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Alicia Chambers,

NIST Executive Secretariat.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XC891]

#### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Notice of final determination and discussion of underlying biological and environmental analyses; notice of availability of Finding of No Significant Impact.

**SUMMARY:** NMFS has evaluated the joint resource management plan (RMP) submitted to NMFS by the Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and the Washington Department of Fish and Wildlife, pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The Skagit River steelhead fishery RMP manages harvest of ESA-listed, Skagit River steelhead in Treaty Indian fisheries and non-Treaty recreational fisheries in the Skagit River terminal area of Washington State. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, had determined pursuant to Limit 6 of the 4(d) Rule for salmon and steelhead that implementing and enforcing this RMP will not appreciably reduce the likelihood of survival and recovery of Puget Sound steelhead. In compliance with the National Environmental Policy Act (NEPA), NMFS also announces the availability of its Finding of No Significant Impact for the Skagit River steelhead fisheries, under the RMP.

**DATES:** The final determination of take prohibition limitation under the ESA was made on March 22, 2023. The Finding of No Significant Impact was signed on March 22, 2023.

**ADDRESSES:** Written responses to the determination should be addressed to the NMFS Sustainable Fisheries Division, 1009 College St. Southeast, Suite 210, Lacey, WA 98503.

**FOR FURTHER INFORMATION CONTACT:** James Dixon at (360) 522-3673 or by email at [james.dixon@noaa.gov](mailto:james.dixon@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

#### ESA-Listed Species Covered in This Notice

Steelhead (*Oncorhynchus mykiss*): threatened, naturally produced and artificially propagated Puget Sound.

#### Background

The Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and Washington Department of Fish and Wildlife have jointly submitted a steelhead fishery RMP to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plan was submitted on December 6, 2021, pursuant to limit 6 of the 4(d) Rule for ESA-listed salmon and steelhead. The RMP would manage the harvest of Skagit River natural-origin steelhead in the Skagit River terminal marine area. As required, NMFS took public comments on its recommended determination for how the plans address the criteria in § 223.203(b)(5) prior to making its final determination.

#### Discussion of the Biological Analysis Underlying the Determination

The goal of the Skagit RMP is to provide steelhead fishing opportunities for the Skagit River Treaty Indian Tribes and for recreational fishers, in a manner that is conservative at higher run sizes and increasingly so at lower run sizes. For a period of 10 years (through April 30, 2032), the Skagit RMP will allow implementation of annual steelhead fisheries in the Skagit terminal management area consistent with the impact limits, management framework, enforcement and monitoring requirements, as described in the RMP. The Skagit RMP utilizes an abundance-based, stepped harvest regime to determine annual harvest rates, based on the annual estimated run size. These stepped harvest rates range from a 4 percent total allowable harvest rate at low run sizes (<4,001 adults) to 25 percent for runs greater than 8,001 adults.

The Sustainable Fisheries Division (SFD) has analyzed the Skagit RMP's proposed abundance-based, stepped harvest regime, along with the conservation measures proposed in the plan. We have concluded that the Skagit RMP would provide effective protection to the Skagit River steelhead populations and would not jeopardize

the Puget Sound Steelhead Distinct Population Segment (DPS) based on parameters defining a viable salmonid population in terms of overall abundance and productivity, as well as the diversity and spatial structure of the steelhead within the Skagit River basin and the role of the Skagit steelhead to the larger DPS. The Skagit RMP will provide for the proposed harvest opportunities while not appreciably slowing the population's achievement of viable function or appreciably reducing the survival and recovery of the Puget Sound Steelhead DPS.

NMFS' determination on the Skagit RMP depends upon implementation of all of the monitoring, evaluation, reporting tasks or assignments, and enforcement activities included in the RMP. Reporting and inclusion of new information derived from research, monitoring, and evaluation activities described in the plan provide assurance that performance standards will be achieved in future seasons. NMFS' evaluation is available on the West Coast Region website at: <https://www.fisheries.noaa.gov/action/skagit-basin-steelhead-fishery>.

#### Summary of Comments Received in the Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its Proposed Evaluation and Pending Determination (PEPD) on the plan for public review and comment on December 23, 2022 (87 FR 78944). The PEPD was available for public review and comment for 30 days.

During the public comment period, 28 comments were received, all by email. These came in the form of: individual, unique comments, and letters from fishing and conservation organizations. NMFS thoroughly reviewed and considered all of the substantive comments received from the public and the additional literature cited. This review of new information and data informed NMFS' subsequent analysis, in its biological opinion, but did not lead to any changes to the Skagit RMP, as submitted, or to SFD's determination that the plan adequately addresses the 4(d), Limit 6 criteria. A section summarizing and responding to the substantive comments received during the public comment period on the PEPD is included as part of the final evaluation document, available on the West Coast Region website. Based on its evaluation and recommended determination, and considering the public comments, NMFS issued its final determination on the joint state-tribal plan on March 22, 2023.

