

with the Commission's minimum distance separation requirements at the city's reference coordinates. The reference coordinates for Channel 271A at Washington are 39-40-05 North Latitude and 97-03-02 West Longitude.

The Audio Division requests comment on a petition filed by Daniel R. Feely proposing the allotment of Channel 275A at King City, California, as the community's fourth local aural transmission service. Channel 275A can be allotted to King City in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) southwest of King City. The reference coordinates for Channel 275A at King City are 36-12-40 North Latitude and 121-07-40 West Longitude.

The Audio Division requests comment on a petition filed by Linda A. Davidson proposing the allotment of Channel 287C at Fallon Station, Nevada, as the community's first local aural transmission service. Channel 287C can be allotted to Fallon Station in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) north of Fallon Station. The reference coordinates for Channel 287C at Fallon Station are 39-36-00 North Latitude and 118-43-12 West Longitude.

The Audio Division requests comment on a petition filed by Dana J. Puopolo proposing the allotment of Channel 278A at Coachella, California, as the community's third local aural transmission service. Channel 278A can be allotted to Coachella in compliance with the Commission's minimum distance separation requirements at the city's reference coordinates. Since Coachella is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. The reference coordinates for Channel 278A at Coachella are 33-40-49 North Latitude and 116-10-23 West Longitude.

The Audio Division requests comment on a petition filed by Linda A. Davidson, proposing the allotment of Channel 293A at Cambria, California, as the community's third local aural transmission service. Channel 293A can be allotted to Cambria in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north of Cambria. The reference coordinates for Channel 293A at Cambria are 35-36-36 North Latitude and 121-06-00 West Longitude.

The Audio Division requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 238A at Carbon, Texas, as the community's first local aural transmission service. Channel 238A can be allotted to Carbon in compliance with the Commission's minimum distance separation requirements at the city's reference coordinates. The reference coordinates for Channel 238A at Carbon are 32-16-14 North Latitude and 98-49-42 West Longitude.

The Audio Division requests comment on a petition filed by TTI, Inc. proposing the allotment of Channel 286A at Northport, Alabama, as the community's second local aural transmission service. Channel 286A can be allotted to Northport in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.4 miles) southwest of Northport. The reference coordinates for Channel 286A at Northport are 33-11-02 North Latitude and 87-39-10 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 286A at Northport.

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 293A at Cambria; Channel 278A at Coachella; and Channel 275A at King City.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 295A at Americus.

4. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Washington, Channel 271A.

5. Section 73.202(b), the Table of FM allotments under Louisiana, is amended by adding Dulac, Channel 242A.

6. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Fallon Station, Channel 287C.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Carbon, Channel 238A, and Channel 264A at Palacios.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04-20357 Filed 9-8-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 221

[Docket No. 040812238-4238-01; I.D. 080904D]

RIN 0648-AS55

Procedures for Review of Mandatory Fishway Prescriptions Developed by the Department of Commerce in the Context of Federal Energy Regulatory Commission's Hydropower Licensing

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a public review process for mandatory fishway prescriptions (prescriptions) NMFS develops, pursuant to its authority under the Federal Power Act, for inclusion in hydropower licenses issued by the Federal Energy Regulatory Commission (FERC). This proposed rule is intended to supersede and codify NMFS' existing policy governing review of its prescriptions, to solicit public comments on how the process has worked during the trial period of implementation and to determine whether any further revision is warranted. The public review process will enable the public to comment on the Department's preliminary prescriptions, and to provide information to assist the Department in considering any needed modifications

of prescriptions to be included in FERC's final license.

DATES: Written comments must be received no later than November 8, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: NMFS.MCRP@noaa.gov.

Include in the subject line the following identifier: RIN 0648-AS55.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Written comments must be sent to: Thomas Bigford, Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. To ensure proper identification of your comments, include in the subject line the name, date and **Federal Register** citation of this document.

FOR FURTHER INFORMATION CONTACT: Melanie Harris at 301-713-4300, ext. 154.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Part I of the Federal Power Act (FPA), 16 U.S.C. 791(a) *et seq.*, the Department of Commerce (DOC) was granted certain authorities in the licensing process for non-federal hydroelectric generating facilities. The DOC, acting through NMFS, provides input to the Federal Energy Regulatory Commission (FERC) on a number of issues related to the license application. Among others, NMFS' authorities include the authority to prescribe fishways pursuant to section 18 of the FPA, 16 U.S.C. 811.

