storage, and management; mineral mining; wastewater/pollutant discharge; wetland and floodplain alteration; habitat restoration projects; and woody debris/structure removal from rivers and estuaries. Each of these activities could be modified to ensure that watersheds and specific river reaches are adequately protected in the short- and long-terms.

2. Fish passage could be restored at barriers to migration through the installation or modification of fish ladders, upgrade of culverts, or removal of barriers.

3. Harvest regulations could be modified to protect listed steelhead populations affected by both directed harvest and incidental take in other fisheries.

4. Artificial propagation programs could be modified to minimize negative impacts (e.g., genetic introgression, competition, disease, etc.) upon native populations of steelhead.

5. Predator control/relocation programs could be implemented in areas where predators pose a significant threat to steelhead.

6. Measures could be taken to improve monitoring of steelhead populations and their habitat.

7. Federal agencies such as the USFS, BLM, Federal Energy Regulatory Commission, COE, U.S. Department of Transportation, and U.S. Bureau of Reclamation could review their management programs and use their discretionary authorities to formulate conservation plans pursuant to section 7(a)(1) of the ESA.

NMFS encourages non-Federal landowners to assess the impacts of their actions on threatened or endangered salmonids. In particular, NMFS encourages state and local governments to use their existing authorities and programs, and encourages the formation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring steelhead and salmon to the watersheds.

Critical Habitat

Section 4(b)(6)(C) of the ESA requires that, to the extent prudent, critical habitat be designated concurrently with the listing of a species unless such critical habitat is not determinable at that time. On February 5, 1999, NMFS published a proposed critical habitat rule for all listed and proposed steelhead ESUs (64 FR 5740). Copies of this critical habitat proposed rule are available upon request (see **ADDRESSES**).

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 (NEPA) under NOAA Administrative Order 216–6.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. Similarly, this final rule is exempt from review under E.O. 12866.

This rule has been determined to be major under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened steelhead ESUs, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**) and can also be obtained from the internet at www.nwr.noaa.gov.

Threatened Species Regulations Consolidation

In the proposed rule issued on March 10, 1998 (63 FR 11774), Upper Willamette River steelhead was designated the letter (v) and Middle Columbia River steelhead the letter (w) in § 227.4. Since March 10, 1998, NMFS issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 227.4 has been redesignated as § 223.102; therefore, Upper Willamette River steelhead is designated in this final rule as paragraph (a)(14) and Middle Columbia River steelhead as paragraph (a)(15) of § 223.102. The regulatory text of the proposed rule remains unchanged in this final rule.

List of Subjects in 50 CFR Part 223

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

Dated: March 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223–THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.102, paragraphs (a)(14) and (a)(15) are added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(14) Upper Willamette River steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive;

(15) Middle Columbia River steelhead (*Oncorhynchus mykiss*). Includes all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.

* * * * *

[FR Doc. 99–6817 Filed 3–24–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 980219043–9068–02; I.D. 011498A]

RIN 0648–AK52

Endangered and Threatened Species: Threatened Status for Ozette Lake Sockeye Salmon in Washington

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a final determination that the Ozette Lake sockeye salmon (*Oncorhynchus nerka*) Evolutionarily Significant Unit (ESU), located on Washington's Olympic Peninsula, is a threatened species under

the Endangered Species Act (ESA) of 1973, as amended.

NMFS also reviewed the status of Baker River sockeye salmon, previously designated as a candidate species. Based on that review, NMFS has determined that Baker River sockeye salmon do not warrant listing under the ESA, nor candidate status at this time. NMFS previously determined that the Okanogan River, Lake Wenatchee, Quinault Lake, and Lake Pleasant (all located in Washington) sockeye salmon ESUs did not warrant listing. However, based on new information, NMFS remains concerned about the status of the Okanogan River and Lake Wenatchee ESUs, and will closely monitor their status.

At this time, NMFS is listing all naturally spawned populations of Ozette Lake sockeye salmon belonging to the species' anadromous life form. NMFS has examined the relationship between hatchery and natural populations of sockeye salmon in this ESU and determined that none of the hatchery populations are currently essential for recovery and, therefore, the hatchery populations (and their progeny) are not listed.

NMFS will issue any protective regulations deemed necessary under section 4(d) of the ESA for the listed ESU in a separate rulemaking. Even though NMFS does not now issue protective regulations for this ESU, Federal agencies are required under section 7 to consult with NMFS if any activity they authorize, fund, or carry out may affect listed sockeye salmon.

DATES: Effective May 24, 1999.

ADDRESSES: Branch Chief, Protected Resources Division, NMFS, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin (503) 231–2005, or Chris Mobley (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

Biological information for sockeye salmon can be found in recent species status assessments by NMFS (Gustafson *et al*., 1997; NMFS, 1999a), Washington Department of Fisheries (WDF), Washington Department of Wildlife, and Western Washington Treaty Tribes (WDF *et al*., 1993), in species life history summaries (Pauley *et al*., 1989; Burgner, 1991; Emmett *et al*., 1991), and in the **Federal Register** document announcing the listing proposal (63 FR 11750, March 10, 1998).

