ACTION: Notice of public hearings and extension of comment deadline.

SUMMARY: By this document, NMFS announces the times, dates, and locations for public hearings in order to receive comments from the general public on the U.S. Navy's application for a Letter of Authorization for the take of small numbers of marine mammals by harassment incidental to Navy operations of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar. NMFS also announces an extension of the comment deadline in order to allow the public sufficient time following the close of the public hearings to submit written comments.

DATES: Public hearings on the proposed rule are scheduled as follows:

1. April 26, 2001, 6 p.m. - 9 p.m., Los Angeles, CA.

2. April 28, 2001, 1 p.m. - 5 p.m., Honolulu, HI.

3. May 3, 2001 9 a.m. - 12 noon, Silver Spring, MD.

Comments must be postmarked no later than May 18, 2001. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: The public meetings will be held at the following locations:

1. Los Angeles: Renaissance Hotel,9620 Airport Boulevard, Los Angeles, CA.

2. Honolulu: Marriott Waikiki Beach Hotel, 2552 Kalakaua Avenue, Honolulu, HI.

3. Silver Spring: Silver Spring Metro Center Building 4, Auditorium, 1301 East-West Highway, Silver Spring, MD.

Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

A copy of the Navy's application is available and may be obtained by writing to this address or by telephoning one of the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS (301) 713–2055, ext 128 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Under section 101(a)(5)(A) of the MMPA, on March 19, 2001, NMFS published a proposed rule (66 FR 15375) to authorize the taking of marine mammals incidental to the world-wide deployment of the U.S. Navy's SURTASS LFA sonar. That document noted that public hearings would be held, if requested. On March 26, 2001, NMFS received the first of numerous requests for a hearing and has determined that public hearings are warranted. In addition, to allow the public sufficient time after the public hearing to submit written comments, NMFS has extended the deadline for public comment from May 3, 2001, to May 18, 2001.

At the public hearings, a brief presentation will precede a request for public information and comments. Those who intend to speak will be asked to submit a speaker card (available at the door). Although oral comments will be heard, all statements, including graphics, should be submitted in writing to assure an accurate public record. All statements and documents submitted will become part of the public record on this rulemaking. Questions limited to NMFS' responsibilities under the MMPA regarding the subject action must be made during the speaker's comment time.

Speakers will have the option to submit additional, supplemental, or replacement comments prior to the deadline for the public comment. If 20 or more speaker cards are received at either hearing, NMFS may request all speakers to limit their presentations to 3 to 5 minutes, in order to allow all potential speakers the opportunity to present their statements.

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to one of the contacts listed (see **FOR FURTHER INFORMATION CONTACT**) at least 10 days prior to the hearing date.

Dated: April 4, 2001.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–9265 Filed 4–12–01; 10:53 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 000303059–1019–02; I.D. No. 021700B]

RIN 0648–XA49

Endangered and Threatened Species; Proposed Endangered Status for a Distinct Population Segment of Smalltooth Sawfish (*Pristis pectinata*) in the United States

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

ACTION: Proposed rule, notice of availability; request for comments.

SUMMARY: NMFS has completed a comprehensive status review of smalltooth sawfish and has determined that a petitioned action to list North American populations of smalltooth sawfish as endangered is warranted. A distinct population segment (DPS) of smalltooth sawfish in the United States is in danger of extinction. NMFS has reviewed the status of the species and efforts being made to protect the species and is proposing to place the U.S. DPS of smalltooth sawfish on the list of endangered species under the Endangered Species Act of 1973, as amended (ESA). NMFS has determined that this DPS is in danger of extinction throughout all or a significant portion of its range from a combination of the following four listing factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting its continued existence. If this proposed listing is finalized, the protective measures of the ESA will be extended to the U.S. DPS of smalltooth sawfish, a recovery plan will be prepared and implemented, and critical habitat may be designated.

