

of wild live rock and the purchase, barter, trade, or sale, or attempts thereof, of wild live rock are effective December 22, 1994, through December 31, 1994.

**§ 638.26 Wild live rock in the Gulf of Mexico.**

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) West of 87°31'06" W. long. (extension of the Alabama/Florida boundary); or

(2) South of 25°20.4' N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* (1) In the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 28°26' N. lat. (extension of the Pasco/Hernando County, FL, boundary), no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(2) In the Gulf of Mexico EEZ from 28°26' N. lat. to 25°20.4' N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19-L) buckets, or volume equivalent (16.88 ft<sup>3</sup> (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 25°20.4' N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

**§ 638.27 Aquacultured live rock.**

(a) Aquacultured live rock may be harvested from the Gulf of Mexico EEZ only under a permit, as required by § 638.4(a)(1)(v). A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(b) The following restrictions apply to individual aquaculture activities:

(1) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(2) Material deposited on the aquaculture site must be geologically or otherwise distinguishable from the naturally occurring substrate or be indelibly marked or tagged; may not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas; must be free of contaminants; must be nontoxic; must be placed on the site by hand or lowered

completely to the bottom under restraint, that is, not allowed to fall freely; and must be placed from a vessel that is anchored.

(3) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(c) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand.

(d) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570-5344:

(1) Permit number of site to be harvested and date of harvest.

(2) Name and official number of the vessel to be used in harvesting.

(3) Date, port, and facility at which aquacultured live rock will be landed.

(e) Live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site.

**§ 638.28 Specifically authorized activities.**

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

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**50 CFR Parts 222**

[Docket No. 940822-4334; I.D. 101194C]

**Endangered and Threatened Species; Status of Snake River Spring/Summer Chinook Salmon and Snake River Fall Chinook Salmon**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is issuing a proposed rule to reclassify permanently Snake River spring/summer and Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) as endangered, a change from the previous threatened status, under the Endangered Species Act of 1973 (ESA). NMFS has determined that the status of Snake River spring/summer chinook salmon and the status of Snake River fall chinook salmon warrant reclassification to endangered, based on

a projected decline in adult Snake River chinook salmon abundance. Both species have already been temporarily listed as endangered through an emergency rule published on August 18, 1994, which allowed for waiver of notice and comment requirements of the Administrative Procedure Act.

**DATES:** Comments must be received by February 21, 1995. Requests for a public hearing must be received by February 6, 1995.

**ADDRESSES:** Comments on this proposed rule and requests for supporting documents should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. The public hearing will be held in the Federal Complex, 911 NE 11th Ave., first floor, west side, Portland, OR.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, 503-230-5430, or Marta Nammack, 301-713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

For background, see Federal Register documents 55 FR 37342 (September 11, 1990), 56 FR 29547 (June 27, 1991), and 59 FR 42529 (August 18, 1994).

**Current Status**

**Spring/Summer Chinook Salmon**

Since the listing of Snake River spring/summer chinook salmon as a threatened species in 1992, redd counts in index areas have remained at the low levels observed during the 1980s. Data from 1994 indicate that the situation is much worse than in recent years, indicating that the Snake River spring/summer chinook salmon faces an imminent threat of extinction throughout all or a significant portion of its range. While NMFS has determined that both the spring and summer runs constitute a single "species" (distinct population segment), returning adults are counted separately as "spring" or "summer" fish. The pre-season estimate of adult Columbia River upriver spring chinook salmon returning in 1994 was 49,000, the third lowest on record since 1938. However, this year's final count of adult spring chinook salmon (of hatchery origin and naturally spawned) at Bonneville Dam was only 20,185 (Fish Passage Center 1994), about 43 percent of the previous record low return. Further upstream at Lower Granite Dam, the final 1994 count of adult spring and summer chinook salmon was 3,915 (Fish Passage Center 1994), about 16 percent of the recent 10-year average. The estimated escapement

of the combined run of Snake River spring and summer chinook salmon to Lower Granite Dam in 1994 will likely result in the production of 250 to 500 redds in the index areas (since naturally spawning fish represent only a fraction of the returning adults). This redd production figure is only 14 to 28 percent of the recent 10-year average (NMFS and the U.S. Fish and Wildlife Service (USFWS) 1994).

