References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **ADDRESSES**).

Author(s)

The primary authors of this finding are the staff members of the Arizona Ecological Services Field Office.

Authority: The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 21, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–17864 Filed 7–18–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 110615334–1325–01]

RIN 0648–XA311

Endangered and Threatened Species: Authorizing Release of a Nonessential Experimental Population of Upper Columbia Spring-Run Chinook Salmon in the Okanogan River Basin Under the Endangered Species Act

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

ACTION: Advance Notice of Proposed Rulemaking; Request for Information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), will be considering a proposal to authorize a nonessential experimental population of Upper Columbia (UC) spring-run Chinook salmon (*Oncorhynchus tshawytscha*) in the Okanogan River and its tributaries in Okanogan County, Washington under the Endangered Species Act (ESA) of 1973, as amended. The geographic boundaries of the experimental population area would likely include the entire Okanogan River subbasin and a portion of the mainstem Columbia River from the confluence of the Columbia and Okanogan Rivers upstream to the base of Chief Joseph Dam. We will consider the best available information to determine if reintroduction of Chinook salmon is biologically feasible and will promote the conservation of the UC spring-run Chinook salmon Evolutionarily Significant Unit (ESU). This advance notice of proposed rulemaking (ANPR) identifies policy and technical issues for consideration and evaluation, and solicits comments regarding them.

DATES: Comments and information regarding the designation process may be sent to us (see **ADDRESSES**), no later than 5 p.m. Pacific Time on September 19, 2011.

ADDRESSES: Comments may be sent to Chief, Protected Resources Division, NMFS, 1201 NE. Lloyd Blvd.—Suite 1100, Portland, OR 97232. Comments may also be sent via facsimile (fax) to 503–230–5441 or submitted on the Internet via the Federal Rulemaking portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. We may elect not to post comments that contain obscene or threatening content. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Eric Murray, NMFS, Northwest Region, Portland, OR 503–231–2378; or Dwayne Meadows, NMFS, Office of Protected Resources, Silver Spring, MD 301–713–1401.

SUPPLEMENTARY INFORMATION:

Rulemaking Background

We first listed the Upper Columbia (UC) spring-run Chinook salmon ESU as endangered under the ESA on March 24, 1999 (64 FR 14308), and reaffirmed this status on June 28, 2005 (70 FR 37160). ESA Section 9 ''take'' prohibitions currently apply to the UC spring-run Chinook salmon ESU because of its endangered status.

The listed ESU currently includes all naturally spawned populations of spring-run Chinook salmon in accessible reaches of Columbia River tributaries between Rock Island and Chief Joseph Dams, excluding the Okanogan River. Listed spring-run Chinook salmon from this ESU currently spawn in three river basins in eastern Washington: The Methow, Entiat and Wenatchee. A fourth population historically inhabited the Okanogan River Basin, but was extirpated in the 1930s because of overfishing, hydropower development, and habitat degradation (NMFS, 2007).

The designated critical habitat of UC spring-run Chinook salmon similarly includes all accessible reaches of Columbia River tributaries between Rock Island and Chief Joseph Dams, but excludes the Okanogan River. We did not include the Okanogan River Basin in any critical habitat designation because the Okanogan population of spring-run Chinook salmon no longer existed.

The listed UC spring-run Chinook salmon ESU also includes six artificial propagation programs: The Twisp River, Chewuch River, Methow Composite, Winthrop National Fish Hatchery, Chiwawa River, and White River spring Chinook salmon hatchery programs.

On October 9, 2007, we adopted a final recovery plan for the UC spring-run Chinook salmon ESU (72 FR 57303). The recovery plan identifies three extant populations in this ESU (the Methow, Wenatchee, and Entiat) and an historic, extirpated population in the Okanogan River Basin (NMFS, 2007). The recovery plan identifies re-establishment of a population in the Okanogan River Basin as a recovery action (NMFS, 2007). Re-establishment of a spring-run Chinook salmon population in the Okanogan River Basin could aid recovery of this ESU by increasing abundance, by improving spatial structure, and by reducing the risk of extinction to the ESU as a whole.

