions of four knowledgeable individuals with expertise on the tulotoma, freshwater mollusks, the Mobile River Basin, and conservation biology principles. The purpose of such review is to ensure that the reclassification is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. We received a single comment from a peer reviewer stating that the proposed rule was comprehensive and accurate, and recommending that we include reference to a summary journal article that was not cited in the proposed rule. This article has been referenced, where appropriate, in the Background section, above.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from the Federal Lists of Endangered and Threatened Species. "Species" is

defined by the Act as including any species or subspecies of fish or wildlife or plants and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the "species" is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. Those factors are: (A) Habitat modification, destruction, or curtailment; (B) overutilization of the species for commercial, recreational, scientific or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifying or delisting a species. Listing, reclassifying, or delisting may be warranted based on any of the above threat factors, either singly or in combination.

For species that are already listed as threatened or endangered, an analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting.

The following threats analysis examines the five factors currently affecting, or that are likely to affect, the listed tulotoma snail within the foreseeable future. For the purposes of this analysis, we will first evaluate whether the currently listed species, the tulotoma, should be considered threatened or endangered throughout its range. If we determine that the species is threatened, then we will consider whether there are any significant portions of the species' range where it is in danger of extinction or likely to become endangered within the foreseeable future.

Under section 3 of the Act, a species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word "range" refers to the range in which the species currently exists, and the word "significant" refers to the value of that portion of the range being considered to the conservation of the species. The "foreseeable future" is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated.

For the purposes of this analysis, we will evaluate all five factors currently affecting, or that are likely to affect, the tulotoma to determine whether the currently listed species is threatened or endangered. The five factors listed under section 4(a)(1) of the Act and their applications to tulotoma are presented below.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* When listed in 1991, the tulotoma was believed to inhabit less than 2 percent (12 km (7.2 mi)) of its 563-km (350-mi) historical range. A Coosa River population of tulotoma was known to survive below Jordan Dam. Populations were also known from four Coosa River tributaries: Kelly, Weogufka, Hatchet, and Ohatchee Creeks. All of these populations were isolated by dams and impounded waters and considered to be vulnerable to nonpoint source pollution. Population trends were unknown, but were believed to be possibly declining.

At the time of listing, hydropower discharges were limiting the range and abundance of tulotoma to only a 3-km (1.8-mi) reach of the Coosa River below Jordan Dam. Water discharges for hydropower purposes were released from Jordan Dam for 2.25 hours per day; at all other times, flow consisted of only dam seepage. As a result of the low water quantity, water quality problems, particularly low dissolved oxygen and elevated temperatures, were a significant limiting factor to tulotoma below Jordan Dam. In 1992, the Alabama Power Company (APC) established minimum flows in the Coosa River below Jordan Dam, and later installed a draft tube aeration system to ensure maintenance of dissolved oxygen levels at or above State standards (Grogan 2005, pp. 2–3). The APC also initiated studies to document the range, numbers, demographics, and life history of tulotoma in the reach of the Coosa River below Jordan Dam and to determine the effects of the new minimum flow regime (Christman *et al.* 1996, p. 18). Other studies were also conducted to monitor long–term population trends in this reach of the Coosa River (*e.g.,* De Vries 2005). Numerous tulotoma colonies have been discovered as a result of the monitoring efforts. With increased flows, additional colonies have become established in the upper portion of the reach and, in the downstream areas, the tulotoma has extended its range laterally within the channel in habitats made available by the constant minimum flows. Thousands of colonies consisting of more than 100 million tulotoma now inhabit a 10-km (6-mi) reach of the Coosa River below the Jordan Dam (Christman *et al.* 1996, p. 59; DeVries 2004, pp. 8–10, 2005 p. 14).

In 1991, tulotoma were also known to occur in 2 km (1.2 mi) of Kelly Creek, 4 km (2.4 mi) of Weogufka Creek, 3 km (1.8 mi) of Hatchet Creek, and from a single shoal on Ohatchee Creek (Herschler *et al.* 1990, p. 819). These four known tributary populations of tulotoma were considered to be extremely localized, vulnerable to water quality or channel degradation, and susceptible to decline and extirpation from effects of nonpoint source pollution and stochastic events within their respective watersheds. As a result of studies and surveys, we now know that the range of tulotoma is greater than estimated at the time of listing for three of these populations, and tulotoma is now known to occur in a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005 pp. 11–13). Tulotoma colony sizes within these three populations have remained stable over a 12-year period (DeVries 2005, pp. 11–13). The Kelly Creek tulotoma population has expanded into an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Lochamy 2005, Powell 2005), likely as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008). No tulotoma have been rediscovered in the Ohatchee Creek shoal population for 15 years, and, therefore, the population is now believed to be extirpated (DeVries 2005, p. 10).