The FPA requires that section 18 prescriptions be included in any license issued by FERC. The mandatory nature of these prescriptions was upheld by Federal court in *American Rivers v. FERC*, 201 F.3d 1186 (9th Cir. 1999) and *American Rivers v. FERC*, 129 F.3d 99 (2d Cir. 1997). After a license has been issued, the license, including the NMFS' prescriptions, is subject to rehearing before the FERC and subsequent judicial review under the FPA's appeal procedures, which place exclusive jurisdiction in the Federal Court of Appeals, 16 U.S.C. 825l(b).

NMFS' practice has been to try to work closely with license applicants in developing prescriptions. However, licensees and others have expressed interest in having NMFS consider public input and comments on these prescriptions through a standardized review process. Such a process would provide an opportunity for interested parties to provide comment on the prescriptions.

The DOC, acting through NMFS, jointly with the Department of the Interior based on shared authority under section 18 of the FPA (together with Interior's authority under section 4(e) of the FPA), published two **Federal Register** notices while developing what initially was intended to be issued as a joint policy and procedure for public review of mandatory prescriptions (Mandatory Conditions Review Process or MCRP).

First, on May 26, 2000 (65 FR 34151), the Departments published a **Federal Register** notice soliciting public comments on the Departments' proposed policy establishing a review process for mandatory conditions and prescriptions they develop as part of FERC's hydropower licenses. Second, on December 13, 2000 (65 FR 77889), the Departments solicited public comments on a new process for public review of, and comment on, mandatory conditions and prescriptions concerning hydropower licenses. Refer to the December 13, 2000, **Federal Register** publication for a summary of the significant comments submitted in response to the May 26, 2000 notice, and the Departments' responses. In response to the December 13, 2000 notice, the Departments received 18 sets of comments representing a broad range of interests. The January 2001 joint MCRP, including responses to the public comments received on the December 13, 2000 (65 FR 77889) **Federal Register** notice was posted on the NMFS website, at the following location: <http://www.nmfs.noaa.gov/habitat/habitatprotection/pdf/FINAL%20MCR.pdf>.

The proposed rule is intended to codify an MCRP for NMFS, and to solicit public comments to inform NMFS' review process. At the same time, in a parallel proposed rule, the Department of the Interior proposes to codify an MCRP, while also proposing to add an administrative appeals process, in lieu of a rehearing stage. The DOC and the Department of the Interior employ different formats for regulations, but in all other aspects, the MCRP portions of the two proposed rules are intended to be the same.

The proposed MCRP rule published herein applies to NMFS' section 18 of the FPA prescriptions, under the FPA filed in connection with any of the following three licensing processes provided by FERC: the Traditional Licensing Process (TLP), the Alternative Licensing Process (ALP) or the Integrated Licensing Process (ILP). NMFS' recommendations under sections 10(a) and 10(j) of the FPA are subject to review by FERC under

Commission procedures, and are not governed by the MCRP.

NMFS hereby is also soliciting public comments on how its process for developing prescriptions under Section 18 has worked. Based on all comments received, NMFS will determine whether any further revision is warranted, and publish a final rule implementing the MCRP.

II. Changes from Existing MCRP

NMFS notes that the proposed rule codifies the MCRP as it has implemented during the trial period since January 2001, with the following changes. The existing MCRP provides 60 days for comments on NMFS' preliminary fishway prescriptions. In this rulemaking, 45 days has been selected to conform to the reply comments time period in FERC's ILP. See section 5.23 of 104 FERC 61,109 (July 23, 2003). In addition, the proposed rule addresses the need for special review procedures in the context of negotiated settlements, regardless of whether a settlement is reached under the TLP, ALP or ILP.

