

In our proposal to list the Southern Resident DPS, we included information on potential physical and biological features that are essential to conservation and that may require special management considerations. We requested comments on the appropriateness of considering the suggested features to assist in developing a proposal for critical habitat designation. We have reviewed the comments provided and the best available scientific information on "essential features", and will initiate rulemaking to designate critical habitat.

#### Classification

##### *National Environmental Policy Act (NEPA)*

ESA listing decisions are exempt from the requirements to prepare an environmental assessment or environmental impact statement under the NEPA. See NOAA Administrative Order 216-6.03(e)(1) and *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981). Thus, we have determined that the final listing determination for the Southern Resident killer whale DPS described in this notice is exempt from the requirements of the NEPA of 1969.

##### *Executive Order (E.O.) 12866, Regulatory Flexibility Act and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

##### *E.O. 13084- Consultation and Coordination with Indian Tribal Governments*

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O.

13084 do not apply to this final rule. Nonetheless, we will continue to inform potentially affected tribal governments, solicit their input, and coordinate on future management actions.

##### *E.O. 13132 - Federalism*

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in 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 final rule. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule was provided to the relevant state agencies in each state in which the species is believed to occur, and these agencies were invited to comment. We have conferred with the State of Washington in the course of assessing the status of Southern Resident killer whales, and considered, among other things, state and local conservation measures. Washington has listed killer whales under the Washington Administrative Code 232-12-014 and is coordinating with us to develop a Conservation Plan.

#### References

A list of references cited in this notice is available upon request (see ADDRESSES) or via the Internet at <http://www.nwr.noaa.gov>. Additional information, including agency reports and written comments, is also available at this Internet address.

#### List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: November 10, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

#### PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation 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 (b), add the following to the List of Endangered Marine and Anadromous Species, in alphabetical order under MARINE MAMMALS:

#### § 224.101 Enumeration of endangered marine and anadromous species.

\* \* \* \* \*

(b) *Marine mammals.* \* \* \* Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not including Southern Resident killer whales placed in captivity prior to listing or their captive born progeny; \* \* \*

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[I.D. 110905G]

##### Fraser River Sockeye Salmon Fisheries; Inseason Orders

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

**ACTION:** Temporary rule; inseason orders.

**SUMMARY:** NMFS publishes the Fraser River salmon inseason orders regulating salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2005 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing times and areas for the gear types of U.S. treaty Indian and all-citizen fisheries during the period the Panel exercised jurisdiction over these fisheries.

**DATES:** Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1); those dates and times are listed herein. Comments will be accepted through December 5, 2005.

**ADDRESSES:** Comments may be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

Comments can also be submitted via e-mail at the

Fraser2005salmon.nwr@noaa.gov, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments and include the I.D. number 110905G in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** David Cantillon, (206) 526-4140.

**SUPPLEMENTARY INFORMATION:** The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon fishing unless opened by Panel orders which are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notification of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders must be published in the Federal Register as soon as practicable after they are issued (50 CFR 300.97(b)(4)). Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2005 orders are being published in this single document to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2005 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220-22:

*Order No. 2005-01: Issued 2 p.m., July 29, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 p.m. (noon) Monday, August 1, 2005, to 12 p.m. (noon), Wednesday, August 3, 2005.

*Order No. 2005-02: Issued 1 p.m., August 2, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Wednesday, August 3, 2005, to 12 p.m. (noon), Saturday, August 6, 2005.

*Order No. 2005-03: Issued 2 p.m., August 5, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Saturday, August 6, 2005, to 12 p.m. (noon), Monday, August 8, 2005.

*Order No. 2005-04: Issued 2 p.m., August 7, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Monday, August 8, 2005, to 12 p.m. (noon), Wednesday, August 10, 2005.

*Order No. 2005-05: Issued 2 p.m., August 9, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 p.m. (noon) Wednesday, August 10, 2005, to 12 p.m. (noon), Saturday, August 13, 2005.

*Order No. 2005-06: Issued 1 p.m., August 12, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Saturday, August 13, 2005, to 12 p.m. (noon), Wednesday, August 17, 2005.