On November 22, 2010, we received a letter from the Confederated Tribes of the Colville Reservation (CTCR) requesting that we authorize the release of an experimental population of spring-run Chinook salmon in the Okanogan River Basin. The CTCR has also initiated discussions on this topic with the U.S. Fish and Wildlife Service (USFWS), the Bonneville Power Administration, the Army Corps of Engineers, the Bureau of Reclamation, the Washington Department of Fish and Wildlife (WDFW), and the Okanagan Nations Alliance of Canada. The CTCR's request included a large amount of information on the biology of UC spring-run Chinook salmon and the possible management implications of releasing an experimental population in the Okanogan Basin.

Statutory and Regulatory Framework

Section 10(j) of the ESA allows the Secretary of Commerce (Secretary) to authorize the release of populations of listed species outside their current range

if the release would ''further the conservation'' of the listed species. The statute refers to such a population as ''experimental.'' We may only authorize an experimental population by regulation, and the regulation must identify the population and determine, on the basis of the best available information, whether the population is ''essential to the continued existence of the species'' (section 10(j)(B)). Section 10(j) provides that an experimental population is treated as a ''threatened species,'' except that populations authorized as ''non-essential'' experimental populations do not receive the benefits of certain protections normally applicable to threatened species. Below we discuss the impact of treating experimental populations as threatened species, and of exceptions that apply to non-essential experimental populations.

For endangered species, Section 9 of the ESA automatically prohibits take. The ESA defines take to mean harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. For threatened species, the ESA does not automatically prohibit take, but instead authorizes the agency to adopt regulations it deems necessary and advisable for species conservation (ESA section 4(d)). Such 4(d) regulations may include the take prohibitions of section 9.

If we authorize an experimental population of a threatened species, and there is an existing regulation under ESA section 4(d), that existing regulation will apply to the experimental population. If, however, we authorize an experimental population of an endangered species, there are no protective regulations in place until we adopt regulations under section 4(d). This would be the case for an experimental population of UC spring-run Chinook salmon, which are listed as endangered.

Section 7 of the ESA provides for Federal interagency cooperation and consultation to conserve listed species, ensure survival, help in recovery of the species, and protect designated critical habitat. Section 7(a)(1) mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the ESA in aiding the recovery of listed species. Section 7(a)(2) requires all Federal agencies, in consultation with NMFS, to ensure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 applies equally to endangered and threatened species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with NMFS on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Although ESA Section 10(j) provides that an experimental population is treated as a threatened species, if the experimental population is authorized as non-essential, ESA section 10(j)(C) requires that we apply the ESA Section 7 consultation provisions as if it were a species proposed to be listed, rather than a species that is listed (unless it is located within a National Wildlife Refuge or National Park, in which case it is treated as listed). This means that the ESA Section 7(a)(2) consultation requirement would not apply to a non-essential experimental population in the Okanogan Basin. Only two provisions of ESA Section 7 would apply—section 7(a)(1) and section 7(a)(4).

We have not promulgated regulations implementing ESA Section 10(j), or authorized any experimental populations to date. The USFWS has authorized many experimental populations and developed regulations to implement Section 10(j) at 50 CFR 17.80 through 17.84. While USFWS' regulations do not apply to NMFS' 10(j) authorizations, they can help inform our authorization process. We will consider the factors contained in the USFWS' regulations in determining whether to establish an experimental population of spring-run Chinook in the Okanogan River. The USFWS implementing regulations contain the following provisions:

- The USFWS regulations define an essential experimental population as ''an experimental population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild.'' All other experimental populations are classified as nonessential. This definition was apparently derived from the legislative history to the ESA amendments that created § 10(j). See, Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 97–835, at 15 (1982).
- In finding whether the experimental population will further the conservation of the species the Secretary shall consider (50 CFR 17.81(b)): (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere, (2) the likelihood that any such experimental population will become established and survive in the foreseeable future, (3) the relative effects that establishment of an experimental population will have on the recovery of the species, and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.
- USFWS regulations also describe four components that will be provided in any regulations promulgated with regard to an experimental population under ESA Section 10(j). The components are (50 CFR 17.81(c)): (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population authorized in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Biological Considerations