III. Administrative Review Mechanism

In the earlier joint responses to comments on the draft MCRP policy, the Departments indicated that numerous comments requested the implementation of an administrative appeals process, in addition to the review stages provided under the draft MCRP. The Departments determined at that time that an appeals process was unwarranted. However, given now that NMFS and other participants in the FERC licensing process have more than three years of experience under the MCRP, and being aware of the Department of Interior's separate proposal for an administrative appeals process to be implemented in lieu of the MCRP's rehearing stage, NMFS is again considering the possible addition of a mechanism for administrative review of its prescriptions within NMFS, including the relationship of any such mechanism to the existing FERC rehearing process, and solicits public comments. NMFS invites commenters to consider differences in the size of the case load, agency staffing, and scope of authority, relative to the Department of Interior, in commenting on the need for an additional administrative review mechanism, and the form such a review mechanism should take.

In addition, NMFS is aware of a proposal for amending the Federal Power Act that is currently being considered by Congress. The legislative proposal appears in the hydropower title passed by the House in H.R. 6 and

by the Senate in S. 14 in the 108th Congress. The same language also appears in S. 2095 which was introduced in the Senate on February 12, 2004. NMFS invites comment about whether elements of the legislative proposal should be incorporated into this rulemaking.

IV. Procedural Requirements

A. National Environmental Policy Act

NMFS has analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment because it only provides notice and comment on prescriptions. The prescriptions will be part of FERC's NEPA analysis. NMFS has determined that the issuance of this proposed rule qualifies for a categorical exclusion as defined by NOAA Administrative Order 216-6, Environmental Review Procedure.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The Chief Counsel for Regulation of the DOC certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed rule will not affect a substantial number of small entities. According to the Small Business Administration, for NAICS code 221111 hydroelectric power generation, a firm is small if, including its affiliates, its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. During the period from 2001 to 2003, of 108 licenses issued by FERC, only 4 contained section 18 prescriptions from NMFS, and none of these projects was owned or operated by small entities as defined above. Based on FERC's projected licensing schedule, reflecting licenses due to expire over the next several decades, there is no reason to expect that the currently small percentage of licenses issued subject to NMFS' section 18 authority will

significantly change, or that of these projects, a significant number will be licensed to small entities. Furthermore, in the event that NMFS, in the future, issued a Section 18 prescription for a project licensed to one or more small entities, the effect of the proposed rule would not be significant. The proposed rule provides a formal opportunity for public review of and comment on prescriptions developed by NMFS as part of FERC's hydropower licensing process, but does not mandate or determine the effects of the fishway prescriptions themselves. All fishway prescriptions are considered on a case-by-case basis and are made part of FERC's license decision, and any licenses that would have significant effects would need to undergo public review pursuant to the National Environmental Policy Act. For these reasons, the proposed rule will not have a significant economic effect. As a result, a regulatory flexibility analysis was not prepared.

C. Regulatory Planning and Review

This document is a significant rule. Though this rule will not have an adverse effect or an annual effect of \$100 million or more on the economy, the preliminary assessment of the Office of Management and Budget (OMB) is that the rule may represent a novel approach to public input, it may serve as a model for future rulemakings, and it may have interagency implications. Therefore, the rule will be reviewed by the OMB under Executive Order 12866.

D. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Will not have an annual effect on the economy of \$100 million or more and is expected to have no significant economic impacts.
2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation.
3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of this proposed rule is to provide a standardized opportunity for public comment on NMFS' prescriptions. It will impose no additional regulatory restraints to those entities already in operation. The DOC

has, therefore, determined that the proposed rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

E. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The proposed rule does not require any additional management responsibilities. NMFS expects that this proposed rule will not result in any significant additional expenditures by entities that participate in FERC's hydropower licensing process.

2. This proposed rule will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This proposed rule is not expected to have significant economic impacts nor will it impose any unfunded mandates on other Federal, state, or local governments agencies to carry out specific activities.

F. Federalism

Executive Order 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule; therefore, a Federalism assessment is not required. This proposed rule will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. No intrusion on state policy or administration is expected, roles or responsibilities of Federal or state governments will not change, and fiscal capacity will not be substantially directly affected.

