

UTAM, Inc., as the coordinator for the transition of the spectrum from fixed microwave service to unlicensed PCS.¹ UTAM would be responsible for administering the transition, including negotiating costs of relocation, ensuring that comparable facilities are provided, and resolving disputes of interference to fixed microwave operation from unlicensed PCS stations. Further, we required that any unlicensed PCS device or system be coordinated through UTAM before being initially deployed or subsequently relocated. All applicants for FCC equipment authorization of unlicensed PCS devices were required to be participants in UTAM.

The above decisions were conditioned on UTAM's submission and our acceptance of: (1) A funding plan that is equitable to all prospective manufacturers of unlicensed devices; and, (2) a plan for band clearing that will permit the implementation of nomadic devices and, in particular, nomadic data PCS devices, as promptly as possible. We added that, at a minimum, such a plan should include estimated time tables and priorities for clearing significant portions of the PCS unlicensed band, should address specifically the issue of nomadic data PCS devices, and should address how the plan ensures that such devices can be implemented as expeditiously as possible. We also stated that we intended to obtain public comment on these plans before acting on them.

On August 1, 1994, UTAM, Inc., filed its plans for financing and managing the relocation of fixed microwave stations. Pursuant to Sections 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 303(r), we are hereby soliciting additional comment in GEN Docket No. 90-314 on the UTAM proposal and whether it adequately addresses the Commission's concerns. Comments on these issues must be filed on or before September 12, 1994. Reply comments must be filed on or before September 27, 1994. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to the Office of the Secretary,

Federal Communications Commission, Washington, DC 20554.

The UTAM filing, along with all comments and reply comments in this proceeding, including those filed in response to this Public Notice, are available for public inspection as part of the record in GEN Docket No. 90-314 during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington, DC. All or part of the text of these filings may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street NW., Room 246, Washington, DC 20554, telephone (202) 857-3800.

For additional information regarding this Public Notice, contact David Means, Office of Engineering and Technology, FCC, telephone (301) 725-1585, extension 206.

Federal Communications Commission.
Bruce A. Franca,
Deputy Chief Engineer.
[FR Doc. 94-20085 Filed 8-17-94; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 940822-4222 I.D. 072594B]

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

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

ACTION: Emergency interim rule.

SUMMARY: NMFS is taking emergency action to reclassify Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) as endangered, a change from the current threatened status, under the Endangered Species Act of 1973 (ESA). NMFS has determined that the status of Snake River spring/summer chinook salmon and the status of Snake River fall chinook salmon warrant reclassification to endangered, based on a projected decline in adult Snake River chinook salmon abundance.

EFFECTIVE DATE: This rule is effective from August 18, 1994 to May 26, 1995.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR (503/230-5430) or Laurie

Sullivan, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1990, NMFS received petitions from Oregon Trout, and competitors Oregon Natural Resources Council, Northwest Environmental Defense Center, American Rivers, and Idaho and Oregon chapters of American Fisheries Society to determine whether Snake River spring chinook salmon, Snake River summer chinook salmon, and Snake River fall chinook salmon should be listed as threatened or endangered under the ESA. NMFS published a notice on September 11, 1990, (55 FR 37342) announcing that the petitions presented substantial scientific information indicating that the listings may be warranted and requesting information from the public. During the subsequent status reviews, NMFS reviewed all available scientific information pertaining to the status of Snake River spring chinook salmon, Snake River summer chinook salmon, and Snake River fall chinook salmon. The NMFS Northwest Region Biological Review Team (BRT) prepared status review reports for Snake River spring and summer chinook salmon (Matthews and Waples 1991) and Snake River fall chinook salmon (Waples et al. 1991) providing detailed information, discussion, and references relevant to the level of risk faced by the species, including historical and current abundance, population trends, distribution of fish in space and time, and other information indicative of the health of the population.

NMFS proposed listing Snake River spring/summer chinook salmon (56 FR 29542) and Snake River fall chinook salmon (56 FR 29547) as threatened on June 27, 1991. The final rule listing Snake River spring/summer chinook salmon and Snake River fall chinook salmon as threatened was published on April 22, 1992 (57 FR 14653). The decision to list was based in part on a determination that the population constituted an evolutionarily significant unit (ESU) pursuant to NMFS's policy published on November 20, 1991 (56 FR 58612). Critical habitat was designated for Snake River spring/summer chinook salmon and Snake River fall chinook salmon on December 28, 1993 (58 FR 68543).