DATES: Comments on this proposal and on the December 2000 Smalltooth Sawfish Status Review must be received

by July 16, 2001. A public hearing will be held promptly if any person so requests within 45 days of the date of this publication. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: Send all comments and materials concerning this proposed rule and the December 2000 Smalltooth Sawfish Status Review (Status Review) to the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, Saint Petersburg, FL 33702. The Status Review may be obtained by contacting the above individual. Please note that electronic mail or internet site comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS, at the address above (727–570–5312), or Marta Nammack, NMFS, 301–713–1401, ext. 116.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1999, NMFS received a petition from the Center for Marine Conservation requesting NMFS to list North American populations of smalltooth sawfish and largetooth sawfish as endangered under the ESA. The petitioner's request was based on four criteria: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) the inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting its continued existence. On March 10, 2000, NMFS published its determination that the petition presented substantial information indicating that listing may be warranted for smalltooth sawfish, but not for largetooth sawfish. Concurrently, NMFS announced the initiation of a smalltooth sawfish formal status review (65 FR 12959, March 10, 2000).

The ESA defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range''. A ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range''. Section 4(a)(1) of the ESA states that a species is threatened or endangered if any one or more of the following factors causes it to be, or likely to become, in danger of extinction throughout all or a significant portion of its range: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Section 4(b)(1)(A) of the ESA requires that NMFS make listing determinations based solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

In order to conduct a comprehensive review of smalltooth sawfish, a status review team was created to investigate the status of the species with regard to the listing criteria provided by the ESA. In addition to its own resources and data, the status review team gathered all known records and data of smalltooth sawfish by contacting fishery managers, museums and other research collectors. The status review contains the best scientific and commercial information available on smalltooth sawfish. The document addresses the status of the species, the five listing determination criteria, and the effect of efforts underway to protect the species.

The December 2000 Smalltooth Sawfish Status Review is now available. The findings of the Status Review have been accepted by NMFS and are summarized here. The Status Review contains a more complete discussion and complete literature citations for the information summarized in this proposed rule.

Consideration as a ''species'' under the Endangered Species Act

The ESA defines species as ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature''. 16 U.S.C. 1532(15). This definition allows for the recognition of distinct population segments at levels below taxonomically recognized species or subspecies. On February 7, 1996, the U.S. Fish and Wildlife Service (FWS) and NMFS published a joint policy to clarify the phrase ''distinct population segment (DPS)'' for the purposes of listing, delisting and reclassifying species under the ESA (61 FR 4722). This policy identifies two criteria that must be met for a population segment to be considered a DPS under the ESA: (1) The *discreteness* of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the *significance* of the population segment to the species or subspecies to which it belongs.

Discreteness of the U.S. Population of Smalltooth Sawfish

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The status review team was unable to find any indication that the current U.S. population of smalltooth sawfish interact with smalltooth sawfish elsewhere, suggesting that the U.S. population may be effectively isolated from other populations. However, there are few scientific data on the biology of smalltooth sawfish; and it is not possible to conclusively subdivide this species into discrete populations on the basis of genetics, morphology, behavior, or other biological characteristics. However, the DPS policy allows for the delineation of a DPS based on international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. The smalltooth sawfish status review team was unable to identify any mechanisms regulating the exploitation of this species anywhere outside of the U.S. In contrast, several southeastern U.S. states have regulations in place prohibiting fishing for this species. Based on these differences in control of exploitation and regulatory mechanisms, the U.S. population of smalltooth sawfish meets the requirements of discreteness on an international boundary basis.

Significance of the U.S. Population of Smalltooth Sawfish

The DPS policy identifies several factors that may be considered in making a determination of a population's significance to the taxon to which it belongs. Among these considerations is evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon. The smalltooth sawfish has already been wholly or nearly extirpated

from large areas of its former range in the North Atlantic (Mediterranean, U.S. Atlantic and Gulf of Mexico) and the Southwest Atlantic by fishing and habitat modification; and its status elsewhere is uncertain but likely to be similarly reduced. In fact, the status review team was unable to find any recent verifiable records of smalltooth sawfish populations outside of the U.S. Reports of this species from outside the Atlantic may be misidentifications of other pristids. Therefore smalltooth sawfish populations in U.S. waters, while extremely depleted, may be the largest population of smalltooth sawfish in the Western Atlantic. As sawfish in general are suffering worldwide declines, the U.S. population of smalltooth sawfish comprises an important component of the sawfishes' remaining global biological diversity. The U.S. population of smalltooth sawfish is the northernmost population in the Western Hemisphere (see habits and habitat section). Because other populations of smalltooth sawfish are apparently relatively scarce compared to the U.S. population, and because the U.S. population is the northernmost population in the western Atlantic, the loss of the U.S. population would result in a significant gap in the range of this species. For these reasons, the U.S. population of smalltooth sawfish is significant as defined under the DPS policy.