G. Paperwork Reduction Act

This proposed rule does not require an information collection under the Paperwork Reduction Act. Therefore, this proposed rule does not constitute a new information collection requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. Essential Fish Habitat

NMFS has analyzed this proposed rule in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that the issuance of this proposed rule may not adversely affect the essential fish habitat of federally managed species, and therefore, an essential fish habitat consultation on this proposed rule is not required.

I. Government-to-Government Relationship With Tribes

This rule has been determined to not have impacts on Native American tribes, as that term is used in E.O. 13175. Because the proposed rule will standardize a review process of section 18 of the FPA fishway prescriptions, which directly affect tribal resources, NMFS will consult with Tribal governments when reviewing and responding to comments or Requests for Rehearing that directly relate to prescriptions that affect tribal resources.

List of Subjects in 50 CFR Part 221

Fisheries, Hydropower.

Dated: September 2, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to add 50 CFR part 221 to read as follows:

PART 221—HYDROPOWER LICENSE CONDITIONS

Subpart A—General Provisions

Sec.

221.1 Basis and purpose.

221.2 Definitions.

Subpart B—Procedures for Review of Mandatory Fishway Prescriptions

221.3 Traditional or Integrated Licensing Process (TLP or ILP, respectively).

221.4 Prescriptions submitted with an offer of settlement, whether in an Alternative Licensing Process (ALP) or otherwise.

Authority: 16 U.S.C. 811; Pub. L. 102-486, 1106 Stat. 3008.

Subpart A—General Provisions

§ 221.1 Basis and purpose.

(a) Section 18 of the Federal Power Act (16 U.S.C. 811), and § 1701(b) of the Energy Policy Act, Pub. L. 102-486, Title XVII, § 1701(b), Oct. 24, 1992, 1106 Stat. 3008, authorize the Secretary of Commerce to prescribe fishways that are required to be constructed, maintained and operated by hydropower licensees pursuant to mandatory conditions

contained in licenses issued by the Federal Energy Regulatory Commission. The Secretary's authority under the Federal Power Act, 16 U.S.C. 791(a) *et seq.* is delegated to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, and re-delegated to the Regional Administrators.

(b) The purpose of this part is to establish a process for the public to review and comment on mandatory fishway prescriptions formulated by NMFS pursuant to section 18 of the Federal Power Act, and section 1701(b) of the Energy Policy Act of 1992, and filed with the Federal Energy Regulatory Commission pursuant to FERC's hydropower licensing regulations set forth at 18 CFR subchapter B.

§ 221.2 Definitions.

Applicant means a person or legal entity applying to FERC for a hydropower license under the Federal Power Act, 16 U.S.C. 791a-823b.

Department means the U.S. Department of Commerce.

FERC means the Federal Energy Regulatory Commission.

Indian Tribe means a federally recognized Indian tribe identified in NMFS' section 18 prescriptions.

Mandatory Conditions Review Process (MCRP) means a process that allows the public to review and comment on preliminary prescriptions that NMFS submits for inclusion in a hydropower license issued under subchapter I of the Federal Power Act, 16 U.S.C. 791-823b. The process is open to the license applicant, all participants in the licensing process, and the public generally, and is limited to prescriptions submitted pursuant to section 18 of the FPA, 16 U.S.C. 811. It does not apply to recommendations filed under sections 10(a) and 10(j) of the FPA, 16 U.S.C. 803(a) and (j).

Modified fishway prescriptions means mandatory fishway prescriptions developed for inclusion in a hydropower license pursuant to section 18 of the Federal Power Act, 16 U.S.C. 811, as modified based on comments received according to the procedures set forth in this rule, and filed with FERC after the close of the comment period on the draft NEPA document.

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of the agency's six Regional Administrators, as appropriate.

Subpart B—Procedures for Review of Mandatory Fishway Prescriptions

§ 221.3 Traditional or Integrated Licensing Process (TLP or ILP, respectively)

(a) *Notice and comment on preliminary prescriptions--(1) Ready for Environmental Analysis.* Even though NMFS will work with applicants during the pre-filing and post-filing stages, the MCRP is triggered when FERC issues a notice indicating the license application is Ready for Environmental Analysis (REA). Comments, recommendations, terms and conditions, and prescriptions concerning the license application will typically be filed with FERC within 60 days from the date of the REA notice.