Under the ESA and its implementing regulations (50 CFR part 424), an "endangered species" is any species that is in danger of extinction

¹ See, Second Report and Order, GEN Docket No. 90-314, 58 FR 59174, November 8, 1993, at para. 83-91. See, also, Memorandum Opinion and Order, GEN Docket No. 90-314, 59 Fed. Reg. 32830, June 24, 1994, at para. 209-223. See, also, 47 CFR 15.307. The frequency band established for unlicensed PCS is 1910-1930 MHz. See 47 CFR 15.301.

throughout all or a significant portion of its range. A "threatened species" is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Current Status

Spring/Summer Chinook Salmon

Since listing of Snake River spring/summer chinook salmon in 1992, redd counts in index areas for 1992 and 1993 have continued to maintain the low levels observed during the 1980s. Data from 1994 indicate that the situation is much worse than in recent years, thus posing an imminent threat of extinction throughout all or a significant portion of its range. The pre-season estimate for returning upriver spring/summer chinook adults was 49,000, the third lowest on record since 1938. However, the final total 1994 adult spring chinook salmon count at Bonneville Dam was 20,132 (Fish Passage Center 1994), about 43 percent of the previous record low return. The expected 1994 escapement of the combined run of Snake River spring and summer chinook salmon to Lower Granite Dam will likely result in the production of 250 to 500 redds in the index areas, which is only 14 to 28 percent of the recent ten-year average (NMFS and USFWS 1994).

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

While it is impossible to make specific projections for returns of spring chinook salmon over the next three to five years, it is possible to comment in general terms on the prospects for decreasing run sizes. Because of the weak 1990 brood and the apparent failure of the 1991 brood, the prospects for improved returns depend on the relatively abundant 1992 and 1993 broods. Outmigration conditions in 1994 for the 1992 brood were poor. Therefore, there is reason to believe that returns will not substantially increase until the 1993 brood contributes to the returns in 1997 and 1998. After 1998, returns will again be influenced by the low adult returns expected in 1994 and 1995. NMFS is concerned that the expected dramatic decline in spring chinook salmon abundance may indicate that summer chinook salmon abundance will also be lower than in recent years.

In small populations, random processes can lead to two major types of

risk: Demographic and genetic. Demographic risk is the risk of extinction due to environmental fluctuations, random events affecting individuals in the population, and possible reductions in reproduction or survival at low population sizes. Genetic risk is the risk of loss of genetic variability and/or population fitness through inbreeding and genetic drift. Both types of risk increase rapidly as population size decreases.

Severe, short-term genetic problems from inbreeding are unlikely unless population size remains very low for a number of years. However, the erosion of genetic variability due to low population size is cumulative, so long-term effects on the population (even if it subsequently recovers numerically) are also a concern.

The Snake River spring/summer chinook salmon ESU consists of many local spawning populations spread over large geographic areas. Therefore, the total number of fish returning to local spawning populations would be much less than the total run size. Assuming that 1,300 to 1,500 spring/summer chinook salmon adults survive to spawn, the average number of spawners per subpopulation would only be 30 to 40 fish (NMFS and USFWS 1994). Based on recent trends in redd counts in major tributaries of the Snake River, NMFS believes that many local populations could be at critically low levels, with individual streams in the Grande Ronde River, Middle Fork Salmon River, and Upper Salmon River basins at particularly high risk. Both demographic and genetic risks would be of concern for local populations, and in some cases, habitat might be so sparsely populated that adults would not find mates.

Fall Chinook Salmon

Since listing of Snake River fall chinook salmon in 1992, adult returns to Lower Granite dam for 1992 and 1993 have continued to maintain the low levels observed during the 1980s. Updated information in 1994 indicate that the situation is much worse thus posing an imminent threat of extinction throughout all or a significant portion of its range. The projected return of listed fall chinook salmon to the Columbia River in 1994 is 803, the second lowest on record. A tentative run forecast for 1995 suggests that the return will be about 60 percent of that expected in 1994 (NMFS and USFWS 1994). While it is impossible to make specific projections for returns of fall chinook salmon over the next three to five years, it is possible to generally comment on the prospects for decreasing run sizes.

The 1991 brood is apparently weak, based on the record low return of jacks in 1993. Therefore, the 5 year-old component of the 1996 return is likely to be low. There was sufficient escapement in 1992 and 1993 to allow for increased returns after 1995, but success of these runs will depend largely on improved passage and ocean survival conditions.