*Order No. 2005-07: Issued 2 p.m., August 19, 2005.*

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Saturday, August 20, 2005, to 12 p.m. (noon), Tuesday, August 23, 2005.

*Order No. 2005-08: Issued 3:30 p.m., August 22, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon) Tuesday, August 23, 2005, to 12:00 p.m. (noon), Saturday, August 27, 2005.

Areas 6, 7, and 7A: Open to net fishing from 5 a.m., Friday, August 26, 2005, to 8 a.m., Saturday, August 27, 2005.

#### All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 3 p.m. until 7 p.m. on Thursday, August 25, 2005.

Areas 7 and 7A Reef Net: Open to fishing from 6 a.m. until 2 p.m. on Thursday, August 25, 2005.

*Order No. 2005-09: Issued 1:30 p.m., August 26, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 12 p.m. (noon), Saturday, August 27, 2005, to 12 p.m. (noon) Tuesday, August 30, 2005.

Areas 6, 7, and 7A: Open to net fishing from 8 a.m., Saturday, August 27, 2005, to 9 p.m., Sunday, August 28, 2005.

#### All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 2 p.m. until 8 p.m. on Monday, August 29, 2005.

Areas 7 and 7 Purse Seine: Open to fishing from 8 a.m. until 6 p.m. on Monday, August 29, 2005.

Areas 7 and 7A Reef Net: Open to fishing from 12 p.m. (noon) until 6 p.m. on Monday, August 29, 2005.

*Order No. 2005-10: Issued 12 p.m., September 2, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 4 a.m., Saturday, September 3, 2005, to 12 p.m. (noon) Wednesday, September 7, 2005.

Areas 6, 7, and 7A: Open for drift gillnets and purse seines from 4 a.m., Saturday, September 3, 2005, to 9 p.m. Monday, September 5, 2005, in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

#### All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. (Midnight) on Tuesday, September 6, 2005, in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m. on Tuesday, September 6, 2005, in the area southerly and easterly of a straight line drawn from Iwersen's dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

*Order No. 2005-11: Issued 4 p.m., September 6, 2005.*

#### All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. (Midnight) on both Wednesday, September 7, and Friday, September 9, 2005.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m. on both Wednesday, September 7, and Friday, September 9, 2005.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m. on both Wednesday, September 7, and Friday, September 9, 2005.

*Order No. 2005-12: Issued 12 p.m., September 9, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Open for drift gillnets from 5 a.m., Saturday, September 10, 2005, to 9 p.m. Monday, September 12, 2005.

Areas 6, 7, and 7A: Open for drift gillnets and purse seines from 5 p.m., Saturday, September 10, 2005, to 9 p.m. Monday, September 12, 2005.

#### All Citizen Fisheries

Areas 7 and 7A Gillnet: Open to fishing from 8 a.m. until 11:59 p.m. (Midnight) on both Tuesday, September 13, and Wednesday, September 14, 2005.

Areas 7 and 7A Purse Seine: Open to fishing from 5 a.m. until 9 p.m. on both Tuesday, September 13, and Wednesday, September 14, 2005.

Areas 7 and 7A Reef Net: Open to fishing from 5 a.m. until 9 p.m. on both Tuesday, September 13, and Wednesday, September 14, 2005.

*Order No. 2005-13: Issued 12 p.m., September 12, 2005.*

#### Treaty Indian Fisheries

Areas 4B, 5, and 6C: Relinquish regulatory control effective 12:01 a.m., Tuesday, September 13, 2005. *Order No. 2005-14: Issued 12 p.m., September 16, 2005.*

The Fraser River Panel approved the following relinquishment of regulatory control in U.S. Puget Sound Panel waters:

Areas 6, 6A, and 7: Relinquish regulatory control effective 12:01 a.m., Saturday, September 17, 2005.

Area 7A: Relinquish regulatory control in that portion of Area 7A lying east and south of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island

in the province of British Columbia, Canada, effective 12:01 a.m., Saturday, September 17, 2005.

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is impracticable because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 3636(b).

Dated: November 14, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 05-22862 Filed 11-17-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 111505B]

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

**ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 12 noon, local time, November 17, 2005, through June 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, 727-824-5305, fax: 727-824-5308, e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be