Previous Federal ESA Actions Related to West Coast Sockeye and Petition Background

The ESA actions on sockeye salmon in the Pacific Northwest are extensive. The history of petitions received regarding this species is summarized in the proposed rule published on March 10, 1998 (63 FR 11750). This final determination was initiated in response to a petition filed by Professional Resource Organization-Salmon (PRO-Salmon) on March 14, 1994. PRO-Salmon petitioned to list Baker River sockeye salmon as well as eight populations of other species of Pacific salmon under the ESA. In response to this petition and to the more general concerns about the status of Pacific salmon throughout the region, NMFS published a document in the **Federal Register** on September 12, 1994 (59 FR 46808) announcing that the petition presented substantial scientific information indicating that a listing may be warranted and that the agency would initiate ESA status reviews for sockeye and other species of anadromous salmonids in the Pacific Northwest. The comprehensive review considered all populations in the States of Washington, Idaho, and Oregon. Hence, the status review for sockeye salmon encompassed, but was not restricted to, the population identified in the PRO-Salmon petition.

During the coastwide sockeye salmon status review, NMFS assessed the best available scientific and commercial data, including technical information from Federal, state, and tribal co-managers and other interested parties. The NMFS Biological Review Team (BRT), composed of staff from NMFS' Northwest Fisheries Science Center, reviewed and evaluated scientific information provided by the co-managers and other sources and completed a coastwide status review for sockeye salmon (Gustafson *et al*., 1997). Early drafts of the BRT review were distributed to state and tribal fisheries managers and peer reviewers who are experts in the field to ensure that NMFS' evaluation was accurate and complete.

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (63 FR 11750, March 10, 1998) which identified six ESUs of sockeye salmon in Washington. The Ozette Lake ESU was proposed for listing as a threatened species and the Baker River ESU was classified as a candidate species. NMFS concluded that the remaining four ESUs (Okanogan River, Lake Wenatchee, Quinault Lake, and Lake Pleasant ESUs) did not warrant listing proposals.

During the year between the proposed rule and this final determination, NMFS requested public comment and solicited peer and co-manager review of the agency's proposal and received comments and new scientific information concerning the status of the Ozette Lake and Baker River ESUs, as well as the status of other ESUs for which listing was deemed not warranted. NMFS also received information regarding the relationship of existing hatchery stocks to naturally spawned populations in the Ozette Lake ESU. This new information was evaluated by NMFS' BRT and published in an updated status review that draws conclusions about the delineation and risk assessment for the proposed Ozette Lake ESU (NMFS, 1998). Based on the updated NMFS status review and other information, NMFS now issues its final listing determination for the Ozette Lake ESU and conclusions regarding the candidate Baker River ESU. Copies of the NMFS status review and related documents are available upon request (see **ADDRESSES**).

Summary of Comments and Information Received in Response to the Proposed Rule

NMFS held 21 public hearings in California, Oregon, Idaho, and Washington to solicit comments on this and other salmonid listing proposals (63 FR 16955, April 7, 1998; 63 FR 30455, June 4, 1998). During the 112-day public comment period, NMFS received 8 written comments regarding the sockeye salmon proposed rule. NMFS also sought new data and analyses from tribal and state co-managers and met with them to formally discuss technical issues associated with the sockeye salmon status review. Technical information was considered by NMFS' BRT in its re-evaluation of ESU boundaries and risk assessments; this information is discussed in the updated status review of sockeye salmon (NMFS, 1998).

A number of comments addressed issues pertaining to the proposed critical habitat designation for sockeye salmon. NMFS will address these comments in a forthcoming **Federal Register** document announcing the agency's conclusions about critical habitat for the listed ESU.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In accordance with this policy, NMFS solicited 10 individuals to take part in

a peer review of its west coast sockeye salmon status review and proposed rule. All individuals solicited are recognized experts in the field of sockeye salmon biology, and represent a broad range of interests, including Federal, state, and tribal resource managers, and academia. Three of the 10 individuals took part in the peer review of this action; comments from peer reviewers were considered by NMFS' BRT and are summarized in the updated status review document (NMFS, 1998).

A summary of comments received in response to the proposed rule is presented here.

Issue 1: Sockeye Salmon Biology and Ecology

Comments: Several commenters and peer reviewers asserted that resident sockeye salmon (kokanee) should be included in the listed anadromous sockeye salmon ESU. Several commenters also stated that NMFS should address how the presence of kokanee populations may ameliorate risks facing anadromous populations within the listed ESU. A peer reviewer emphasized his belief that Ozette Lake kokanee should be made part of the Ozette Lake sockeye salmon ESU, despite the very large genetic distance between beach-spawning Ozette Lake sockeye salmon and Ozette Lake kokanee. This reviewer also stated, that given sufficient time and selective pressures, Ozette Lake kokanee will reintroduce the anadromous form of *Oncorhynchus nerka* (*O. nerka*) to Ozette Lake. The reviewer argued that kokanee represent the remaining tributary-spawning gene pool, and that without them, anadromous production will not expand beyond what the limited beach habitat can produce. On the other hand, another peer reviewer agreed with both the separate ESU designation for Ozette Lake sockeye salmon and with the exclusion of kokanee from this ESU, based on information presented in the status review. This reviewer also provided information (unpublished mtDNA data) on genetic relationships between the Ozette Lake ESU and selected *O. nerka* populations in Washington and British Columbia.