Although risks associated with small population sizes are also a general concern for Snake River fall chinook salmon, currently there is no evidence of multiple subpopulations of naturally-spawning Snake River fall chinook salmon. The primary risk to Snake River fall chinook salmon remains the continued low numbers of spawning adults. Genetic and demographic risk increases dramatically with increasing number of consecutive years of depressed population levels.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated during a status review of a species or population proposed for listing or reclassification. In addition to the evaluation for this emergency action, these criteria were reviewed in the proposed and final rules to list Snake River spring/summer chinook salmon and Snake River fall chinook salmon.

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

Hydropower development has resulted in blockage and inundation of habitat, turbine-related mortality of juvenile fish, increased travel time of juvenile migration through the Snake and Columbia Rivers, and increased travel time of migrating adults. Water withdrawal and storage, irrigation diversions, siltation and pollution from sewage, farming, grazing, logging, and mining have also degraded Snake River salmon habitat. Changes in operation of lower Snake and Columbia River dams and changes in land and water management activities since the listing of Snake River chinook salmon should result in long term improvements in survival of adult and juvenile chinook salmon. However, observed and expected low returns from 1994 and for the next few years suggest that these improvements have not yet been sufficient to remove the immediate risks to the listed species.

B. Utilization for Commercial, Recreational, Scientific, or Educational Purposes

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

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

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

C. Disease or Predation

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

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

Marine mammal numbers, especially harbor seals and California sea lions, are increasing on the West Coast and increases in predation by pinnipeds have been noted in all Northwest salmonid fisheries. However, the extent

to which marine mammal predation is a factor causing the decline of Snake River chinook salmon is unknown.

D. Inadequacy of Existing Regulatory Mechanisms

A wide variety of federal and state laws and programs have affected the abundance and survival of anadromous fish populations in the Columbia River Basin. Relevant regulatory mechanisms in place when the species were proposed for listing were discussed in supplemental factors for decline reports (NMFS 1991a; NMFS 1991b). Although some improvements in regulatory mechanisms have been made since listing, increases in estimated Snake River chinook salmon abundance during the 1991 through 1993 period are not expected to be sustained in the near future. This indicates that regulatory mechanisms currently in place are insufficient or not effectively applied, and immediate action must be taken to reverse the continuing decline of listed Snake River salmon.

E. Other Natural and Manmade Factors

Drought conditions may have contributed to reduced Snake River chinook salmon production. Annual mean streamflows for the 1977 water year were the lowest recorded since the late nineteenth century for many streams (Columbia River Water Management Group 1978). Generally, drought conditions have continued since this time, particularly in the Snake River.

Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, result in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. El Niño conditions may affect individual Snake River chinook salmon stocks differently. During El Niño conditions, chinook salmon stocks that rear in ocean areas south of Vancouver Island generally survive at a lower rate than chinook salmon stocks that inhabit northerly ocean areas (Johnson 1986). Most hatchery Snake River spring chinook salmon CWTs are recovered in British Columbia fisheries, and are believed to be less affected by El Niño conditions than hatchery summer chinook salmon. Approximately half of the Snake River hatchery (McCall Hatchery) summer chinook salmon CWT ocean recoveries come from Washington, Oregon, and California fisheries (Berkson 1991). Approximately 20 to 30 percent of the Snake River hatchery (Lyons Ferry and Hagerman hatcheries) fall chinook

salmon CWT ocean recoveries occur in Washington, Oregon, and California fisheries.

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

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

Reasons for Emergency Determination

Although conservation measures have been implemented since 1992 specifically to improve habitat and migration passage conditions, decrease harvest levels, and improve hatchery programs, NMFS believes that the new data indicating critically low returns expected for 1994 constitute an emergency requiring immediate action to reclassify both Snake River spring/summer chinook and Snake River fall chinook salmon as endangered. Section 4(b)(7) of the ESA provides that an emergency rule may be promulgated by the Secretary "in regard to any emergency posing a significant risk to the well-being of any species * * *". The severity of the decrease in run size based on the most recent estimates of returns indicates that there is a significant risk to the well-being of both Snake River fall chinook and Snake River spring/summer chinook that warrants this emergency rule. Although the reclassification will not result in additional prohibitions under section 9 of the ESA, the emergency reclassification serves notice that NMFS

will immediately implement further protections to reverse the continued decline.

Because time is a critical factor in the effort to prevent the Snake River spring/summer and fall chinook salmon from becoming extinct, and given the demographic and genetic risks these small populations of Snake River chinook salmon are now facing, it is crucial that these species be provided a high level of protection immediately.