Pacific salmon and steelhead are anadromous fish that migrate as adults from the ocean to spawn in freshwater lakes and streams where their offspring hatch and rear prior to migrating back to the ocean to forage until maturity. The migration and spawning times vary considerably between and within species and populations (Groot and Margolis, 1991). At spawning, adults pair to lay and fertilize thousands of eggs in freshwater gravel nests or ''redds'' excavated by females. Depending on lake/stream temperatures, eggs incubate for several weeks to months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles called ''fry'' and begin actively feeding. Depending on the species and location, juveniles may spend from a few hours to several years in freshwater areas before migrating to the ocean. The physiological and behavioral changes required for the transition to salt water

result in a distinct ''smolt'' stage in most species. On their journey juveniles must migrate downstream through a riverine and estuarine corridor between their natal lake or stream and the ocean. En route to the ocean, the juveniles may spend from a few days to several weeks in the estuary, depending on the species.

Juveniles and subadult salmon and steelhead typically spend from one to five years foraging over thousands of miles in the North Pacific Ocean before returning to spawn. Spawning migrations known as ''runs'' occur throughout the year, varying by species and location. Most adult fish return or ''home'' with great fidelity to spawn in their natal stream, although some do stray to non-natal streams. Pacific salmon species die after spawning.

The homing fidelity of salmon and steelhead has resulted in discrete independent populations distributed among watersheds (McElhany *et al.,* 2000). Portions of the populations will, however, stray into adjacent watersheds to spawn. Straying results in regular genetic exchange among populations, creating genetic similarities among populations in adjacent watersheds. Salmon ESUs that are made up of several independent populations spread over a wide geographic area tend to be at lower risk of extinction than single population ESUs (McElhany *et al.,* 2000).

UC Spring-Run Chinook Salmon Life History

After 2 to 3 years in the ocean, adult UC spring-run Chinook salmon begin returning from the ocean in the early spring, with the run into the Columbia River peaking in mid-May (NMFS, 2007). Spring-run Chinook salmon enter the Upper Columbia River tributaries from April through July. After migration, they hold in these tributaries until spawning occurs in the late summer, peaking in mid to late August. Juvenile spring-run Chinook salmon spend a year in freshwater before migrating to salt water in the spring of their second year of life.

UC Spring-Run Chinook Salmon Recovery Plan

Section 4(f) of the ESA requires the Secretary of Commerce to develop recovery plans for all listed species unless the Secretary determines that such a plan will not promote the conservation of a listed species. Prior to developing recovery plans for salmon in the interior Columbia River Basin, we assembled a team of scientists from Federal and state agencies, tribes, and academia. This group, known as the Interior Columbia Technical Recovery Team (ICTRT), was tasked with identifying population structure and recommending recovery criteria (also known as delisting criteria) for ESA-listed salmon and steelhead in the Middle Columbia, Upper Columbia, and Snake River basins. The ICTRT recommended specific abundance and productivity goals for each population in the UC spring-run Chinook salmon ESU. The team also identified the current risk level of each population based on the gap between recent abundance and productivity and the desired goals. The ICTRT (2008) considered all three extant populations to be at high risk of extinction based on their current abundance and productivity levels.

The ICTRT also recommended spatial structure and diversity metrics that would reflect an ESU at low risk of extinction (ICTRT, 2007). Spatial structure refers to the geographic distribution of a population and the processes that affect the distribution. Populations with restricted distribution and few spawning areas are at a higher risk of extinction from catastrophic environmental events (*e.g.,* a single landslide) than are populations with more widespread and complex spatial structure. A population with complex spatial structure typically has multiple spawning areas that facilitate the expression of gene flow and life history characteristics. Population diversity concerns the phenotypic (morphology, behavior, and life-history traits) and genotypic (DNA) characteristics of populations. Phenotypic diversity allows more diverse populations to use a wider array of environments and protects populations against short-term temporal and spatial environmental changes. Genotypic diversity (DNA), on the other hand, provides populations with the ability to survive long-term changes in the environment. It is the combination of phenotypic and genotypic diversity expressed in a natural setting that provides populations with the ability to adapt to long-term changes. The mixing of hatchery fish (or excessive numbers of out-of-basin stocks) with naturally produced fish on spawning grounds can decrease genetic diversity within the population (NMFS, 2007). The ICTRT (2008) considers all three extant population of this ESU at high risk of extinction based on their current lack of spatial structure and diversity.