Response: While conclusive evidence does not yet exist regarding the relationship of resident and anadromous forms of *O. nerka*, NMFS believes available evidence suggests that resident sockeye and kokanee should not be included in listed sockeye ESUs in cases where the strength and duration of reproductive isolation would provide the opportunity for adaptive divergence in sympatry. This is demonstrated by the very large genetic differences between Ozette Lake sockeye salmon and Ozette Lake kokanee. However, where resident ''kokanee-sized'' *O. nerka* (potential ''residual sockeye salmon'') are observed spawning with, or adjacent to, sockeye salmon on spawning beaches in Ozette Lake, they are to be considered part of the Ozette Lake sockeye salmon ESU.

Several lines of evidence support comments that kokanee may produce anadromous offspring, and thus, represent a valuable life form for anadromous sockeye salmon. Under certain conditions, anadromous and resident *O. nerka* are capable of having offspring that express the alternate life history form; that is, anadromous fish can produce nonanadromous offspring, and vice versa (Ricker, 1938; Fulton and Pearson, 1981; Scott, 1984; Chapman *et al.*, 1995). However, the number of outmigrants that successfully return as adults is typically quite low. In Ozette Lake, where access to and from the ocean is relatively easy and the energetic costs of migration to and from the ocean are negligible, the sockeye salmon morphology has not been reported to occur on the tributary spawning grounds of kokanee (prior to the recent sockeye salmon stocking efforts in these tributaries). If Ozette Lake kokanee were producing anadromous outmigrants that were surviving to adulthood, individuals expressing the sockeye salmon morphology would most likely have been seen on the kokanee spawning grounds.

NMFS believes resident fish can help buffer extinction risks to an anadromous population by mitigating depensatory effects in spawning populations, by providing offspring that migrate to the ocean and enter the breeding population of sockeye salmon, and by providing a ''reserve'' gene pool in fresh water that may persist through times of unfavorable conditions for anadromous fish. In spite of these potential benefits, presence of resident populations is not a substitute for conservation of anadromous populations. A particular concern is isolation of resident populations by human-caused barriers to migration. This interrupts normal population dynamics and population genetic processes and can lead to loss of a genetically based trait (anadromy). As discussed in NMFS' ''species identification'' paper (Waples, 1991), the potential loss of anadromy in distinct population segments may, in and of itself, warrant listing the ESU as a whole.

Issue 2: Description and Status of Sockeye Salmon ESUs

Comment: Several general comments were received about the overall analytical process for delineating sockeye salmon ESUs. One peer reviewer stated that the sockeye salmon status review is incomplete because it is limited to the anadromous form only and does not include designation of kokanee ESUs. One commenter criticized NMFS' ESU concept, arguing that the ESA does not require a Distinct Population Segment (DPS) to be reproductively isolated from other conspecific populations, that it is not possible to determine evolutionary significance of an ESU with genetic data, and that the ESU concept does not properly address the ecological significance of a DPS. Additionally, a peer reviewer stated that his unpublished analysis of mtDNA haplotype data for several populations of sockeye salmon in Washington does not, in general, support the ''decision to define ESUs at the lake level'' although he recognized the observed genetic differentiation of sockeye salmon in Washington, as shown by allozyme data.

Response: Regarding the identification of ESUs, NMFS relies on a policy describing how it will apply the ESA definition of ''species'' to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy defining DPSs (61 FR 4722, February 7, 1996). The earlier policy is more detailed and applies specifically to Pacific salmonids and, therefore, was used for this determination. This policy states that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled ''Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon'' (Waples, 1991) and in

a recent scientific paper by Waples (1995).

The National Research Council (NRC) has recently addressed the issue of defining species under the ESA (NRC, 1995). Their report found that protecting DPSs is soundly based on scientific evidence, and recommends applying an ''Evolutionary Unit'' (EU) approach in describing these segments. The NRC report describes the high degree of similarity between the EU and ESU approaches (differences being largely a matter of application between salmon and other vertebrates), and concluded that either approach would lead to similar DPS descriptions most of the time.

Comment: One commenter criticized NMFS' risk assessment approach, arguing that NMFS' evaluation of risks from artificial propagation was arbitrary, and that the overall risk assessment is fundamentally flawed due to an absence of references to standard conservation biology literature (particularly that on risk assessment methods), a lack of unambiguous criteria for risk, the lack of quantitative population modeling, and the use of subjective opinion within the risk matrix approach.

Response: For nearly a decade, NMFS scientists have been conducting salmonid status reviews under the ESA using a risk assessment approach that includes an evaluation of: (1) absolute numbers of fish and their spatial and temporal distribution; (2) current abundance in relation to historical abundance and current carrying capacity of the habitat; (3) trends in abundance; (4) natural and human-influenced factors that cause variability in survival and abundance; (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs); and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU. In determining whether an ESU is threatened or endangered, BRT scientists must make judgements about the overall risk to the ESU based on likely interactions among, and cumulative effects of, these various status indicators. NMFS acknowledges that some elements of the agency's approach are inherently subjective (e.g., forecasting effects of natural risk factors). Still, NMFS believes that its approach to making listing determinations is scientifically credible and invites any constructive suggestions on ways to improve risk assessments under the ESA.