(2) *Filing of preliminary prescriptions.*

(i) NMFS will file preliminary prescriptions within FERC's 60-day REA comment period. In order to ensure that this submission is as complete as possible and that NMFS can receive meaningful comments, NMFS needs to receive all requested information from the applicant in a timely manner, and accurate notification from FERC of when the REA notice will be issued. If settlement negotiations are on-going at the time FERC issues the REA notice, NMFS will suspend these negotiations in order to prepare preliminary prescriptions to meet FERC's deadline. When filing the preliminary prescriptions, NMFS will include a rationale for the prescriptions, reference relevant documents already filed with FERC, and provide a schedule of when the preliminary prescriptions will be modified. The schedule should indicate that NMFS will submit modified prescriptions within 60 days after the close of the draft NEPA comment period. The information that is filed in response to the REA notice is generally incorporated into FERC's National Environmental Policy Act (NEPA) analysis that establishes the framework for license conditions.

(ii) Exceptional circumstances, such as the filing of competing applications for a hydropower license, may preclude NMFS from filing preliminary prescriptions within 60 days after FERC issues its REA notice. When exceptional circumstances occur, NMFS will work with FERC and the applicant(s) on a case-by-case basis to ensure that an opportunity for public review and comment is provided.

(iii) If NMFS determines at the time of the REA notice that it does not have sufficient information, such as completed reports on required studies or information on technical feasibility, to support the filing of preliminary prescriptions, it may exercise its

authority under section 18 of the FPA by reserving the authority to submit prescriptions at a later date. In these situations, NMFS will file with FERC its reservation of authority within 60 days after FERC issues its REA Notice and will provide the reasons for this action. NMFS will accept comments on its reservation of authority.

(iv) NMFS will file the preliminary prescriptions, the schedule for modification, and reference to supporting information with FERC. NMFS also will provide this information to FERC's Service List, which includes the applicant.

(3) *Comment opportunity.* (i) The MCRP will provide a primary opportunity for notice and comment during the 45 days immediately following the submission of preliminary prescriptions under the TLP or ILP. NMFS will begin reviewing comments when received; however, no response will be made until after review of the draft NEPA document.

(ii) NMFS' preliminary submission to FERC, which is served on FERC's Service List, will invite comments and new supporting evidence on the preliminary prescriptions within a 45-day time period. Participants on the Service List and other interested stakeholders are encouraged to comment at this time. All comments on NMFS' preliminary prescriptions should be specifically identified as such and include supporting evidence.

(iii) In addition, to be responsive to persons with an interest in the preliminary prescriptions, but who have not been previously involved in the licensing process, NMFS will consider public comments provided during the draft NEPA comment period. FERC's draft NEPA document includes NMFS' preliminary prescriptions. All comments submitted to NMFS will be considered. In order to give the comments the full and thorough consideration necessary to efficiently provide FERC with the modified prescriptions, NMFS strongly encourages participants in the licensing process to submit comments during the primary notice and comment period, rather than wait until the NEPA comment period. Comments submitted on the preliminary prescriptions during the 45-day comment period need not be resubmitted during the draft NEPA comment period.

(iv) If NMFS reserves its authority, it will accept comments on this decision during the comment period. If and when the reservation of authority is invoked during the term of the license, NMFS will work with all interested parties to determine how to apply the MCRP.

Because this reservation of authority has rarely been invoked, it is hard to predict how the MCRP will apply. In addition, NMFS will accept comments even when it has not been involved in the proceedings. However, it must be noted that procedural limitations may make it difficult for NMFS to become involved late in the process. Therefore, these issues should be raised to NMFS in the initial consultation phase or as early as possible in the licensing process to allow NMFS the opportunity to enter the licensing process at a meaningful stage.

(b) *Filing modified prescriptions.* (1) NMFS will review the draft NEPA document and all comments received on the preliminary prescriptions. Based on this review, NMFS will modify the prescriptions, as needed, and respond to comments. Modified prescriptions are reviewed and signed at a level at least as high as the Regional Administrator. Within 60 days of the close of the draft NEPA comment period, NMFS will submit modified prescriptions, unless substantial or new information is provided during the NEPA comment period requiring additional review time. In those infrequent situations when additional time is needed, NMFS will submit to FERC, and serve upon the Service List and all commenters, a letter providing an explanation of the need for additional time and a schedule for preparing the modified prescriptions.