The return of spring and summer chinook salmon in 1995 is likely to be even lower than in 1994. The total spring chinook salmon jack (precocious males) count at Bonneville Dam in 1994 was 397 fish (Fish Passage Center 1994), less than 30 percent of the record low in 1993, and 10 percent of the recent 10 year average (NMFS and USFWS 1994). At Lower Granite Dam, the final count of spring chinook salmon jacks in 1994 was about 25 percent of the 1993 count, and the total 1994 summer chinook salmon jack count at Lower Granite Dam was about 62 percent of the 1993 count (Fish Passage Center 1994).

For a given brood year, spring/summer chinook salmon can produce offspring that return primarily as 3- (jacks), 4-, and 5-year-old adults. While it is impossible to make specific projections for returns of spring chinook salmon over the next 3 to 5 years, it is possible to comment in general terms on the prospects for decreasing run sizes. Because of the weak 1990 brood (i.e., adults spawning in 1990) and the apparent failure of the 1991 brood, the prospects for improved returns depend on the relatively abundant 1992 and 1993 broods. Outmigration conditions in 1994 for offspring of the 1992 brood were poor. Therefore, there is reason to believe that adult returns will not substantially increase until offspring of the 1993 brood contribute to the returns in 1997 and 1998. After 1998, returns will again be influenced by poor production resulting from the low adult returns experienced in 1994 and expected in 1995. NMFS is concerned that the dramatic decline in the spring run of Columbia River chinook salmon abundance may indicate that Snake River spring/summer chinook salmon abundance will continue to decline in the near future.

When a species population reaches precariously low levels, random processes can lead to two major types of risk: demographic and genetic. Demographic risk is the risk of extinction due to environmental fluctuations, random events affecting individuals in the population, and possible reductions in reproduction or survival due to a small population size. Genetic risk is the risk of loss of genetic

variability and/or population fitness through inbreeding and genetic drift. Both types of risk increase rapidly as population size decreases. Severe, short-term genetic problems from inbreeding are unlikely unless the population size remains very small for a number of years. However, the erosion of genetic variability due to small population size is cumulative, so long-term effects on the population (even if it subsequently recovers numerically) are also a concern.

The Snake River spring/summer chinook salmon evolutionarily significant unit (ESU) is spread over a large geographic area and consists of many local spawning populations (subpopulations). Therefore, the total number of spawners in a subpopulation would be much less than the total run size. Assuming that 1,500 to 2,000 listed (naturally reproducing) spring/summer chinook salmon adults survive to spawn in 1994, the average number of spawners per subpopulation would only be approximately 40 to 50 fish. Based on recent trends in redd counts in major tributaries of the Snake River, NMFS believes that many subpopulations could be at critically low levels, especially subpopulations in the Grande Ronde River, Middle Fork Salmon River, and Upper Salmon River Basins. Therefore, both demographic and genetic risks are evident, and in some cases, habitat might be so sparsely populated that spawning adults may not find mates.

#### *Fall Chinook Salmon*

After the listing of Snake River fall chinook salmon as a threatened species in 1992, adult counts at Lower Granite Dam during 1992 and 1993 remained at low levels. In-season estimates for the 1994 return indicate that the situation has not substantially improved. This lack of overall improvement during recent years, exacerbated by the low returns of 1994 and expected low returns in the next few years, indicates that the Snake River fall chinook salmon faces an imminent threat of extinction throughout all or a significant portion of its range. The projected adult return of listed Snake River fall chinook salmon to the Columbia River during 1994 is 803 fish, the second lowest on record (Columbia River Technical Staffs (CRTS) 1994). As discussed in CRTS (1994) and summarized in NMFS (1994), the number of listed Snake River fall chinook salmon returning in 1994 is expected to be below replacement level (i.e., fewer progeny than parents); spawners have not replaced themselves in 7 or 8 of the last 9 years.