Comment: One commenter disagreed with the BRT's conclusion that the Okanogan River and Lake Wenatchee ESUs are near historic abundance levels. They cited evidence that total Columbia Basin sockeye salmon run size may have exceeded 4,000,000 fish at a time when the Okanogan Basin had 41 percent of the accessible lake rearing area in the Columbia Basin, and suggest that historical Okanogan River escapement was probably in excess of 1,000,000 fish (not the 12,000 fish suggested in the status review). Further, they commented that the status of the Wenatchee stock is of particular concern, with a recent steep decline and very low escapements despite negligible downstream harvest. The Okanogan stock has also exhibited a steep recent decline, and both stocks have poor prospects for 1999 runs.

Response: Despite finding that these populations did not warrant ESA protection at the conclusion of the initial status review for west coast sockeye salmon, NMFS sought additional information regarding the status of Okanogan River and Lake Wenatchee sockeye salmon ESUs in the updated status review (NMFS, 1998). NMFS agrees that the recent trends in abundance are of concern and the agency intends to closely monitor these ESUs.

Comment: One commenter questioned the genetic integrity of the Ozette Lake sockeye salmon ESU and, thus, its designation as a separate species under the ESA. Based on the introduction of non-native sockeye salmon (Quinault Lake sockeye salmon were stocked in 1982) and sockeye salmon/kokanee hybrids (released in 1991 and 1992), this commenter stated that at issue is ''whether the non-native population has bred with the native population to such an extent that the evolutionarily important adaptations that distinguished the original population have been lost.'' He suggested that more research is needed to better determine the proper limits of the Ozette Lake sockeye salmon ESU before determining that the ESU warrants listing.

Response: The history of artificial propagation in the Ozette Lake basin is extensive. All releases prior to 1983 were single, large, plantings of out-of-basin sockeye. It is unlikely that these practices resulted in the loss of genetic fitness and unique adaptations of the historic Ozette Lake sockeye salmon population. NMFS will work with hatchery managers in the Ozette Lake ESU to ensure that current artificial propagation practices are conducted in a manner that will not result in the loss of genetic characteristics or adaptive traits.

Issue 3: Factors Contributing to the Decline of West Coast Sockeye Salmon

Comment: Many commenters identified factors they believe have contributed to the decline of west coast sockeye salmon. Factors identified include overharvest by commercial fisheries, predation by pinnipeds and piscivorous fish species, effects of artificial propagation, and the deterioration or loss of freshwater and marine habitats. Despite concurrence with NMFS' assessment of the risk factors facing Ozette Lake sockeye salmon, one peer reviewer questioned the consistency of statements regarding siltation in tributaries as a cause of sockeye salmon decline compared to statements regarding abundance of kokanee, which would also presumably be affected by such siltation. Another peer reviewer argued that listing was not warranted for this ESU because the dominant brood years in the four-year abundance cycle (1984, 1988, 1992 and 1996) are stable, not declining. He also commented that risk was decreasing, not increasing, so becoming endangered in the future is not likely. As evidence of decreasing risk, he noted that the lake is protected within Olympic National Park, the watershed is recovering from logging in the 1960s and 1970s, lake rearing habitat is not limiting, and there is no longer any tribal harvest. In addition, a review panel was unable to determine which factors were responsible for any decline in Ozette Lake sockeye salmon. This reviewer also commented that the genetic effects of hatchery production are misrepresented in the status review.

Response: NMFS agrees that a multitude of factors, past and present, have contributed to the decline of west coast sockeye salmon. NMFS also recognizes that natural environmental fluctuations have likely played a role in the species' recent decline in abundance. However, NMFS believes other human-induced impacts (e.g., incidental catch in certain fisheries, hatchery practices, and habitat modification) have played an equally significant role in this species' decline. Moreover, these human-induced impacts have likely reduced the species' resiliency to such natural factors for decline as drought and poor ocean conditions (NMFS 1996a).

For the Ozette Lake ESU, risks perceived by the BRT were focused on low current abundance and trends and variability in abundance; current escapements average below 1,000 adults per year, implying a moderate degree of risk from small-population genetic and demographic variability with little room for further declines before abundances

reach critically low levels. Other concerns include siltation of beach spawning habitat, very low abundance now compared to harvests in the 1950s, and potential genetic effects of past interbreeding with genetically dissimilar kokanee.

With respect to predation issues raised by some commenters, it is worth noting that NMFS published reports recently describing the impacts of California sea lions and Pacific harbor seals upon salmonids on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997 and 1999). These reports conclude that in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. These reports further conclude that data regarding pinniped predation are quite limited, and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997 and 1999).

Comment: Two commenters questioned NMFS' interpretation of population trends, arguing that the main decline in abundance occurred between 1948 and 1958, and that populations have not declined substantially since then. They noted that declines cited by NMFS were not statistically significant, and that an analysis of the four individual brood cycles (4-year lags) shows two increasing and two declining. They argue that there is a consistent strong run every 4 years indicating that the population is no longer declining significantly. They also provided new information on the history of logging in the Ozette Lake Basin, noting that the main population declines occurred before there was substantial logging in the basin. They argue that overharvest at sea could be a major limiting factor, and that sockeye salmon tributary spawning may have been eliminated by harvest practices focusing on the early part of the run. Finally, they contended that re-establishment of tributary spawning by anadromous fish is limited by the genetic capacity of remaining lake-spawning fish.