Based on the above analysis of the discreteness and significance of smalltooth sawfish,, smalltooth sawfish that occur in waters of the eastern United States are both discrete and significant and constitute a DPS. As such, consideration of the conservation status of the U.S. DPS of smalltooth sawfish in relationship to the ESA's listing standards is appropriate.

Distribution and Abundance

Smalltooth sawfish are tropical marine and estuarine fish that have the northwestern terminus of their Atlantic range in the waters of the eastern United States. In the United States, smalltooth sawfish are generally a shallow water fish of inshore bars, mangrove edges, and seagrass beds, but are occasionally found in deeper coastal waters.

In order to assess both the historic and the current distribution and abundance of the smalltooth sawfish, the status review team collected and compiled literature accounts, museum collection specimens, and other records of the species. This information indicates that prior to around 1960, smalltooth sawfish occurred commonly in shallow waters of the Gulf of Mexico and eastern seaboard up to North Carolina, and more rarely as far north as New York. Subsequently their distribution has contracted to peninsular Florida and, within that area, can only be found with any regularity off the extreme southern portion of the state. The current distribution is centered in the Everglades National Park (including Florida Bay).

Although time-series abundance data are lacking, publication and museum records, negative scientific survey results, anecdotal fisher observations, and limited landings per unit effort (from Louisiana) indicate that smalltooth sawfish have declined dramatically in U.S. waters over the last century. The decline is likely greater than indicated by numbers or frequencies of catches because during the past century, both fishing and scientific sampling effort have increased by orders of magnitude. The fact that documented smalltooth catch records have declined during this period despite these tremendous increases in fishing effort underscores the population reduction in smalltooth sawfish. NMFS concludes that the abundance of the U.S. DPS of smalltooth sawfish is at an extremely low level relative to historic levels.

Summary of Factors Affecting the Species

Section 4 of the ESA (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the ESA (50 CFR part 424) set forth the procedures for adding species to the Federal list. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors and their application to the U.S. DPS of smalltooth sawfish are described below.

(a) The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Loss and/or degradation of habitat has contributed to the decline of many marine species, and is unknown, but fully expected, to have impacted the distribution and abundance of smalltooth sawfish. The continued urbanization of the southeastern coastal states has resulted in substantial loss of coastal habitat through such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, erosion, and diversions of freshwater run-off. Animal wastes and fertilizers from agricultural runoff contribute large amounts of non-point source nutrient loading and introduce a wide range of toxic chemicals into habitats important to smalltooth sawfish. Urban development in the southeast coastal zone is more than four times the national average, destroying or degrading significant amounts of coastal and estuarine habitat. Commercial activities in the southeast eliminate or degrade substantial amounts of marine and estuarine fish habitat although the exact amount is unknown. An analysis of 18 major southeastern estuaries recorded over 703 miles (1,131 km) of navigation channels and 9,844 miles (15,842 km) of shoreline modifications. Profound impacts to hydrological regimes have been produced in South Florida through the construction of a 1,400–mile (2,260–km) network of canals, levees, locks, and other water control structures which modulate freshwater flow from Lake Okeechobee, the Everglades, and other coastal areas.

Potential detrimental impacts from the activities listed above on smalltooth sawfish habitat within the U.S. DPS include: (1) loss of wetlands, (2) eutrophication, (3) point and non point sources of pollution, (4) increased sedimentation and turbidity, and (5) hydrologic modifications. Smalltooth sawfish may be especially vulnerable to coastal habitat degradation due to their affinity to shallow, estuarine systems. The cumulative impacts from habitat degradation discussed above may reduce habitat quality and limit habitat quantity available to the U.S. DPS of smalltooth sawfish. Given current low levels of abundance, and its current retracted range, it is critical that efforts be undertaken to better understand, avoid, minimize and mitigate these factors.