Although final count data from the 1994 return will not be available until February 1995, a tentative forecast of the 1995 run size suggests that the return will be about 60 percent of that expected in 1994 (NMFS and USFWS 1994). While it is impossible to make specific projections for returns of fall chinook salmon over the next 3 to 5 years, it is possible to comment generally on the prospects for decreasing run sizes. The number of offspring from the 1991 brood is apparently quite small, based on the record low return of jacks in 1993. Therefore, the 5-year-old component of the 1996 return is likely to be low. There was sufficient escapement in 1992 and 1993 to allow for increased returns after 1995, but success of these runs will depend largely on improvements in migration passage and ocean survival conditions.

Although risks associated with small population sizes are also applicable to Snake River fall chinook salmon, currently there is no evidence of multiple, naturally spawning subpopulations of this species. Still, the primary risk to Snake River fall chinook salmon remains the continued low numbers of spawning adults, and genetic and demographic risks will increase if the population remains at depressed levels for a number of consecutive years.

#### *Factors Affecting the Species*

Section 4(a)(1) of the ESA specifies five factors to be evaluated during a status review of a species or population proposed for listing or reclassification. These factors are discussed below with respect to Snake River spring/summer chinook salmon and Snake River fall chinook salmon.

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

Hydropower development has resulted in the blockage and inundation of habitat, turbine-related mortality of juvenile fish, and increased travel times for adults and juveniles migrating through the Snake and Columbia Rivers. Water withdrawal and storage, irrigation diversions, siltation and pollution from sewage, farming, grazing, logging, and mining have also degraded Snake River salmon habitat. Changes in the operation of lower Snake and Columbia River Dams and changes in land and water management activities since the listing of Snake River chinook salmon should result in long-term improvements in survival of adult and juvenile chinook salmon. However, the low adult run size in 1994 and projected

low returns during the next few years suggest that these changes have not yet been sufficient to remove the immediate risks to these species.

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

Historically, combined ocean and river harvest rates of Snake River spring/summer chinook salmon exceeded 80 and sometimes 90 percent (Ricker 1959). Current ocean and river harvest levels of Snake River spring/summer chinook salmon have been reduced in the commercial, recreational, and tribal fisheries due to low escapements and efforts to protect these runs. Between 1991 and 1993, the approximate harvest rate for Snake River spring/summer chinook salmon (primarily in the Columbia River) ranged from 5.5 to 7.7 percent.

For upriver bright (upper Columbia River and Snake River) fall chinook salmon, the 1990 total harvest rate (commercial, recreational, and tribal fisheries) was approximately 70 percent. Measures have been taken between 1991 and 1993 to reduce harvest rates on Snake River fall chinook salmon to approximately 50 percent. However, as evidenced by continued and projected low returns, these efforts have not reversed the decline of the species and further measures are urgently needed to reduce the risk of extinction.

While there are a number of scientific research programs which involve handling, tagging, and moving fish in the Columbia and Snake Rivers, NMFS believes that the contribution of these programs to the decline of listed Snake River chinook salmon is negligible. Furthermore, these programs contribute to the efforts to enhance long-term survival of these species.

*C. Disease or Predation*

Chinook salmon are exposed to numerous bacterial, protozoan, viral, and parasitic organisms; however, these organisms' impacts on Snake River chinook salmon are largely unknown.

Predator populations, particularly northern squawfish (*Ptychocheilus oregonensis*), have increased due to hydroelectric development that created impoundments providing ideal predator foraging areas. Turbulent conditions in dam turbines, bypasses, and spillways have increased predator success by stunning or disorienting passing juvenile salmon migrants. Increased efforts to reduce populations of northern squawfish should result in survival improvements of listed salmon, but the benefits are not yet fully known.

Marine mammal numbers, especially harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*), are increasing on the West Coast, and increases in predation by pinnipeds have been noted in some Northwest salmonid fisheries. However, the extent to which marine mammal predation is a factor causing the decline of listed Snake River chinook salmon is unknown.