On October 9, 2007, we published a final recovery plan for the UC spring-run Chinook salmon ESU (72 FR 57303). The plan contains specific recovery criteria that, when met, would allow this ESU to be removed from the list of threatened and endangered species. The plan identifies specific abundance and productivity goals for the extant populations (Entiat, Wentachee, and Methow) as well as specific population spatial structure and diversity criteria. The recovery criteria are very similar to those recommended by the ICTRT. The plan states ''Recovery of spring Chinook salmon in the Okanogan Subbasin is not a requirement for delisting because the Interior Columbia Basin Technical Recovery Team determined that this population was extinct. However, this plan recognizes that if a major spawning area could be established in the Okanogan using an Upper Columbia spring-run Chinook stock, then the ESU would be at a lower risk of extinction.'' The recovery plan also contains specific management strategies for achieving the objectives defined by the recovery criteria.

UC Spring-Run Chinook Salmon Current Status

On March 18, 2010, we announced the initiation of 5-year status reviews for 16 ESUs of Pacific salmon including the UC spring-run Chinook salmon ESU (75 FR 13082). As part of this review, our Northwest Fisheries Science Center compiled and issued a report on the newest scientific information on the viability of this ESU. The report states,

> ''The Upper Columbia Spring-run Chinook salmon ESU is not currently meeting the viability criteria (adapted from the ICTRT) in the Upper Columbia Recovery Plan. Increases in natural origin abundance relative to the extremely low spawning levels observed in the mid-1990s are encouraging; however, average productivity levels remain extremely low. Large-scale directed supplementation programs are underway in two of the three extant populations in the ESU. These programs are intended to mitigate short-term demographic risks while actions to improve natural productivity and capacity are implemented. While these programs may provide short-term demographic benefits, there are significant uncertainties regarding the long-term risks of relying on high levels of hatchery influence to maintain natural populations'' (Ford *et al.,* 2010).

All extant populations are still considered to be at high risk of extinction based on the abundance/productivity and spatial structure/diversity metrics. When the risk levels for these attributes are integrated, the overall risk of extinction for this ESU is high (Ford *et al.,* 2010). Will Release of an ''Experimental Population'' Further Conservation of UC Spring-run Chinook Salmon?

Before authorizing the release of an experimental population, we must find that such a release will further the

conservation of the species. In making this finding, we use the best information available to assess the four considerations described above from 50 CFR 17.81(b). Below we describe information relevant to each of these considerations.

Possible Adverse Effects of Removing Individuals From Elsewhere To Establish the Experimental Population

During our analysis of the CTCR's ESA 10(j) authorization request, we will consider the most appropriate source of fish to establish an experimental population. It is likely that this source would be excess hatchery-reared Chinook salmon from the Methow Composite program. These fish are from the neighboring river basin and have evolved in an environment similar to that of the Okanogan Basin. They are likely to be the most similar genetically to the extirpated Okanogan spring-run Chinook salmon population. For the past several years, enough adult salmon from this hatchery program have returned to the Methow Basin that excess eggs and sperm are available to begin raising fish for reintroduction into the Okanogan Basin. If this stock were chosen as the appropriate donor population, we would issue necessary permits under ESA section 10(a)(1)(A) prior to any reintroduction effort. It is not expected that the use of eggs and sperm from excess hatchery fish would have any adverse effects on the natural population of UC spring-run Chinook salmon in the Methow Basin because they exceed the minimum number of adults needed to maintain hatchery production. Although the Methow Composite program seems the most likely source of fish for reintroduction, there are other potential sources. The CTCR's 10(j) authorization request identified the Methow Composite program as the most appropriate source population.