Although the Ohatchee Creek population has apparently become extirpated since the time of listing (DeVries 2005, p. 10), other tributary stream surveys have located three populations in the Lower Coosa River drainage that were unknown at the time of listing. Tulotoma are now known from a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). Although very localized, the Choccolocco Creek population has remained stable in colony size and numbers over the past decade (DeVries 2005, pp. 10–11). The Weoka Creek population has been sampled only twice since its discovery; however, tulotoma colonies are abundant in the stream reach, and average colony size is larger than any other tributary population (DeVries 2005, pp.13–14.) The Yellowleaf Creek population is localized, small, and has not been routinely monitored; however,

occasional spot checks show the species continues to persist (Johnson 2006).

Tulotoma colonies have also been discovered at three locations in the Alabama River: Near the type locality below Claiborne Lock and Dam in Monroe County, Alabama (Garner 2006); below Millers Ferry Lock and Dam in Wilcox County, Alabama (Powell 2008); and below Robert F. Henry Lock and Dam at a location in Autauga and Lowndes Counties, Alabama (Garner 2008), and at a locality in Dallas County, Alabama (Johnson 2008). The presence of juvenile and adult tulotoma in these three river reaches indicates that the newly discovered colonies are self-maintaining.

The 1991 listing rule (56 FR 797) noted the vulnerability of localized (isolated) tributary populations to nonpoint source pollution, specifically siltation from construction activities. The extirpation of the Ohatchee Creek population is suspected to be due to sedimentation and nutrient enrichment from nonpoint sources in the watershed. Although other monitored tulotoma populations have remained stable or expanded since listing, they remain vulnerable to water and habitat quality degradation, particularly in the tributaries. Lower Choccolocco Creek is on the State list of impaired waters for organic pollution due to contaminated sediments (Alabama Department of Environmental Management (ADEM) 2006, p. 5). Yellowleaf Creek and several other lower Coosa River watersheds have been identified as High Priority Watersheds (*i.e.,* vulnerable to degradation) by the Alabama Clean Water Partnership (ACWP) (ACWP 2005a, Chapter 12) due to the high potential of nonpoint source pollution associated with expanding human population growth rates and urbanization. For example, the headwaters of Yellowleaf Creek are about 5 km (3 mi) southeast of the greater metropolitan area surrounding Birmingham, Alabama, and the watershed is highly dissected by county roads. High sediment discharge has been identified as an issue in Kelly Creek (ACWP in prep., p. 43), and potential fecal coliform problems have been documented at several locations in Choccolocco Creek (ACWP in prep., p. 38). However, the ACWP has also developed locally endorsed and supported plans to address nonpoint source pollution and maintain and improve water quality in the lower Coosa River Basin (ACWP 2005a, pp. 3.1–3.48) and in the middle Coosa River Basin (AWCP in prep., pp. 49–50) (see Factor D. below for further detail on monitoring plans). Full implementation of current programs and plans will reduce the vulnerability of tributary populations to nonpoint source pollution.

Summary of Factor A: The range of tulotoma has increased from 6 populations in 1991, occupying 2 percent of its historical range, to a total of 10 populations, occupying 10 percent of the historical range. In addition, these populations are found in a wide range of historically occupied habitats, including large coastal plain rivers, large high-gradient rivers, and multiple upland tributary streams. Populations known at the time of listing have been monitored, and with the exception of Ohatchee Creek, were found to be stable or increasing. Four of the six populations discovered since 1991 have been monitored for 2 to 12 years. The Choccolocco Creek population has remained stable for 12 years. The Yellowleaf Creek population has not been routinely monitored, and we cannot determine a population trend beyond mere presence or absence; however, occasional spot checks show the species continues to persist (Johnson 2006). The Weoka Creek and Lower Alabama River populations have been observed and monitored for a period of 4 and 2 years, respectively; however, this is not a sufficient amount of time to be able to determine a population trend.