Response: Although Ozette Lake sockeye salmon populations were heavily harvested in fisheries prior to the most extensive timber harvest activities in the watershed, the impacts of intense and frequent timber harvest and associated road building (conducted prior to state regulation of forest practices) in the watershed in the years following the high fishery harvest events have been extensively documented; these forest practice activities have no doubt contributed to the widespread sedimentation of key portions of lake tributaries, lakeshore spawning beaches, and outwash fans. Timber harvest and road building may not have caused the declining sockeye salmon abundance, but have contributed to the failure of Ozette Lake sockeye populations to rebuild since the cessation of commercial sockeye salmon harvests in 1974 (there has been no direct sockeye harvest of any kind since 1982). Additionally, although there is a single strong brood-year, the ESU as a whole faces significant risks due to the weakness of the other brood-year returns.

Issue 4: Designation of Baker River Sockeye Salmon as a Candidate Species

Comment: One peer reviewer and a commenter contended that the Baker River ESU should not be a candidate for listing, although their arguments were based on different considerations. The peer reviewer argued that because the Baker Lake spawning beaches are essentially a hatchery, this is not a natural stock, and, therefore, is not subject to the ESA. He also argued that although human intervention may pose a risk to long-term evolution of the population, it will be required for the run to continue. Alternatively, both the peer reviewer and commenter believed that abundance and trends do not demonstrate high risk, and that the artificial spawning beaches are highly productive, producing very high numbers of fry per female. Finally, they commented that water quality and disease are not serious concerns.

Response: Concerns over these issues prompted NMFS to conduct a renewed evaluation of Baker River sockeye salmon status in the year since publication of the proposed rule. As a result of this review, NMFS determined that continued significant increases in abundance since the status review eased concerns over the risks facing this population. NMFS acknowledges that significant human intervention is required to maintain the productivity of this ESU. Although changes in the suite of activities could pose risks to this population, NMFS concludes that Baker River sockeye salmon are increasing substantially and that listing is not warranted.

Issue 5: Consideration of Existing Conservation Measures

Comment: Several commenters argued that NMFS had not considered existing conservation programs designed to enhance sockeye salmon stocks within particular ESUs. Some commenters provided specific information on some of these programs to NMFS concerning the efficacy of existing conservation plans.

Response: NMFS has reviewed existing conservation plans and measures relevant to the ESUs addressed in this final rule and concludes that existing conservation efforts in some cases have helped ameliorate risks facing the species. Some of these conservation efforts are discussed here in ''Existing Conservation Efforts.''

While several of the conservation plans addressed in the comments received show promise for ameliorating risks facing sockeye salmon, some of the measures described in comments have not been implemented. Some of these measures are also geographically limited to individual river basins or political subdivisions, thereby improving conditions for only a small portion of the entire ESU. Some of these measures are not mature enough to accurately measure their efficacy in protecting or restoring the sockeye salmon populations that are the subject of this determination.

Summary of Factors Affecting Sockeye Salmon

Section 4(a)(1) of the ESA and NMFS listing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon 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) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

The factors threatening naturally spawned sockeye salmon throughout the species' range are numerous and varied. The present depressed condition of many populations is the result of human-induced factors (e.g., incidental harvest in certain fisheries, hatchery practices, and habitat modification) that serve to exacerbate the adverse effects of natural factors (e.g., competition and predation) or environmental variability

from such factors as drought and poor ocean conditions.

As noted previously, the comments received regarding the relative importance of various risk factors contributing to the decline of sockeye salmon essentially reinforce NMFS' description of factors in the listing proposal. A summary of these factors and their role in the decline of the Ozette Lake ESU is presented in NMFS' March 10, 1998, **Federal Register** document (63 FR 11750), as well as several documents in the agency's west coast sockeye salmon administrative record (WDF *et al*., 1993; Gustafson *et al*., 1997; NMFS, 1999).

Efforts Being Made to Protect West Coast Sockeye Salmon

Under section 4(b)(1)(A) of the ESA, the Secretary of Commerce is required to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made to protect a species. During the status review for west coast sockeye salmon and for other salmonids, NMFS reviewed protective efforts ranging in scope from regional strategies to local watershed initiatives; some of the major efforts are summarized in the March 10, 1998, proposed rule (63 FR 11774). Since then, NMFS has received little new information regarding these or other efforts being made to protect sockeye salmon. Notable efforts within the range of the Ozette Lake ESU continue to be the Northwest Forest Plan (NFP), Washington Wild Stock Restoration Initiative, and Washington Wild Salmonid Policy.

In addition, a recovery planning group composed of the Makah and Quileute Indian Tribes, the National Parks Service, and Washington Department of Fish and Wildlife has recently initiated a collaborative planning effort to determine how to increase the abundance of naturally spawning Ozette Lake sockeye salmon to historic and self-sustaining population levels. NMFS and FWS will assist this effort, and other state agencies and interested parties will be invited to participate. The Makah tribe, which has operated a supplementation program in Ozette Lake since the early 1980's, is contributing a draft supplementation plan as a starting point for the planning group.

While NMFS recognizes that many of the ongoing protective efforts are likely to promote the conservation of Ozette Lake sockeye salmon and other salmonids, some are very recent and few address conservation at a scale that is adequate to protect and conserve the Ozette Lake ESU. NMFS concludes that existing protective efforts are inadequate to preclude a listing for this ESU. However, NMFS will continue to encourage these and future protective efforts and will work with Federal, state, and tribal fisheries managers to evaluate, promote, and improve efforts to conserve sockeye and other salmon populations.