The Likelihood That the Experimental Population Would Become Established and Survive in the Foreseeable Future

Human development of the Okanogan Basin along with commercial and recreational fisheries led to the extirpation of UC spring-run Chinook salmon (NMFS, 2007), and to the 1997 listing of Upper Columbia River steelhead (62 FR 43937) that currently persist in the Okanogan Basin. In recent years, there have been numerous habitat improvement projects completed in the U.S. and Canadian portions of the Okanogan River and its tributaries. The CTCR's 10(j) authorization request includes information on several of these projects. We will consider the information in the request and other information available to determine if there is suitable habitat in the Okanogan Basin for natural reproduction of spring-run Chinook salmon. Although any reintroduction effort is likely to require supplementation with hatchery-origin fish for several years, we will consider the likelihood that a population of spring-run Chinook salmon could become established and eventually persist, without hatchery supplementation.

Potential Effects That Establishment of an Experimental Population Might Have on the Recovery of the Species

The establishment of a fourth population of UC spring-run Chinook salmon could potentially improve viability of this ESU by increasing overall ESU abundance and improving ESU spatial structure. An ESU consisting of four rather than three independent populations faces lower risk of extinction from natural events such as landslides, extreme floods, earthquakes, and volcanic activity. If we authorize an experimental population under ESA section 10(j), and if the reintroduction were successful, any contributions that the experimental population might make to viability of the UC spring-run Chinook salmon ESU as a whole would be evaluated in future reviews of this ESU's status. The recovery plan for the species states recovery of spring Chinook salmon in the Okanogan Subbasin is not a requirement for delisting. The recovery plan also contains specific management strategies for achieving the objectives defined by the recovery criteria. The CTCR's 10(j) request provides a detailed discussion of its view on this consideration.

The Extent to Which an Introduced Population May Be Affected by Existing Federal or State Actions, or Private Activities Within or Adjacent to the Experimental Population Area

There are numerous human activities, including agriculture, forestry, irrigation, urban development, transportation management, and recreational fishing occurring in the Okanogan River Basin that could potentially affect an introduced population of spring-run Chinook salmon. Some of these activities have been altered to reduce their effects on anadromous fish and their habitat due to the presence of ESA-listed UC steelhead in the Okanogan River Basin. Nevertheless, it is likely that the cumulative impacts of these activities will render some portions of the Okanogan river Basin unsuitable for spring-run Chinook salmon. We plan to consider the available information to determine what effect these activities might have on an introduced population of spring-run Chinook salmon. The CTCR's 10(j) authorization request provides a detailed discussion of their view on this consideration.

Issues Related to Regulations Authorizing an Experimental Population

In this section we discuss issues related to the four components that will be provided in any regulations promulgated with regard to an experimental population authorization under ESA Section 10(j) (50 CFR 17.81(c)). The CTCR's 10(j) request provides a detailed discussion of their views on these issues.

Appropriate Means To Identify the Experimental Population

For an experimental population of UC spring-run Chinook salmon to receive a 10(j) authorization, we would need to ensure that the candidate experimental population would be geographically separate from other members of this ESU when the fish are present in the Okanogan River Basin and in the portion of the Columbia River upstream of its confluence with Okanogan River to the base of Chief Joseph Dam. Currently, spring-run Chinook salmon are extirpated from this area and straying of fish from other populations into this area is extremely low. If the ESA 10(j) authorization were to occur, hatchery-origin fish used for the reintroduction would be marked, for example, with specific fin clips and coded-wire tags. Future adult and juvenile spring-run Chinook salmon in this area would be considered to be members of the experimental population. It may be possible to mark these fish in a manner that would distinguish them from other hatchery-raised Chinook salmon, and we will consider this during the development of our proposal. If the reintroduction is successful, and fish begin reproducing naturally, their offspring would not be distinguishable from fish from other Chinook salmon populations. Outside of the experimental population area, *e.g.,* in the Columbia River below the Okanogan or in the ocean, we would consider these unmarked fish to be members of the listed ESU (that is, we would not consider them to be part of the experimental population).