Habitat-related threats have been addressed in the Coosa River through establishing minimum flows or pulsing flows below Jordan and Logan Martin Dam, respectively. Habitat conditions have improved; occupied habitat has expanded in the Coosa River below Jordan Dam; and tulotoma numbers are now estimated at greater than 100 million individuals. The ranges of tulotoma populations in Kelly, Weogufka, and Hatchet Creek have expanded 2- to 5-fold since listing. Tulotoma colony densities within these populations have remained stable or increased.

Tulotoma remains extirpated from approximately 90 percent of its historical range, and surviving populations remain isolated, localized, and vulnerable to nonpoint source pollution. These conditions are expected to continue for the foreseeable future. While monitored populations have persisted and expanded over the past two decades, and a program to address nonpoint source pollution in the Coosa and Alabama Rivers and their tributaries has been established by ACWP and ADEM, the tulotoma continues to be threatened by the destruction, modification, or curtailment of its habitat and range such that the tulotoma is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization was not a threat when the species was listed in 1991, but the final listing rule noted the vulnerability and susceptibility of the localized populations to overcollecting should the tulotoma, with its ornate shell, become important to the commercial pet trade (56 FR 797; January 9, 1991). However, there has been no evidence to date that any commercial use in the pet trade industry has occurred.

In summary, overutilization for any purpose is not currently considered a threat to tulotoma, and is not likely to become a threat within the foreseeable future.

C. *Disease or predation.* The January 9, 1991, final rule (56 FR 797) listing the tulotoma found no evidence of disease or predation as a threat, and we are not aware of any evidence since listing that suggests tulotoma is currently threatened by disease or predation or likely to become so within the foreseeable future.

D. *The inadequacy of existing regulatory mechanisms.* At the time of the 1991 listing, existing laws were considered inadequate to protect the tulotoma. The species was not officially recognized by Alabama as needing any special protection or given any special consideration under other environmental laws when project impacts were reviewed.

Tulotoma are now protected from collection or commerce under Alabama Nongame Species Regulations 220–2–92. In addition, the Alabama Department of Conservation and Natural Resources (ADCNR) recognizes tulotoma as a Species of Highest Conservation Concern (Mirarchi *et al.* 2004, p. 120; ADCNR 2005, p. 301). The persistence of tulotoma and the improvement of some populations over time is an indication that existing regulatory mechanisms are now providing some measure of consideration and protection of the species. For example, the Alabama Total Maximum Daily Load (TMDL) Program has been implemented to identify and reduce water pollution in impaired waters (ADEM 2007). Under this program, Choccolocco Creek has been identified as impaired, and plans are under development to remove contaminated sediments.

The ACWP has been organized to educate and coordinate public participation in water quality issues, particularly nonpoint source pollution

and implementation of TMDLs (*http://www.cleanwaterpartnership.org*). The ACWP, in coordination with ADEM, has developed a Lower Coosa River Basin Management Plan and an Alabama River Basin Management Plan to address nonpoint source pollution and watershed management issues (AWCP 2005a, p. I; AWCP 2005b, pp. xv–xvii). The Lower Coosa Plan includes the watersheds of the Yellowleaf, Weogufka, Hatchet, and Weoka Creek populations, along with the Coosa River below Jordan Dam, while the Alabama River Basin Plan includes the watersheds of the newly discovered Alabama River tulotoma population. A draft Middle Coosa River Basin Management Plan, which includes Choccolocco and Kelly Creeks, is under development (AWCP in prep., pp. i, v–vi, 43). These plans are a mechanism to identify water quality problems in the drainages, educate the public, and coordinate activities to maintain and improve water quality in the basins; however, they have yet to be fully implemented.

Federal status under the Act continues to provide additional protections to the tulotoma not available under State laws. For example, during recent water shortages due to an extended drought in the Southeast, emergency consultation under section 7 of the Act was conducted between the Service, Federal Energy Regulatory Commission (FERC), and APC representatives on efforts to conserve water by decreasing minimum flows below Jordan Dam. The consultation identified measures to be implemented to minimize impacts to tulotoma and monitor the effects of the reductions (*e.g.,* FERC 2007, pp. 1–8).