(2) NMFS will coordinate with other resource agencies and tribes, as appropriate, when reviewing and responding to comments. The format of the response to comments may vary depending on the nature, substance and extent of the comments received, inter-agency involvement, time frame, and NMFS' practice. Submission of the modified prescriptions will be signed by an authorized person at least as high as the Regional Administrator level.

(3) NMFS will submit to FERC modified prescriptions, a response to comments, and an index of NMFS' administrative record. In its submission, NMFS will identify the schedule for filing its administrative record. NMFS will file its administrative records with FERC. A copy of the administrative record will be provided to the applicant. Any party on the Service List may request copies of the administrative record, in whole or in part. Finally, NMFS intends to furnish modified prescriptions to FERC in advance of issuance of the final NEPA document.

(c) *Reconsideration of modified prescriptions - requests for rehearing.* After FERC issues the license, if any intervenor submits a request for rehearing that clearly identifies

substantial issues with NMFS' modified prescriptions and includes supporting evidence, NMFS will review those concerns. For substantive issues raised regarding NMFS' prescriptions, NMFS will submit a written response to the commenter, and file a copy with FERC, within 30 days if possible. In those cases when FERC authorizes parties an opportunity to file briefs or present oral argument on the issues presented on rehearing, NMFS will submit its written response in the form of a brief, filed with FERC pursuant to 18 CFR 385.713(d)(2). In those unusual situations when more than 30 days is required for response because of significant or new information, NMFS will, within 30 days, submit its reason for needing this time and a reasonable schedule for the written response. NMFS may choose to file consolidated responses to more than one request for rehearing.

§ 221.4 Prescriptions submitted with an offer of settlement, whether in an Alternative Licensing Process (ALP) or otherwise.

This § 221.4 describes an opportunity for NMFS to receive and respond to comments regarding the mandatory prescriptions submitted to FERC pursuant to a negotiated offer of settlement, including settlements reached under FERC's ALP. The form of the review process will depend on whether NMFS submits prescriptions that are intended to implement corresponding terms of a settlement agreement entered into by NMFS pursuant to its statutory authority. If NMFS submits prescriptions that are not part of a settlement agreement, then the procedure described in § 221.3 applies.

(a) Under the ALP the applicant files a license application, including an offer of settlement, which may include NMFS' agreement as to its prescriptions, and a draft applicant prepared NEPA document with FERC. Alternatively, NMFS may join as a party to a settlement agreement reached through negotiations under the TLP or ILP. If, pursuant to a settlement agreement reached with the licensee and other parties, NMFS agrees to the terms of settlement pertaining to its exercise of authority under section 18 of the FPA, then the following modified review process applies:

(1) Under the ALP, or in response to the submission of any offer of settlement reached under the TLP or ILP, FERC will publish a notice calling for comments on the license application and the offer of settlement, including the terms of settlement pertaining to NMFS' agreed upon section 18 of the

FPA prescriptions. In response to FERC's notice, interested parties are provided an opportunity to comment on the license application, the settlement offer, and NMFS' agreed upon prescriptions.

(2) If comments and supporting evidence directly addressing NMFS' agreed upon fishway prescriptions are submitted, then NMFS will review the comments. If comments are substantive and raise issues not previously identified and possibly require changes to the prescriptions and/or settlement agreement, NMFS will discuss the comments and its appropriate resolution with participants, based on the parties' communications protocol.

(3) If NMFS determines, after discussion with the other settlement participants, that the comments warrant a change in the agreed-upon prescriptions, NMFS will modify the agreed-upon prescriptions. NMFS will modify the agree-upon prescriptions that are made as a result of comments received and discussions with the settlement participants. If submitted under the ALP, this comment opportunity provided pursuant to the offer of settlement will be the only review conducted by NMFS' on its agreed-upon prescriptions, prior to FERC's license decision.