Whether the Experimental Population Is Essential to the Continued Existence of the Species

In authorizing an experimental population under ESA section 10(j), we must determine whether the population is essential to the continued existence of the species in the wild. We have proposed to use the same definition as is in the USFWS regulations at 50 CFR 17.80 (see above). The UC spring-run Chinook salmon ESU is currently at high risk of extinction. Based on the recovery plan's criteria and proposed management strategies, the UC spring-run Chinook salmon ESU could recover to the point where listing under the ESA is no longer necessary solely with contributions from the three extant populations. Specifically, if the Wenatchee and Methow population could achieve a 12-year geometric mean abundance of 2,000 fish and the Entiat reach a 12-year geometric mean abundance of 500 fish, the ESU would meet the recovery criteria for abundance. This would require a minimum productivity of between 1.2 and 1.4 for the 12-year time period (NMFS, 2007). The extant populations would also need to meet specific criteria, identified in the recovery plan, which would result in a moderate or lower risk for spatial structure and diversity. At this point, the ESU would be considered viable and could possibly be delisted, if all threats were being addressed. The Upper Columbia Recovery Plan identifies several harvest, hatchery management, hydropower and habitat related actions that could be taken to improve viability of the three extant spring-run Chinook salmon populations. The plan also clearly states that recovery of spring-run Chinook salmon in the Okanogan Basin is not a requirement for delisting. For these reasons, if this action goes forward it is possible that a reintroduced population in the Okanogan Basin could be considered ''nonessential.''

Management Restrictions, Protective Measures, and Other Special Management Considerations

When authorizing experimental populations, we consider whether the population will require management restrictions, protective measures, or other special management considerations. If we authorize an experimental population of spring-run Chinook salmon in the Okanogan River Basin, we may establish protective regulations under section 4(d) of the ESA. The regulations we may consider are discussed below.

A Process for Periodic Review

If we authorize the release of an experimental population under ESA section 10(j), the success of the reintroduction effort is likely to be assessed by certain ongoing monitoring programs and new programs developed specifically for this purpose. The CTCR request identifies ongoing monitoring and evaluation programs such as the WDFW monitoring program at Wells Dam (located on the mainstem Columbia River downstream of the confluence with the Methow River) that could be slightly modified to include monitoring of an experimental population. The CTCR request also identifies additional monitoring activities in the Okanogan Basin, including spawning ground and carcass surveys, weir counts, and video surveillance at Zosel Dam (located at river mile 79 of the Okanogan River, just south of Osoyoos Lake and the U.S.–Canada border). As data are collected through these monitoring efforts, NMFS, the CTCR, and other potential project partners can evaluate the success of the program.

If the reintroduction were successful, we expect that the experimental population's status in terms of abundance, productivity, spatial structure and diversity would be evaluated in a manner similar to the three extant populations in the UC spring-run Chinook salmon ESU. We would likely request that the ICTRT recommend recovery criteria for this population as they have for the three extant populations. Any contribution that the nonessential experimental population could make to the ESU as a whole would eventually be considered in a 5-year periodic review as required by ESA section 4(c)(2)(A).

Potential Regulations

Any population authorized by the Secretary to be an experimental population shall be treated as if it were a threatened species (for the purposes of ESA section 7, nonessential experimental populations are treated as proposed for listing). This means the agency shall establish regulations under section 4(d) of the ESA it deems necessary and appropriate with respect to such population. The protective regulations adopted for experimental populations may contain prohibitions and exceptions related to that population. In the authorization request, the CTCR asked us to establish limited take prohibitions for this experimental population. In short, the CTCR has requested that we generally prohibit take of members of the population, but allow: (1) Take that is incidental to an otherwise lawful activity, (2) incidental take that occurs as a result of lawful tribal and recreational fishing for non-listed fish; (3) direct harvest of adult salmon in the case that such harvest is required to reduce the proportion of hatchery-origin fish (as compared to naturally-produced fish) returning to spawning grounds; (4) direct take of adults needed for hatchery brood stock, and (5) direct or indirect take that occurs as a result of scientific research, monitoring, or evaluation. We will consider the Tribe's request in developing any proposal. Another option would be to apply our current 4(d) protective regulations for threatened salmon and steelhead in Oregon, Washington, and Idaho (50 CFR 223.203).