Evaluation criteria currently used by Federal action agencies to assess impacts on threatened salmon may not adequately protect endangered salmon, and could preclude future options for recovering species now considered to be precariously close to extinction. A more accurate characterization of the status of the Snake River chinook salmon should encourage action agencies to immediately employ more conservative criteria when they propose, evaluate and implement their actions. Similarly, because changing the status of a species may require reinitiation of consultation under section 7 of the ESA on previously issued biological opinions, the emergency reclassification of Snake River chinook salmon will require NMFS to reevaluate completed consultations to determine if reinitiation is necessary. However, it should be noted that reinitiation may be made independent of the legal status of the species and may be based on new information regarding run size that may reveal that the effects of Federal actions may affect listed species in a manner or to an extent not previously considered. (See 50 CFR 402.16).

This emergency reclassification should compel Federal action agencies to adopt a more conservative approach in analyzing the risk to Snake River chinook salmon associated with ongoing and future actions, including hydropower operations, land management actions, harvest activities, and hatchery practices. For example, alternative scenarios for hydropower operation are currently being evaluated by a multi-agency workgroup. Should the current hydropower actions be determined to jeopardize the continued existence of listed species when evaluated with new analytical methods, these alternative operation scenarios may represent reasonable and prudent alternatives to the current action by providing a higher level of protection for endangered species. For land management actions, restricting development in roadless areas, evaluating land management activities on a landscape scale through watershed analysis, and affording a higher level of protection to riparian areas would

prevent foreclosure of future options for protecting Snake River chinook salmon habitat. Following reclassification, hatchery releases of listed and unlisted fish would be subjected to additional scrutiny and be expected to further reduce ecological interactions that adversely affect listed Snake River chinook salmon. Chinook fisheries are likely to be subject to restrictions beyond that of recent years. These types of protective measures should be adopted immediately to ensure that all future actions will improve survival conditions for Snake River chinook salmon.

Based on reviews of the current and expected short-term future status of Snake River spring/summer and fall chinook salmon, NMFS believes that this emergency action to reclassify Snake River spring/summer chinook salmon and Snake River fall chinook salmon from threatened to endangered is warranted. This emergency reclassification is needed immediately to preserve future management options and modify the current levels of acceptable risk to the continued existence of Snake River spring/summer chinook salmon and Snake River fall chinook salmon.

During the 240 days this emergency rule is in effect, NMFS will initiate and complete a rulemaking (with a public comment period) to extend the reclassification of Snake River spring/summer and fall chinook salmon to endangered under the ESA until such time as reclassification or delisting is warranted.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that the present situation poses a significant risk to the well-being of Snake River chinook salmon; therefore, emergency regulations can be issued under 16 U.S.C. 1533(b)(7). Pursuant to this section, the requirements of section 553 of the Administrative Procedure Act do not apply to this rulemaking. Furthermore, the AA finds that independent of 16 U.S.C. 1533(b)(7) the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553 (b) and (d) of the Administrative Procedure Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because it is issued without opportunity for prior public comment.

This rule will be implemented in a manner that is consistent to the

maximum extent practicable with the approved coastal management program of the States of Washington and Oregon. This determination has been submitted under section 307 of the Coastal Zone Management Act for review by the responsible State agency.

This proposed rule has been determined to be exempt from review under E.O. 12866.

NOAA Administrative Order 216-6 states that listing actions under the ESA are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

List of Subjects

50 CFR Part 222

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

50 CFR Part 227

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

Dated: August 15, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222 and 227 are amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531-1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), the second sentence, is amended by adding the phrase "Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); Snake River fall chinook salmon (*Oncorhynchus tshawytscha*);" immediately after the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*);".

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation of part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

§ 227.4 [Amended]

4. In § 227.4, paragraphs (f) and (g) are removed.

Subpart C—Threatened Marine and Anadromous Fish [Reserved]

§ 227.21 [Removed]

5. Subpart C "Threatened marine and anadromous fish" is reserved and § 227.21 is removed.

[FR Doc. 94-20322 Filed 8-15-94; 2:31 pm]

BILLING CODE 3510-22-W

50 CFR Part 638

[Docket No. 940821-4221; I.D. 072694B]

RIN 0648-AG65

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

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

ACTION: Emergency interim rule; extension of effectiveness with modifications.