Determination

Section 3 of the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that listing determinations be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Ozette Lake Sockeye Salmon ESU - Based on results from its coastwide status review for sockeye salmon, and after taking into account comments and new information described earlier, NMFS concludes that the Ozette Lake ESU should be classified as threatened under the ESA. The majority of the NMFS BRT concluded that this ESU is likely to become endangered in the foreseeable future if present conditions continue. Furthermore, NMFS concludes that current protective efforts are insufficient to change the BRT's forecast of extinction risk.

In the listed Ozette Lake ESU, all naturally spawned populations of sockeye salmon residing below impassable natural barriers (e.g., long-standing, natural waterfalls) are listed as threatened. NMFS' intent in listing only ''naturally spawned'' populations is to protect sockeye salmon stocks that are indigenous to (i.e., part of) the ESU. In this listing determination NMFS has identified non-indigenous populations that co-occur with fish in the listed ESU. The agency recognizes the difficulty of differentiating between indigenous and non-indigenous fish, especially when the latter are not readily distinguishable with a mark (e.g., fin clip). Also, matings in the wild of either type would generally result in progeny that would be treated as listed fish (i.e., they would have been naturally spawned in the geographic range of the listed ESU and have no distinguishing mark). Therefore, to reduce confusion regarding which sockeye salmon are considered listed within the ESU, NMFS will treat all naturally spawned fish as listed for purposes of the ESA. Efforts to determine the conservation status of the ESU would similarly focus on the contribution of indigenous fish to the listed ESU. It should be noted that NMFS will take actions necessary to minimize or prevent non-indigenous sockeye salmon from spawning in the wild unless the fish are specifically part of a recovery effort.

NMFS has examined the relationship between hatchery and natural populations of sockeye salmon in this ESU, and has assessed whether any hatchery populations are essential for their recovery. In examining this relationship, NMFS scientists consulted with hatchery managers to determine whether any hatchery populations are similar enough to native, naturally spawned fish to be considered part of the biological ESU (NMFS, 1999a). The evaluation also considered whether any hatchery population should be considered essential for the recovery of a listed ESU. NMFS concludes that the sockeye salmon stock reared at Umbrella Creek Hatchery should be considered part of the Ozette Lake ESU, based on the fact that broodstock are derived from wild beach-spawning adults and that hatchery stock is not perpetuated by spawning fish returning to the hatchery. NMFS also concludes that the Umbrella Creek Hatchery stock is not essential for recovery. NMFS' opinion on this second question was influenced by the presence of significant numbers of sockeye salmon still spawning naturally on Olsen's Beach and in Allen's Bay in Ozette Lake; these fish could be used in recovery efforts. NMFS also concludes that if progeny of the sockeye salmon/kokanee hybrid stock reared at Umbrella Creek Hatchery still exist, they should not be considered part of the ESU. This decision was based on the wide genetic divergence of Ozette Lake stream-spawning kokanee and beach-spawning sockeye salmon and the likelihood that hybrids of these stocks would resemble neither of the native *O. nerka* stocks in Ozette Lake.

The determination that a hatchery stock is not ''essential'' for recovery does not preclude it from playing a role in recovery. Any hatchery population that is part of the ESU is available for use in recovery if conditions warrant. In this context, an ''essential'' hatchery population is one that is vital to incorporate into recovery efforts (for example, if the associated natural population(s) were extinct or at high risk of extinction). Under such circumstances, NMFS would consider taking the administrative action of listing existing hatchery fish.

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from the listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' (58 FR 17573, April 5, 1993). In the case of the Umbrella Creek Hatchery stock, the protective regulations that NMFS will issue shortly may except take of naturally spawned listed fish for use as broodstock as part of an overall conservation program. According to the interim policy, the progeny of these hatchery-wild or wild-wild crosses would also be listed. Given the requirement for an acceptable conservation plan as a prerequisite for collecting broodstock, NMFS determines that it is not necessary to consider the progeny of intentional hatchery-wild or wild-wild crosses as listed.

In addition, NMFS believes it is desirable to incorporate naturally spawned fish into the hatchery population to ensure that genetic and life history characteristics do not diverge significantly from the natural population's. NMFS therefore concludes that it is not inconsistent with NMFS' interim policy, nor with the policy and purposes of the ESA, to consider these progeny as part of the ESU but not listed.

Baker River Sockeye Salmon ESU - For the reasons described in the March 10, 1998, proposed rule (63 FR 11750) and earlier in this document, NMFS concludes that the Baker River sockeye salmon ESU is not presently in danger of extinction, nor is it likely to become endangered in the foreseeable future if present conditions continue. NMFS will no longer classify this ESU as a candidate species.

Other Sockeye Salmon ESUs - While other ESUs and populations were not extensively reviewed at this time, NMFS did review updated trend information for the Lake Wenatchee and Okanogan River ESUs. Based on this new information, NMFS is concerned about the status of the Okanogan River and Lake Wenatchee ESUs, and will continue to closely monitor their status.