Information Solicited

Authorizing the release of an experimental salmon population under ESA section 10(j) is a relatively new activity for NMFS. We believe it is important to engage the public early in the rulemaking process. This ANPR is a key first step, and we encourage all interested parties to submit comments regarding the issues raised in this notice. Similar to the UFWS process, we plan to consult with the WDFW, local government entities, affected Federal agencies, and private landowners in the experimental population area if we develop a proposal. We will also conduct meetings with affected parties prior to developing our proposal. If we move forward with developing a proposal, we will conduct a review of the reintroduction and experimental population designation under the National Environmental Policy Act.

At this time, we seek information on the following:

(1) Possible adverse effects of removing individuals from a donor population to begin the experimental population. Excess fish from the Methow Composite hatchery program appear to be the most likely source of individuals to begin the reintroduction. Currently, we are unaware of any adverse effects of removing these excess hatchery fish. We solicit information on any possible adverse effects we may not have considered;

(2) Other possible sources of spring-run Chinook salmon to begin the reintroduction;

(3) The likelihood that the experimental population will become established in the Okanogan Basin;

(4) The likelihood that the experimental population could eventually persist without substantial hatchery supplementation;

(5) How the establishment of the experimental population may contribute to recovery of the UC spring-run Chinook salmon ESU as a whole;

(6) The extent to which the experimental population would be affected by current or future Federal, state, or private actions within or adjacent to the experimental population area;

(7) Current programs within the experimental population area that protect fish or aquatic habitats;

(8) Whether the experimental population would be essential to the continued existence of the UC spring-run Chinook salmon ESU. The information currently available indicates that the experimental population is likely to be ''nonessential'' for the reasons discussed above. We solicit information to support this conclusion as well as any information to the contrary;

(9) Any necessary management restrictions, protective measures, or other management measures that we have not considered;

(10) Monitoring or evaluation actions that may be needed to assess the success of the reintroduction;

(11) How, if the reintroduction were successful, the experimental population's contribution to overall ESU viability might be assessed; and

(12) Names, expertise, and contact information for potential peer reviewers for this designation. We seek individuals with expertise in salmon biology, population ecology, and/or reintroductions of at-risk species.

We seek the above information as soon as possible but by no later than September 19, 2011.

References

The complete citations for the references used in this document, as well as the CTCR ESA 10(j) authorization request can be obtained by contacting us directly or via the Internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Dated: July 13, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–18015 Filed 7–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket: 110627355–1354–01]

RIN 0648–BB08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 46

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment (FW) 46 to the NE Multispecies Fishery Management Plan (FMP). FW 46 was developed and submitted to NMFS for approval by the New England Fishery Management Council (Council) to address haddock catch in the Atlantic herring fishery. The proposed rule would increase the haddock incidental catch cap allocated to the Atlantic midwater trawl herring fishery to 1 percent of the Georges Bank (GB) haddock Acceptable Biological Catch (ABC) and to 1 percent of the Gulf of Maine (GOM) haddock ABC. In addition, this action would modify the cap accountability measures (AMs) such that, upon attainment of the cap, the midwater trawl herring fleet could not catch or land herring in excess of the incidental catch limit (2,000 lb (907.2 kg)) in or from the appropriate haddock stock area. This action is intended to allow the herring fishery to fully utilize available herring quota, while providing incentives for the midwater trawl fishery to minimize haddock catch.

DATES: Comments must be received by August 3, 2011.

ADDRESSES: You may submit comments, identified by 0648–BB08, by any of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Melissa Vasquez.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Proposed Rule for NE Multispecies Framework Adjustment 46.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of FW 46, its Regulatory Impact Review (RIR), a draft of the environmental assessment (EA) prepared for this action, and the Initial Regulatory Flexibility Analysis (IRFA) prepared by the Council are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The IRFA assessing the impacts of the proposed measures on small entities and describing steps taken to minimize any significant economic impact on such entities is summarized in the Classification section of this proposed rule. The FW 46 EA/RIR/IRFA are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Melissa Vasquez, Fishery Policy Analyst, phone: 978–281–9166, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council initiated FW 46 to revise the haddock incidental catch cap for the Atlantic herring fishery to allow for the full utilization of available herring quota, while providing incentives for the midwater trawl herring fishery to minimize haddock catch. FW 43 to the NE Multispecies FMP (71 FR 46871; August 15, 2006) established an exempted fishery in 2006 to allow for the incidental catch of NE multispecies