(b) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Smalltooth sawfish were historically often caught as bycatch in various fishing gears, including gillnet, otter trawl, trammel net, seine, and, to a lesser degree, hand line. There are frequent accounts in early literature of smalltooth sawfish being entangled in fishing nets from areas where smalltooth sawfish were once common, but are now rare or extirpated. Their long, toothed rostrum makes it difficult to avoid entanglement in virtually all kinds of large mesh gillnet gear. The saw penetrates easily though nets and causes the animal to become entangled when it attempts to escape. Shrimp trawling is another source of incidental

mortality on smalltooth sawfish. Entangled specimens frequently had to be cut free, causing extensive damage to nets and presenting a substantial hazard if brought on board. For these reasons, most smalltooth sawfish caught by fishermen were either killed outright or released only after removal of their saws.

Quantitative data are limited, but indicate that smalltooth sawfish historically were commonly taken by commercial fishermen and that this species has experienced severe declines in its abundance over the past several decades. Large-scale directed fisheries for smalltooth sawfish have not existed; however, smalltooth sawfish bycatch has been commercially landed in various regions, primarily in Louisiana. Total Gulf of Mexico landings dropped continually from 1950 to 1978 from around 5 metric tons to less than 0.2 metric tons during this time period. NMFS does not have any records of landings since 1978.

A data set from ''Fisheries Statistics of the United States'' (1945-1978) of smalltooth sawfish landings in Louisiana by shrimp trawlers, containing both landings data and crude information on effort (number of vessels, vessel tonnage, number of gear units) underscores that landings have dramatically declined, even as fishing effort increased. Annual smalltooth landings in Louisiana declined from a high of 34,900 lb (15,830 kg) in 1949 to less than 1,500 lbs (680 kg) in most years after 1967. During this period of time, the number of fishing vessels, the size of the fishing vessels and the amount of gear that they deployed increased substantially. Landings per unit effort (LPUE) data were calculated using three different units of effort (number of vessels, tonnage of vessels and number of gear units). All three data series showed dramatic declines in LPUE, from high levels in the 1950s to very low levels in the 1970s. The magnitude of these declines is such that the LPUE values in the 1970s are less than 1 percent of those in the 1950s, demonstrating a severe decline in the population. The lack of landings since 1978 shows that smalltooth sawfish have been commercially extinct for over 20 years.

Anecdotal information collected by NMFS port agents indicates that smalltooth sawfish are now taken very rarely in the shrimp trawl fishery. The most recent records from Texas are from the 1980s. Through 1999, smalltooth sawfish were still occasionally documented in shrimp trawls in Florida (4 from 1990 to 1999).

Historically, smalltooth sawfish have also occasionally occurred as bycatch in recreational fisheries. Occasional takes with harpoon or hook-and-line by recreational fishers in Florida were recorded during the first half of the 20th century. In Texas, many sawfish were reportedly taken incidentally by sport fishermen in the bays and surf prior to the 1960s. Most of these fish were released; however, prior to their live release, the saws of many individuals were removed. This practice may have contributed to the decline of smalltooth in Texas.

Today, recreational catches of sawfish are very rare, and poorly documented for the most part, except within the Everglades National Park. Long-term abundance data are not available, but there are recent (1989-1999) recreational catch per unit effort (CPUE) data for the Everglades. These CPUE data indicate that a sustaining population still exists there, with consistent annual catches by private recreational anglers and guide boats.

Direct take of smalltooth sawfish has been of little importance or remains obscure. Although there is a market for smalltooth sawfish saws, the species is not commonly taken and any captures are apparently incidental.

Smalltooth sawfish have also been taken by collectors and sold live to aquaria. The recent high value aquaria are willing to pay for this species ($1,000 per ft; $3,200 per m) may be providing increased incentive for their collection. The smalltooth sawfish has rarely been used for scientific purposes.

(c) Disease or Predation

There is no information regarding competition, predation, and disease affecting smalltooth sawfish. The decline of the species, however, appears to have been one of slow attrition over the course of the twentieth century (primarily from bycatch in fisheries and secondarily by coastal habitat destruction) rather than some acute epizootic event. The few living specimens examined appear to be in good health.

(d) Inadequacy of Existing Regulatory Mechanisms

Numerous Federal, state, and inter-jurisdictional laws, regulations and policies govern activities in U.S. waters and have the potential ability to affect the abundance and survival of smalltooth sawfish and their habitat. While these laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. For example, NMFS and FWS consult with other agencies on projects that may impact fish and wildlife and provide recommendations to avoid any adverse impacts, but there has never been a recommendation directed at the protection of sawfish. Any general recommendations that are implemented and reduce habitat loss in shallow coastal areas may provide some benefit to smalltooth sawfish by curbing increased habitat degradation.