Prohibitions and Protective Measures

Section 4(d) of the ESA requires NMFS to issue protective regulations that it finds necessary and advisable to provide for the conservation of a threatened species. Section 9(a) of the ESA prohibits violations of protective regulations for threatened species promulgated under section 4(d). The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. NMFS will publish 4(d) protective regulations for the listed Ozette Lake sockeye salmon ESU in a separate **Federal Register** document. The process for completing the 4(d) rule will provide the opportunity for public comment on the proposed protective regulations.

In the case of threatened species, NMFS also has flexibility under section 4(d) to tailor the protective regulations based on the contents of available conservation measures. Even though existing conservation efforts and plans are not sufficient to preclude the need for listing at this time, they are nevertheless valuable for improving watershed health and restoring salmon populations. In those cases where well-developed and reliable conservation plans exist, NMFS may choose to incorporate them into the protective regulations and recovery plans. NMFS has already adopted 4(d) protective regulations that excepts a limited range of activities from general section 9 take prohibitions. For example, the interim 4(d) rule for Southern Oregon/Northern California Coasts coho salmon (62 FR 38479, July 18, 1997) excepts habitat restoration activities conducted in accordance with approved plans and fisheries conducted in accordance with an approved state management plan. In the future, 4(d) rules may except from take prohibitions activities identified in conservation plans governing such activities as forestry, agriculture, and road construction when such activities are conducted in accordance with the plans.

These are all examples where NMFS may apply modified section 9 prohibitions in light of the protections provided in a conservation plan that is adequately protective. There may be other circumstances as well in which NMFS would use the flexibility of section 4(d). For example, in some cases there may be a healthy population within an overall ESU that is listed. In such a case, it may not be necessary to apply the full range of prohibitions available in section 9. NMFS intends to use the flexibility of the ESA to respond appropriately to the biological condition of each ESU and to the strength of efforts to protect it.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) of the ESA requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions likely to affect sockeye salmon in the listed ESU include authorized land management activities (e.g., timber sales and harvest) of the U.S. Forest Service (USFS). Federal actions, including the Army Corps of Engineers (COE) section 404 permitting activities under the Clean Water Act, COE permitting activities under the River and Harbors Act, National Pollution Discharge Elimination System permits issued by the Environmental Protection Agency, highway projects authorized by the Federal Highway Administration, and Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, may also require consultation. These actions will likely be subject to ESA section 7 consultation requirements that may result in conditions designed to achieve the intended purpose of the project and avoid or reduce impacts to sockeye salmon and its habitat within the range of the listed ESU.

There are likely to be Federal actions ongoing in the range of the listed ESUs at the time these listings become effective. Therefore, NMFS will review all ongoing actions that may affect the listed species with Federal agencies and will complete formal or informal consultations, where requested or necessary, for such actions pursuant to ESA section 7(a)(2).

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species.

NMFS has issued section 10(a)(1)(A) research or enhancement permits for other listed species (e.g., Snake River chinook salmon and Sacramento River winter-run chinook salmon) for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of

adult fish for artificial propagation programs. NMFS is aware of sampling efforts for sockeye in the listed ESU. These and other research efforts could provide critical information regarding sockeye salmon distribution and population abundance.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the release of artificially propagated fish by tribal, state or privately operated and funded hatcheries, state or university research on species other than sockeye salmon not receiving Federal authorization or funding, the implementation of state fishing regulations, and timber harvest activities on non-Federal lands.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and FWS published a policy committing the Services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9: (1) Possession of sockeye salmon from the listed ESU acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA; and (2) federally funded or approved projects that involve such activities as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which a section 7 consultation has been completed, and when such an activity is conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanied by a biological opinion pursuant to section 7 of the ESA. As described previously in this notice, NMFS may adopt 4(d) protective regulations that except other activities from section 9 take prohibitions for threatened species.

Activities that NMFS believes could potentially harm, injure or kill sockeye salmon in the listed ESU and result in a violation of section 9 include, but are not limited to: (1) Land-use activities that adversely affect sockeye salmon habitat in this ESU (e.g., logging, grazing, farming, road construction in riparian areas, and areas susceptible to mass wasting and surface erosion); (2) diverting water through an unscreened or inadequately screened diversion at times when juvenile sockeye salmon are present; (3) physical disturbance or blockage of the streambed or lakeshore where spawners or redds are present concurrent with the disturbance. The disturbance could be mechanical disruption from creating push-up dams, gravel removal, mining, or other work within a stream channel, trampling or smothering of redds by livestock in the streambed, driving vehicles or equipment across or down the streambed, and similar physical disruptions; (4) discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting the listed sockeye salmon; (5) pesticide and herbicide applications; (6) blocking fish passage through fills, dams, or impassable culverts; (7) interstate and foreign commerce of listed sockeye salmon and import/export of listed sockeye salmon without an ESA permit, unless the fish were harvested pursuant to this rule; (8) collecting or handling of listed sockeye salmon (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species); and (9) introduction of non-native species likely to prey on listed sockeye salmon or displace them from their habitat. This list is not exhaustive. It is intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of listed sockeye salmon under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Effective Date of Final Listing

Given the cultural, scientific, and recreational importance of this species, and the broad geographic range of this listing, NMFS recognizes that numerous parties may be affected by this listing. Therefore, to permit an orderly implementation of the consultation requirements associated with this action, this final listing will take effect May 24, 1999.