*D. Inadequacy of Existing Regulatory Mechanisms*

A wide variety of Federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River Basin. Relevant regulatory mechanisms in place when the species were proposed for listing were discussed in supplemental reports identifying factors for the species' decline (NMFS 1991a; NMFS 1991b). Several factors identified as contributing to the decline of fall chinook salmon (56 FR 29547, June 27, 1991) have seen improvements during the past 3 years. For example, regulations aimed at improving river flow and juvenile acclimation for upper Columbia River (e.g., Umatilla River) fall chinook salmon are believed to have reduced straying impacts on listed fall chinook populations. Similarly, marking programs have been successfully implemented which will prevent the accidental inclusion of upper Columbia River fall chinook salmon into the Lyons Ferry Hatchery broodstock, i.e., a hatchery population believed to contain genetic resources potentially important to the recovery of listed Snake River fall chinook salmon. Although these and other improvements in regulatory mechanisms have been made since listing these species, increases in estimated Snake River chinook salmon abundance during the 1991 through 1993 period are not expected to be sustained in the near future. This indicates that regulatory mechanisms currently in place are insufficient or not effectively applied, and further measures must be taken to reverse the continuing decline of listed Snake River salmon. NMFS will soon publish a recovery plan for these species which will describe site-specific management actions and recovery tasks needed to restore Snake River chinook salmon populations to optimum sustainable levels.

*E. Other Natural and Manmade Factors Affecting its Continued Existence*

Drought conditions have contributed to the decline of Snake River chinook salmon, especially in recent years. Annual mean streamflows for the 1977

water year were the lowest recorded since the late 19th century for many streams (Columbia River Water Management Group 1978). Generally, drought conditions have continued since this time, particularly in the Snake River Basin.

Long-term trends in marine productivity associated with atmospheric conditions in the North Pacific Ocean may have a major influence on salmon production. Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, result in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. The degree to which adverse ocean conditions can influence Snake River chinook salmon production is not known, however, juvenile salmon adapting to the nearshore ocean environment are probably particularly vulnerable.

Artificial propagation has, in some cases, impacted listed Snake River spring/summer chinook salmon. Potential problems associated with hatchery programs include genetic impacts on indigenous wild populations from stock transfers, reduced natural production due to collection of wild adults for hatchery brood stocks, competition with wild salmon, predation of wild salmon by hatchery salmon, and disease transmission.

Artificial propagation activities in the Snake River have also been a factor in the decline of Snake River fall chinook salmon. The taking of Snake River fall chinook salmon for hatchery brood stock has reduced natural escapement, and the straying of hatchery fall chinook salmon from other areas into the Snake River threatens the genetic integrity of wild Snake River fall chinook salmon. Most of the stray adult fall chinook salmon returning to Lyons Ferry Hatchery originate from Umatilla River releases. Although the Oregon Department of Fish and Wildlife now releases hatchery fall chinook salmon further upstream in the Umatilla River to improve imprinting, implementation of adequate flow augmentation actions in the lower Umatilla River have not yet been accomplished and low-flow conditions in the Umatilla River during adult return periods still contribute to straying concerns.

**Conclusion**

Although measures have been taken pursuant to the ESA since listing in 1992 to improve habitat and migration passage conditions, decrease harvest levels, and improve hatchery programs,

NMFS believes that recent and projected adult returns indicate that Snake River chinook salmon are now in danger of extinction throughout all or a significant portion of their range. Therefore, NMFS is proposing to reclassify Snake River spring/summer chinook salmon and Snake River fall chinook salmon as endangered under the ESA. While these species are currently listed as endangered, this listing was done on an emergency basis that expires after 240 days. This proposed rule is for a reclassification as endangered until a further reclassification is warranted and a rulemaking to accomplish same is completed.

Although the reclassification will not result in additional prohibitions under section 9 of the ESA, the reclassification serves notice that NMFS will implement further protections to reverse the continued decline.