There are no Federal regulations for the protection of sawfish. With the exception of Florida, Louisiana, and possibly Alabama in the near future, smalltooth sawfish can also still be legally harvested in state waters.

As noted in the preceding section, a century of net fisheries combined with the low reproductive potential of the sawfish (typical of most elasmobranchs) resulted in a very severe decline in sawfish populations. Smalltooth sawfish bycatch in gillnets has likely been reduced due to recent regulations prohibiting or limiting the use of gillnets in some state waters and the depressed abundance of this species, but bycatch in other gears such as trawls may still present a threat to this species. Recent reports of smalltooth sawfish caught with their saws already removed indicate that smalltooth sawfish are still being harmed by commercial or recreational fishing activities. Based on this information, existing Federal and state laws, regulations, and policies appear inadequate to protect smalltooth sawfish.

(e) Other Natural or Manmade Factors Affecting its Continued Existence

Current and future abundance of smalltooth sawfish is limited by its life history characteristics. While little is known directly about smalltooth sawfish life history, inferences can be drawn from closely related species for which more information is available, such as the largetooth sawfish and other elasmobranchs. These species have slow growth, late maturity, a long life span, and low fecundity; and it is highly likely that smalltooth sawfish share these characteristics. These combined characteristics result in a very low intrinsic rate of population increase and are associated with the life history strategy known as ''k-selection''. K-selected animals are usually successful at maintaining relatively small, persistent population sizes in relatively constant environments. Conversely, they are not able to respond effectively (rapidly) to additional sources of mortality resulting from changes in their environment. Such changes include overexploitation and habitat

degradation. Smalltooth sawfish have been (and are currently) subjected to both overexploitation and habitat degradation.

The intrinsic rate of population growth can be a useful parameter to estimate the capacity of species to withstand exploitation. Animals with low intrinsic rates of increase are particularly vulnerable to excessive mortalities and rapid stock collapse, after which recovery may take decades. The estimated intrinsic rate of natural increase for smalltooth sawfish ranges from 0.08/year to 0.13/year, and population doubling times range from 5.4 years to 8.5 years. These values are considered to be low and to place the species at risk.

Basis for Determination

The U.S. DPS of smalltooth sawfish is at a critically low level of abundance. The U.S. DPS of smalltooth sawfish continues to face threats from: (1) loss of wetlands, (2) eutrophication, (3) point and non point sources of pollution, (4) increased sedimentation and turbidity, and (5) hydrologic modifications. Commercial bycatch has played the primary role in the decline of this DPS. Quantitative data are limited, but indicate that smalltooth sawfish have been taken by commercial fishermen and that this species has experienced severe declines in their abundance. While Federal, state, and interjurisdictional laws, regulations, and policies lead to overall environmental enhancements indirectly aiding smalltooth sawfish, very few have been applied specifically for the protection of smalltooth sawfish. Based on the species' low intrinsic rate of increase resulting from their slow growth, late maturation, and low fecundity, population recovery potential for the species is limited and the species is at risk of extinction. Therefore, under current circumstances, the U.S. DPS of smalltooth sawfish is in danger of extinction.

Protective measures for the U.S. DPS of smalltooth sawfish were examined in combination with the species' status information to determine if listing as threatened or endangered was warranted and if there was a need for an emergency listing. Current protective measures and conservation efforts underway to protect the U.S. DPS of smalltooth sawfish are confined to: actions directed at increasing general awareness of this species and the risks it faces; possession prohibitions in the state waters of Florida and Louisiana; and research being pursued by the Mote Marine Laboratory's Center for Shark Research. There are no Federal or state conservation plans for the smalltooth sawfish.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Section 4(b)(1)(A) of the ESA requires that determinations regarding whether any species is threatened or endangered be based solely on the best scientific and commercial information available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by a state or foreign nation to protect such species (16 U.S.C. 1533(b)(1)(A)).