(b) Under the ALP and other licensing processes, FERC also publishes a notice indicating that it is ready to proceed with the environmental review. In response to this Notice, NMFS, pursuant to its statutory authority under section 18 of the FPA, will submit to FERC, as a separate filing, its agreed-upon prescriptions, so that regardless of FERC action on the settlement agreement, NMFS' agreed-upon prescriptions will become mandatory license conditions. Any changes that may have been made to the settlement prescriptions as a result of comments received will be included in this submission.

[FR Doc. 04-20469 Filed 9-8-04; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[I.D. 090204F]

Endangered and Threatened Species: Notice of Public Hearings on Proposed Listing Determinations for Salmonids in California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: In June 2004, NMFS proposed new listing determinations for 27 Evolutionarily Significant Units (ESUs) of salmon and *O. mykiss* as threatened and endangered under the ESA, including 10 ESUs in California. NMFS recently extended the public comment period for these proposals to October 20, 2004, and also announced a series of eight public meetings/hearings that will be held in the Pacific Northwest. In this notice, NMFS is announcing that public hearings will also be held at six locations in California from late September through mid-October to provide additional opportunities for the public and other interested parties to comment on the subject proposals.

DATES: Written comments must be received by October 20, 2004. See **SUPPLEMENTARY INFORMATION** for the specific public hearing dates.

ADDRESSES: You may submit comments on the proposed listing determinations for 27 ESUs of West Coast Salmon and *O. mykiss* (69 FR 33101; June 14, 2004) by any of the following methods:

E-mail: The mailbox address for submitting e-mail comments on the new listing determination proposals is salmon.nwr@noaa.gov. Please include in the subject line of the e-mail comment the document identifier "Proposed Listing Determinations."

Mail: Submit written comments and information to Assistant Regional Administrator, NMFS, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, California, 90802-4213. Please identify the comment as regarding the "Proposed Listing Determinations."

Fax: 562-980-4027. Please identify whether the fax comment as regarding the "Proposed Listing Determinations."

Copies of the **Federal Register** notices cited herein and additional salmon-related materials are available on the Internet at <http://www.nwr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region, (562) 980-4021.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 2004, NMFS published proposed new ESA listing determinations for 27 salmon and *O. mykiss* ESUs, including ten ESUs that occur in California (69 FR 33101). The 27 proposed listing determinations include 162 total hatchery programs, as part of four ESUs being proposed for endangered status and 23 ESUs being

proposed for threatened status. In addition, NMFS proposed amendments to the existing 4(d) protective regulations for the proposed threatened ESUs.

Extension of Public Comment Period

Several requests were received to extend the comment period for the proposed listing determinations for the 27 ESUs. The original comment period for the proposed listing determinations was to end on September 13, 2004, but has recently been extended to October 20, 2004 (69 FR 53031), to allow additional opportunity for public comment (see **DATES** and **ADDRESSES**).

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In order to provide the public additional opportunity provide comments on these new listing determination proposals, NMFS will be holding six public hearings in California at the specific dates and locations listed below:

(1) September 22, 2004; 6:30-9:30pm at the North Coast Inn, 4975 Valley West Blvd., Arcata, CA 95521 (2) September 23, 2004; 6:30-9:30pm at the DoubleTree Hotel Sonoma Wine Country, One DoubleTree Drive, Rohnert Park, CA 94928

(3) September 28, 2004; 6:30-9:30pm at the Best Western Hilltop Inn, 2300 Hilltop Drive, Redding, CA 96002

(4) September 28, 2004; 6:30-9:30pm at the Monterey Beach Resort, 2600 Sand Dunes Drive, Monterey, CA 93940

(5) October 12, 2004; 6:30-9:30pm at the Radisson Hotel Sacramento, 500 Leisure Lane, Sacramento, CA 95815

(6) October, 12, 2004; 6:30-9:30pm at Fess Parker's DoubleTree Resort, 633 East Cabrillo Blvd., Santa Barbara, CA 93103

NMFS has scheduled these hearings to allow affected stakeholders and members of the public the opportunity to provide comments directly to agency staff during the comment period. However, these public meetings are not the only opportunity for the public to provide input on these proposals. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposals (via correspondence, e-mail, and the Internet; see **ADDRESSES**, above) up until the scheduled close of the comment period on October 20, 2004.