Summary of Factor D: Although additional regulatory mechanisms have been developed since listing including Alabama's regulations to prevent collection or commerce and various water quality programs and initiatives, tulotoma drainage populations require further regulations that would ensure improved water quality and water availability in some areas. At present, without the protections of the Act, the tulotoma remains threatened by the inadequacy of existing regulatory mechanisms such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

E. *Other natural or manmade factors affecting its continued existence.* Random or stochastic events such as droughts and chemical spills, and genetic drift were identified in the final listing rule as threats to the species due to its restricted range, isolation of the populations, and lack of genetic exchange between populations. The tulotoma's restricted range and isolation remain the greatest cause of concern for the species' continued existence and are factors that compound the effects of the other threats identified above. Within its respective watersheds, each population is vulnerable to changes in land use that might result in detrimental impacts (*e.g.,* urbanization and increased nonpoint source pollution). All populations also remain independently vulnerable to stochastic threats such as droughts or chemical spills. These threats, however, have been somewhat offset by the extension of the ranges of the populations known at listing and by the discovery of additional populations within the historical range of the species.

In general, larger populations are more resilient to stochastic events than extremely small populations. For example, due to the extended 2007 drought in the Southeast, minimum flows below Jordan Dam were reduced in order to conserve water in upstream reservoirs for water supply and hydroelectric production. The reduction in flows led to high amounts of suspended algal material and fine sediment, which are harmful to tulotoma (Powell 2008) and resulted in the stranding and estimated mortality of more than 73,000 tulotoma in the Coosa River below Jordan Dam (APC 2008, p. 43). Although this loss seems relatively insignificant in a population estimated at more than 100 million individual tulotoma, it demonstrates the vulnerability of range-restricted populations to stochastic events.

The documentation of more tulotoma populations (since listing) distributed in different watersheds makes rangewide extinction from localized activities or stochastic threats less likely. In addition, although populations remain isolated from each other, the robust size of most populations reduces the threat of genetic drift and bottlenecks. However, each tulotoma population remains vulnerable to natural or human-induced stochastic events within its respective watershed, as demonstrated by the loss of the Ohatchee Creek population. Assessments of tributary populations following the severe 2007 drought found little to no changes in distribution or density of the tulotoma in Kelly, Weogufka, Hatchet, or Choccolocco Creeks (DeVries 2008, p. 3–15). However, tulotoma recruitment was not observed in the Choccolocco Creek population (DeVries 2008, pp. 9–11), and colony densities had declined at Weoka Creek (DeVries 2008, p. 15). The assessment was unable to determine if the Weoka Creek tulotoma decline was attributed to the drought or human impacts (DeVries 2008, p. 15).

Summary of Factor E: Although extension of the ranges of tulotoma populations and discovery of additional populations makes rangewide extinction from localized activities or stochastic threats less likely, all tulotoma populations remain individually vulnerable to stochastic threats such as drought and chemical spills and threatened by changes in land use. Given the relatively small number of populations, Factor E is still a threat to the tulotoma such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Conclusion of the Five-Factor Analysis

In developing this rule, we have carefully assessed the best scientific and commercial data available regarding the threats facing this species, as well as the ongoing conservation efforts. Although reduced, three of the five listing factors continue to pose a known threat to the tulotoma: The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A); inadequacy of regulatory mechanisms (Factor D); and other natural or manmade factors affecting its continued existence (Factor E).

The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000) (see "Recovery Achieved" above) states that the tulotoma should be considered for reclassification from endangered to threatened status when an updated status review of the species is completed and a stable or increasing tulotoma population in the Coosa River below Jordan Dam is confirmed. The 5-year review of the status of tulotoma, completed in 2008, documented an increase in extent and size of tulotoma populations in the Coosa River, Kelly Creek, Weogufka Creek, and Hatchet Creek (U.S. Fish and Wildlife Service 2008). Threats to the species have also been reduced through habitat improvements in the Coosa River, identification of six drainage populations of the species that were unknown at the time of listing, development of watershed management plans, and protection of tulotoma under State laws. However, delisting criteria for the tulotoma have not been met as watershed plans that protect and monitor water quality and habitat quality in occupied watersheds have not been fully implemented.