Conservation Measures

Conservation benefits are provided to species listed as endangered or threatened under the ESA through increased recognition, recovery actions, Federal agency consultation requirements, and prohibitions on taking. Increased recognition through listing promotes public awareness and conservation actions by Federal, state, and local agencies, private organizations, and individuals.

Several conservation efforts are underway that may reverse the decline of west coast sockeye salmon and other salmonids. NMFS is encouraged by these significant efforts, which could provide all stakeholders with an approach to achieving the purposes of the ESA (i.e., protecting and restoring native fish populations and the ecosystems upon which they depend) that is less regulatory. NMFS will continue to encourage and support these initiatives as important components of recovery planning for sockeye salmon and other salmonids.

To succeed, protective regulations and recovery programs for sockeye salmon will need to focus on conserving aquatic ecosystem health. NMFS intends that Federal lands and Federal activities play a primary role in preserving listed populations and the ecosystems upon which they depend. However, throughout the range of the listed ESUs, sockeye salmon habitat occurs and can be affected by activities on state, tribal or private land.

Conservation measures that could be implemented to help conserve the species are listed here (the list is generalized and does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA). Progress on some of these is being made to differing degrees in specific areas.

1. Measures could be taken to promote practices that are more protective of (or restore) sockeye salmon habitat across a variety of land and water management activities. Activities affecting this habitat include timber harvest; agriculture; livestock grazing and operations; pesticide and herbicide applications; construction and urban development; road building and maintenance; sand and gravel mining; stream channelization; dredging and dredged spoil disposal; dock and marina construction; diking and bank stabilization; irrigation withdrawal, storage, and management; mineral mining; wastewater/pollutant discharge; wetland and floodplain alteration; habitat restoration projects; and woody debris/structure removal from rivers and estuaries. Each of these activities could be modified to ensure that watersheds and specific river reaches are adequately protected in the short- and long-terms.

2. Fish passage could be restored at barriers to migration through the installation or modification of fish ladders, upgrade of culverts, or removal of barriers.

3. Harvest regulations could be modified to protect listed sockeye salmon populations.

4. Artificial propagation programs could be modified to minimize negative impacts (e.g., genetic introgression, competition, disease, etc.) upon native populations of sockeye salmon.

5. Predator control/relocation programs could be implemented in areas where predators pose a significant threat to sockeye salmon.

6. Measures could be taken to improve monitoring of sockeye salmon populations and their habitat.

7. Federal agencies such as the USFS, U.S. Bureau of Land Management, Federal Energy Regulatory Commission, U.S. Army Corp of Engineers, U.S. Department of Transportation, and U.S. Bureau of Reclamation could review their management programs and use their discretionary authorities to formulate conservation plans pursuant to section 7(a)(1) of the ESA.

NMFS encourages non-Federal landowners to assess the impacts of their actions on threatened or endangered salmonids. In particular, NMFS encourages state and local governments to use their existing authorities and programs, and encourages the formation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists all participate and share the goal of restoring salmon to the watersheds.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(6)(C)(ii) provides that, where critical habitat is not determinable at the time of final listing, NMFS may extend the period for designating critical habitat by not more than one additional year.

In the proposed rule (63 FR 11774, March 10, 1998), NMFS described the areas that may constitute critical habitat for the Ozette Lake sockeye salmon ESU. Since then, NMFS has received numerous comments from the public concerning the process and definition of critical habitat for sockeye salmon and other salmonids. Also, due to statutory time limitations, NMFS has not yet consulted with affected Indian tribes regarding the designation of critical habitat in areas that may affect tribal trust resources, tribally owned fee lands, or the exercise of tribal rights.

Given these remaining unresolved issues, NMFS determines at this time that a final critical habitat designation is not determinable for this ESU since additional time is required to complete the needed biological assessments and evaluate special management considerations affecting critical habitat. The agency therefore extends the deadline for designating critical habitat for 1 year until such assessments can be made and after appropriate consultations are completed.

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 (NEPA) under NOAA Administrative Order 216–6.

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this final rule is exempt from review under E.O. 12866.

This rule has been determined to be major under the Congressional Review Act (5 U.S.C. 801 *et seq*.)

At this time NMFS is not promulgating protective regulations pursuant to ESA section 4(d). In the future, prior to finalizing its 4(d) regulations for the threatened sockeye salmon ESU, NMFS will comply with all relevant NEPA and RFA requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**) and can also be obtained from the internet at www.nwr.noaa.gov.

Change in Enumeration of Threatened Species

In the proposed rule issued on March 10, 1998 (63 FR 11750), Ozette Lake sockeye salmon was designated the letter (o) in § 227.4. Since March 10, NMFS has issued a final rule consolidating and reorganizing existing regulations regarding implementation of the ESA. In this reorganization, § 227.4 has been redesignated, as § 223.102(a), therefore, Ozette Lake sockeye salmon is designated in this final rule as paragraph (a) (20) in § 223.102(a). The regulatory text of the proposed rule remains unchanged in this final rule.

List of Subjects in 50 CFR Part 223

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

Dated: March 15, 1999.

Andrew A. Rosenberg, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223–THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq*.; 16 U.S.C. 742a *et seq*.; 31 U.S.C. 9701.

2. In § 223.102, paragraph (a)(19) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

(19) Ozette Lake sockeye salmon (*Oncorhynchus nerka*). Includes all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington.

* * * * *

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