Based on results of its status review, NMFS has concluded that the U.S. population segment of smalltooth sawfish constitutes a DPS, or ''species,'' under the ESA. After evaluating the status of this DPS, NMFS has determined that it is in danger of extinction throughout all or a significant portion of its range. NMFS proposes to list the U.S. DPS of smalltooth sawfish as endangered under the ESA at this time. At present, the DPS consists of a single population, with its current distribution centered in the Everglades Park (including Florida Bay).

Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Should the proposed listing be made final, protective regulations under the ESA would take effect, a recovery program would be implemented, and critical habitat may be designated. NMFS recognizes that to be successful, protective regulations and recovery programs for smalltooth sawfish will need to be developed in the context of conserving aquatic ecosystem health. Federal, state and the private sectors would need to cooperate to conserve the listed U.S. DPS of smalltooth sawfish and the ecosystems upon which it depends.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(A) and (a)(1)(B)) provide NMFS with authority to grant exceptions to the ESA's ''taking'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for other listed species for a number of activities.

Under section 10(a)(1)(B) of the ESA, incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, operation of a privately owned power plant in the vicinity of the listed species, and the implementation of state fishing regulations.

Service Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, the NMFS and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

(a) Role of peer review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Federal and State agencies, and the private sector.

(b) Identification of those activities that would constitute a violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. Activities that NMFS believes could result in violation of section 9 prohibitions against ''take'' of the U.S.

DPS of smalltooth sawfish include, but are not limited to, the following:

(1) Bycatch associated with commercial and recreational fisheries;

(2) Poaching of individuals caught as bycatch in the state of Florida for trade;

(3) Destruction of coastal habitat through such activities as agricultural and urban development, commercial activities, dredge and fill operations, boating, erosion, and diversions of freshwater run-off; and

(4) Unauthorized collecting or handling of the species (permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the DPS).

NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of smalltooth sawfish acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement in a biological opinion pursuant to section 7 of the ESA; or

(2) Federally approved projects that involve activities such as agriculture, managed fisheries, road construction, discharge of fill material, stream channelization or diversion for which consultation under section 7 of the ESA has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(3)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, in which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at that time it is listed upon a determination that such areas are essential for the conservation of the species. 'Conservation' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary.

Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat. NMFS is evaluating the prudency of determining critical habitat. If NMFS determines that critical habitat is determinable and that it is prudent to designate critical habitat, it will publish a proposed designation of critical habitat for the U.S. DPS of smalltooth in a separate rule.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Comments are encouraged on this proposal as well as on the Status Review. Specifically, NMFS is soliciting information regarding: (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this DPS; (2) additional information concerning the range, distribution, and population size of this DPS; (3) current or planned activities in the subject area and their possible impacts on this DPS; and (4) additional efforts being made to protect smalltooth sawfish in the U.S.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by NMFS, and such communications may lead to a final regulation that differs from this proposal.

Classification

The Conference Report on the 1982 amendments to the ESA notes that economic considerations have no relevance to determinations regarding the status of species, and that the Regulatory Flexibility Act is not applicable to the listing process. Similarly, listing actions are not subject to the requirements of Executive Order 12612 and are exempt from review under Executive Order 12866.

National Environmental Policy Act

NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. See NOAA Administrative Order 216-6.

Federalism

Smalltooth sawfish records and data were collected by the status review team from appropriate state fishery managers and incorporated into the Status Review. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state/Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, who will be invited to comment.

List of Subjects in 50 CFR Part 224

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

Dated: April 9, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—MARINE AND ANADROMOUS SPECIES

1. The authority for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, paragraph (a) is amended by adding the following entry, ''Smalltooth sawfish (*Pristis pectinata*)'' before ''Shortnose sturgeon (*Acipenser brevirostrum*)'', to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

(a) Marine and anadromous fish.

* * * * *

Species		Where Listed	When Listed	Critical Habitat
Common Name	Scientific Name			
Smalltooth sawfish	*Pristis pectinata*	U.S.A, Atlantic: NC through FL; Gulf of Mexico: TX through FL	4/16/01	NA
*	*	*	*	*

3. In § 224.101, paragraph (a), revise the entry under ''Common Name'' from ''Salmon, Atlantic'' to read ''Atlantic salmon'', and insert ''65 FR 69459, Nov. 17, 2000'' in the ''When Listed'' column for this entry.

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