Recovery plans are intended to guide and measure recovery. Recovery criteria for downlisting and delisting are developed in the recovery planning

process to provide measureable goals on the path to recovery; however, precise attainment of all recovery criteria is not a prerequisite for downlisting or delisting. Rather, the decision to change the status of a listed species under the Act is based on the analysis of the 5 listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicate that a species, subspecies, or distinct population segment is no longer in danger of extinction throughout all or a significant portion of its range.

Based on the analysis above and given the reduction in threats, the tulotoma is not currently in danger of extinction throughout all its range. In the section that follows, we consider whether it is in danger of extinction in a significant portion of its range.

Significant Portion of the Range Analysis

Having determined that the tulotoma snail is no longer endangered throughout its range as a consequence of the threats evaluated under the five factors in the Act, we must next consider whether there are any significant portions of its range where the species is currently endangered. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species as evaluated based upon its representation, resiliency, or redundancy.

The first step in determining whether a species is endangered in a significant portion of its range is to identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are not significant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether the species is in fact endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is endangered there. Conversely, if the Service determines that the species is not endangered in a portion of its range, the Service need not determine if that portion is significant.

For the tulotoma we applied the process described above to determine whether any portions of the range warranted further consideration. Habitat quality is variable throughout the range of the tulotoma. However, the basic biological components necessary for the tulotoma to complete its life history are present throughout the areas currently occupied by each population, and there is no particular location or area that provides a unique or biologically significant function necessary for tulotoma recovery. The quantity of habitat available to each surviving population of tulotoma is also variable.

Although the threats identified above are common to all areas currently occupied by tulotoma, the magnitude of the threats are likely higher in the stream reaches where tulotoma colonies are currently extremely localized, such as Yellowleaf and Choccolocco Creeks and the Alabama River. However, due to habitat limitations and the resulting small range of tulotoma in each of these stream reaches (each less than 2 percent of currently occupied range) they are not significant to the species in a noticeable or measurable way. In addition, we concluded through the five-factor analysis that the existing or potential threats (Factors A, D, and E) are uniform throughout its range, and there is no portion of the range where one or more threats is geographically concentrated. Therefore, we have determined that there are no portions of the range that qualify as a significant portion of the range in which the tulotoma is in danger of extinction currently or within the foreseeable future.

As required by the Act, we considered the five potential threat factors to assess whether tulotoma is endangered or threatened throughout all or a significant portion of its range. Based on habitat improvements, the numbers of tulotoma populations now known (10 populations found in 8 discrete drainages), the robust size of most of these populations (numbering in the thousands to tens of millions of individual tulotoma), the stability of monitored populations over the past 15 years, and current efforts toward watershed quality protection, planning, and monitoring, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the tulotoma to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. However, we have determined that threats to the tulotoma still exist, specifically as a result of water quality and quantity issues as discussed under Factors A, D, and E. Due to these continued threats, the tulotoma meets the definition of threatened in that it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we are reclassifying the tulotoma's status from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the tulotoma, and promotes conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and provides for recovery planning and implementation. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to the tulotoma. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the tulotoma or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the tulotoma. Federal agency actions that may require consultation include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harm, harass, and pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct), 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 of wildlife. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to Service agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Ecological Services Office, 1208–B Main Street, Daphne, Alabama 36526 (telephone 251/441–5181). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7217, facsimile 404/679–7081).

Effects of This Rule

This rule revises 50 CFR 17.11(h) to reclassify the tulotoma from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. Anyone taking, attempting to take, or otherwise possessing a tulotoma, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the tulotoma.

Recovery objectives and criteria for tulotoma will be revised in the Recovery Plan. Recovery actions directed at the tulotoma will continue to be implemented as outlined in the current Recovery Plan (U.S. Fish and Wildlife Service 2000), including: (1) Protecting habitat integrity and quality; (2) informing the public about recovery needs of tulotoma; (3) conducting basic research on the tulotoma and applying the results toward management and protection of the species and its habitats; (4) identifying opportunities to extend the range of the species; and (5) monitoring the populations.

Finalization of this rule does not constitute an irreversible commitment on our part. Reclassification of the tulotoma to endangered status would be possible if changes occur in management, population status, habitat, or other actions that would detrimentally affect the populations or increase threats to the species.