Evaluation criteria used by Federal action agencies to assess impacts on listed salmon should be reassessed to ensure adequate protection for these species and preserve future options for recovery. The proposed reclassification more accurately reflects the status of these species and the fact that these stocks are now considered to be precariously close to extinction. A more accurate characterization of the status of Snake River chinook salmon should encourage action agencies to immediately employ more conservative criteria when they propose, evaluate, and implement their actions. Reclassification signals the continuing decline of these species; new information regarding population size or other threats to these species, such as further drought or another El Nino, may indicate that Federal actions are affecting listed species in a manner or to an extent not previously analyzed.

#### Public Comment Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, including states and tribes, other concerned public agencies, the scientific community, industry, and any other interested parties. The final decision on this proposal will take into consideration the comments and any additional information received by NMFS.

NMFS will be soliciting expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under

consideration for listing and summarizing in the final decision document the opinions of all independent peer reviewers received on this proposed reclassification.

#### Classification

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.2d 825 (6th Cir. 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of the National Environmental Policy Act under NOAA Administrative Order 216-6.

This proposed rule is exempt from review under E.O. 12866.

#### References

- Columbia River Technical Staffs (CRTS). 1994. Biological Assessment of Impacts of Anticipated 1994 Fall Season Columbia River and Mainstem Tributary Fisheries on Listed Snake River Salmon Species Under the Endangered Species Act. June 30, 1994. 34 p.
- Fish Passage Center. 1994. Weekly Report 94-24 (September 9, 1994). Fish Passage Center, Portland, OR.
- Matthews, G.M. and R.S. Waples. 1991. Status Review for Snake River Spring and Summer Chinook Salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC-200. 75 p.
- National Marine Fisheries Service. 1991a. Factors for Decline: A Supplement to the Notice of Determination for Snake River Spring/Summer Chinook Salmon Under the Endangered Species Act. NMFS, Environmental and Technical Services Division, Portland, OR. 70 p.
- National Marine Fisheries Service. 1991b. Factors for Decline: A Supplement to the Notice of Determination for Snake River Fall Chinook Salmon Under the Endangered Species Act. NMFS, Environmental and Technical Services Division, Portland, OR. 55 p.
- National Marine Fisheries Service (NMFS). 1994. Section 7 Consultation—Biological Opinion: 1994 Fall Season Mainstem Columbia River Recreational Fishery, Tributary and Terminal Area Fisheries and Trapping Operations at Bonneville Dam. August 10, 1994. NMFS, Northwest Regional Office, Seattle, WA. 12 p.
- National Marine Fisheries Service and U.S. Fish and Wildlife Service. 1994. May 9, 1994, letter (with enclosures) from J. Smith, NMFS, and M. Plenert, USFWS, to Governor Lowry, Washington, and Governor Roberts, Oregon.
- Waples, R.S., R.P. Jones, Jr., B.R. Beckman, and G.A. Swan. 1991. Status Review for Snake River Fall Chinook Salmon. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC-201. 73 p.

#### List of Subjects

##### 50 CFR Part 222

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

##### 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 21, 1994.

**Rolland A. Schmitt**,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, the amendment to 50 CFR part 222 published in the emergency interim rule at 59 FR 42532, on August 18, 1994, is proposed to continue in effect as a permanent regulation.

[FR Doc. 94-31869 Filed 12-22-94; 3:14 pm]  
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#### 50 CFR Parts 611 and 658

[Docket No. 940346-4348; I.D. 080194C]

RIN 0648-AF83

#### Foreign Fishing; Shrimp Fishery of the Gulf of Mexico

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This rule increases the domestic quota for royal red shrimp harvested from the exclusive economic zone (EEZ) of the Gulf of Mexico and eliminates the total allowable level of foreign fishing (TALFF) for royal red shrimp from that area. In addition, NMFS changes the existing regulations that implement the FMP to clarify and conform them to current agency standards and to enhance enforcement.

**EFFECTIVE DATE:** January 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by regulations at 50 CFR parts 611 and 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).