**Authority**

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) Rule (50 CFR 223.203(b)) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a plan developed jointly by a state and a tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000).

Dated: April 4, 2023.

**Angela Somma,**

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648-XC888]

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits**

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on

applications for proposed Exempted Fishing Permits.

**DATES:** Comments must be received on or before April 24, 2023.

**ADDRESSES:** You may submit written comments by the following method:

- *Email:* nmfs.gar.efp@noaa.gov.

Include in the subject line "Blue Planet Strategies 2023 On-Demand Gear EFP."

**FOR FURTHER INFORMATION CONTACT:**

Laura Deighan, Fishery Management Specialist, *Laura.Deighan@noaa.gov*, (978) 281-9184.

**SUPPLEMENTARY INFORMATION:** Blue Planet Strategies submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to expand trials of on-demand fishing gear that uses one or no surface buoys. This EFP would exempt the participating vessels from the gear marking requirements at 50 CFR 697.21(b)(2) to allow the use of trawls of more than three traps with no more than one surface marking and § 648.84(b) to allow the use of gillnet gear with no more than one surface marking.

This project would be a continuation and expansion of Blue Planet Strategies trials of on-demand fishing systems aimed at reducing the entanglement risk to protected species, mainly the North Atlantic right whale, in the American lobster and Jonah crab and sink gillnet fisheries. Under the previous EFP, 6 lobster vessels made 136 trips and 175 deployments in Statistical Areas 513, 467, and 512. Four gillnet vessels made 83 trips and 60 deployments in Statistical Areas 521 and 513. Blue Planet Strategies states that they have not experienced gear conflicts as a result of their on-demand research to date. In addition to gear trials, Blue Planet Strategies has been involved in outreach efforts, including meetings and demonstrations with fishermen, fishing organizations, conservation organizations, fishery management agency staff and leadership, and other interested parties and presentations to the Ropeless Consortium and Society for Marine Mammalogy.

The objectives of this EFP include testing the efficacy of acoustic release devices and other alternatives to static vertical lines in both trap/pot and sink gillnet fisheries; testing the efficacy of sub-surface gear marking technology to relocate gear and notify other fishermen to the presence of gear in the absence of surface markings; testing smart buoy technology that signals gear location and movement; testing and comparing two sub-surface gear marking systems (including hull-mounted transducers);

and testing the viability of integrating SmartRafts, which monitor whale presence and changing ocean conditions, into on-demand gear.

If granted, this permit would allow up to 16 trap/pot vessels and 4 sink gillnet vessels to replace up to 4 of their existing trawls or strings with modified gear that replace one or both vertical lines with acoustic on-demand systems or other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed rope systems, lift bag systems, and grappling). Initially, the researchers would work with 10 lobster vessels and 2 gillnet vessels, and would expand to the full number of vessels (16 and 4, respectively) in mid-to-late 2023, as additional funding and gear become available. While effort would occur year-round, the researchers anticipate the majority of effort would occur from May to October and fewer than 20 vessels would use on-demand gear at any given time.

For trap/pot gear trials, participants fish between 3 and 25 traps per trawl, in depths ranging from 50 to 400 ft (15.24 to 121.92 m), and with soak times of 2 to 4 days. The researchers expect 780 trips, with 2 pieces of modified gear set per trip, resulting in a total of 1,560 deployments. Participants would deploy on-demand trap/pot gear in Lobster Management Area 1 and, to a lesser extent, Lobster Management Area 3, and would target areas that are not as heavily fished by mobile fleets to reduce the risk of gear conflicts. This project would include the opportunity for up to 12 of the participating lobster vessels to trial gear without static vertical lines in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas.

For gillnet trials, participants fish a maximum of 21 nets of 300 ft (91.44 m) or less for 6 to 8 hours. The researchers expect 104 trips, with 2 pieces of modified gear set per trip, resulting in a total of 208 deployments. Gillnet participants would deploy gear in Statistical Area 521 (approximately 50 deployments), Area 538 (approximately 10 deployments), and in the Georges Bank Regulated Mesh Area (148 deployments).

Some units would be outfitted with EdgeTech acoustic marking technology, acoustic triggers, and software. Other units would be outfitted with Teledyne undersea modem marking technology, acoustic triggers, and software. All units would include smart buoys on each anchoring unit, outfitted with GPS for data collection and lost gear retrieval.

Other than gear markings, all trap trawls and gillnet strings would be consistent with the regulations of the