Required Determinations

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands affected by this rule.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of references cited is available at *http://www.regulations.gov* in Docket No. FWS–R4–ES–2008–0119 and upon request from the Jackson, Mississippi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this document is Paul Hartfield, Jackson, Mississippi Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Therefore, for the reasons stated in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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. Amend § 17.11(h) by revising the entry in the List of Endangered and Threatened Wildlife for "Snail, tulotoma" under SNAILS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*	*	
SNAILS							
*	*	*	*		*	*	
Snail, tulotoma	*Tulotoma magnifica*	U.S.A. (AL)	Entire	T	412, 789	NA	NA
*	*	*	*		*	*	

* * * * *

Dated: May 18, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–13687 Filed 6–1–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110321211–1289–02]

RIN 0648–BA94

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Grouper Management Measures

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

ACTION: Final temporary rule.

SUMMARY: This final temporary rule, issued pursuant to NMFS' authority to issue emergency and interim rules under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), replaces a temporary rule made effective January 1, 2011, and implements interim measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This rule reduces the commercial quota for gag and, thus, the combined commercial quota for shallow-water grouper species (SWG), establishes a 2-month recreational season for gag, and suspends red grouper multi-use allocation in the Gulf grouper and tilefish individual fishing quota (IFQ) program, as recommended by the Gulf of Mexico Fishery Management Council (Council). The rule will be effective for 180 days, unless superseded by subsequent rulemaking, although NMFS may extend its effectiveness for an additional 186 days pursuant to the Magnuson-Stevens Act. The intended effect of this final temporary rule is to reduce overfishing of the gag resource in the Gulf.

DATES: This rule is effective June 1, 2011, through November 29, 2011.

ADDRESSES: Electronic copies of documents supporting this final rule, which include an environmental assessment, a regulatory impact review, and a regulatory flexibility act analysis may be obtained from the Southeast Regional Office Web site at: *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone: 727–824–5305, or e-mail: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On April 21, 2011, in response to a finding that the gag resource continues to be overfished and experiencing overfishing, NMFS published a proposed temporary rule that is finalized here, and requested public comment on that proposal (76 FR 22345).

This final temporary rule reduces the commercial quota for gag from 1.49 million lb (0.68 million kg) to 430,000 lb (195,045 kg), reduces the commercial SWG quota from 6.22 million lb (2.82 million kg) to 5.16 million lb (2.34 million kg), suspends red grouper multi-use allocation in the Gulf grouper and tilefish IFQ program, and implements a recreational fishing season for gag from September 16 through November 15, with a 2-fish daily bag limit. The purpose of this final temporary rule is to reduce overfishing of the gag resource in the Gulf. No changes from the proposed temporary rule were made to this final rule as a result of public comment.

This action reduces the commercial quota for SWG species to 5.16 million lb (2.34 million kg) from the 6.22 million lb (2.82 million kg) SWG quota which was implemented through a regulatory amendment to the FMP on January 1, 2011 (75 FR 74656, December 1, 2011). Because a gag interim rule that reduced the SWG quota even further became effective that same day on January 1, 2011 (75 FR 74650, December 1, 2011), NMFS delayed effectiveness of the 6.22 million lb (2.82 million kg) quota until further notification in the **Federal Register**. This temporary final rule further delays the effectiveness of the 6.22 million lb (2.82 million kg) SWG quota and implements a reduced SWG quota of 5.16 million lb (2.34 million kg). After termination or expiration of this interim final rule, the timing of which is uncertain, NMFS will announce the effective date of the 6.22 million lb (2.82 million kg) SWG quota, unless this rule is superseded by subsequent rulemaking.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 24 comments on the proposed rule. Three comments from non-governmental organizations supported the management measures contained in the proposed temporary rule. The remaining comments came primarily from the recreational sector of the Gulf reef fish fishery, as well as one state agency and one commercial fisherman. Those comments opposed one or more of the management measures contained in the proposed temporary rule, and are addressed below.

Comment 1: A number of commenters questioned the scientific basis used to assess the gag stock and how scientific information was applied to support fishery management decisions. They indicated the data NMFS used were outdated or flawed, or in some cases data were ignored.

Response: Stock assessments are conducted under the scientifically peer reviewed Southeast Data, Assessment,