SUMMARY: An emergency interim rule is in effect through August 14, 1994, to control the taking of live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida and Alabama. At the request of the Gulf of Mexico Fishery Management Council (Gulf Council), NMFS extends the emergency interim rule, with modifications, for an additional 90 days. As modified, this emergency interim rule prohibits all taking of live rock in the EEZ off Alabama; prohibits the taking of live rock by chipping in the Gulf EEZ from the Pasco/Hernando County line in Florida to the Florida/Alabama boundary; prohibits the taking of live rock by chipping with power-assisted tools in the Gulf EEZ south of the Pasco/Hernando County line; and establishes a daily vessel limit in the Gulf EEZ off Florida. The intended effect of this rule is to protect live rock resources and fishery habitat in the Gulf.

EFFECTIVE DATE: August 15, 1994, through November 12, 1994.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Georgia Cranmore, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the EEZ off the southern Atlantic states and in the Gulf are managed under the Fishery Management Plan for Coral and Coral

Reefs of the Gulf of Mexico and the South Atlantic (FMP). The FMP was prepared by the Gulf Council and the South Atlantic Fishery Management Council and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under section 305(c)(2)(B) and (c)(3) of the Magnuson Act, NMFS published an emergency interim rule (59 FR 25344, May 16, 1994) effective for 90 days (May 16 through August 14, 1994) to prohibit the taking of live rock in the Gulf EEZ from the Pasco/Hernando County line in Florida to the Alabama/Mississippi boundary; and, in the Gulf EEZ off Florida south of the Pasco/Hernando County line, to prohibit the use of power-assisted tools to break up or dislodge pieces of live rock and to establish a daily vessel harvest and possession limit for live rock of 25 5-gallon (19-liter) buckets.

The Gulf Council requested an extension of the current emergency interim rule published May 16, 1994, with modifications that would: (1) Reopen the area from the Pasco/Hernando County line to the Alabama/Florida boundary to the harvest and possession of loose rubble rock only, with no chipping allowed; and (2) extend throughout the Gulf EEZ off Florida the current emergency rule's daily vessel harvest and possession limit for live rock of 25 5-gallon (19-liter) buckets. The current prohibitions on taking live rock in the EEZ off Alabama and on the use of power-assisted tools to break up or dislodge pieces of live rock south of the Pasco/Hernando County line would remain in effect.

The measures in this modified emergency rule conform with management options adopted by the Gulf Council for Amendment 2 to the FMP. If approved, Amendment 2 will implement the modified emergency measures on a permanent basis and include a phaseout schedule for all wild live rock harvests. The Gulf Council and the South Atlantic Fishery Management Council expect to submit Amendment 2 in August 1994 for Secretarial review, approval, and implementation.

Based on public testimony and a review of written comments, the Gulf Council determined that the usual harvest practices and number of participants north of the Pasco/Hernando County line in Florida do not threaten the integrity of the natural hard bottoms and banks in the EEZ in that area, at least in the short-term, provided that chipping is not allowed and a daily vessel limit is established. Harvesters

provided charts of natural hard bottom areas, showed videos of reef complexes, and testified that there is sufficient loose rock in this area to support a commercial fishery. They stated that it is not their usual practice to chip rock off the ledges and that without access to live rock during the phaseout period through 1996, they would be financially unable to convert to aquaculture operations.

The EEZ off Alabama, the only other Gulf state to report landings of live rock, would remain closed to harvest because of the scarcity of live rock resources in that area. As currently proposed in Amendment 2, harvest and possession of live rock would be prohibited throughout the Gulf EEZ, except off Florida. Live rock harvests in the EEZ off Florida would be phased out and replaced by aquaculture.

NMFS concurs with the Gulf Council's request and extends the emergency interim rule, with the requested modifications, for an additional 90 days in accordance with section 305(c)(3)(B) of the Magnuson Act.

Details concerning the basis for the emergency interim rule and the classification of the rulemaking are contained in the preamble to the initial emergency interim rule and are not repeated here.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 638.5, paragraphs (o) through (q) and (u) are added to read as follows:

§ 638.5 Prohibitions.

(o) Harvest or possess live rock in the EEZ of the Gulf of Mexico from 87°31'06"W. long. west to 88°23'12"W. long., as specified in § 638.27(b).

(p) Harvest live rock by chipping in the EEZ of the Gulf of Mexico from 87°31'06"W. long. east and south to 28°26'N. lat., or possess in that area live rock taken by chipping; as specified in § 638.27(c)(1).