This document is scheduled to be published in the Federal Register on 12/17/2020 and available online at **federalregister.gov/d/2020-26287**, and on **govinfo.gov**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 201123-0313; RTID 0648-XE804]

Revisions to Hatchery Programs Included as Part of Pacific Salmon and Steelhead Species Listed under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, NMFS, announce updates to the descriptions of Pacific salmon and steelhead (*Oncorhynchus spp.*) species that are currently listed as threatened or endangered under the Endangered Species Act of 1973 (ESA). Updates include the addition or removal of specific hatchery programs, as well as clarifying changes to the names of specific hatchery programs included as part of the listings of certain Pacific salmon and steelhead species. These changes are informed by our most recent ESA 5-year reviews, which were completed in 2016. We are not changing the ESA-listing status of any species under NMFS's jurisdiction, or modifying any critical habitat designation. The updates also include minor changes in terminology to standardize species descriptions.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR, 97232.

FOR FURTHER INFORMATION CONTACT: Robert Markle, NMFS, West Coast Region, Protected Resources Division, 1201 NE Lloyd Blvd, Suite 1100, Portland, OR

97232, by phone at (503) 230-5433, or by e-mail at *robert.markle@noaa.gov*. You may also contact Maggie Miller, NMFS, Office of Protected Resources, (301) 427-8403. Copies of the 5-year status reviews can be found on our website at *https://www.fisheries.noaa.gov/action/2016-5-year-reviews-28-listed-species-pacific-salmon-steelhead-and-eulachon*.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA provides for NMFS and the U.S. Fish and Wildlife Service (FWS) to make determinations as to the endangered or threatened status of "species" in response to petitions or on their own initiative. In accordance with the ESA, we (NMFS) make determinations as to the threatened or endangered status of species by regulation. These regulations provide the text for each species' listing and include the content required by the ESA section 4(c)(1). We enumerate and maintain a list of species under our jurisdiction which we have determined to be threatened or endangered at 50 CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species) (hereafter referred to as the "NMFS Lists"). The FWS maintains two master lists of all threatened and endangered species, *i.e*., both species under NMFS's jurisdiction and species under FWS's jurisdiction (the "FWS Lists") at 50 CFR 17.11 (threatened and endangered animals) and 50 CFR 17.12 (threatened and endangered plants). The term "species" for listing purposes under the ESA includes the following entities: species, subspecies, and, for vertebrates only, "distinct population segments (DPSs)." Steelhead are listed as DPSs and Pacific salmon are listed as "evolutionarily significant units (ESUs)," which are essentially equivalent to DPSs for the purpose of the ESA.

For West Coast salmon and steelhead, many of the ESU and DPS descriptions include fish originating from specific artificial propagation programs (*e.g.* hatcheries) that, along with their naturally-produced counterparts, are included as part of the listed

species. NMFS' Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead (Hatchery Listing Policy) (70 FR 37204, June 28, 2005) guides our analysis of whether individual hatchery programs should be included as part of the listed species. The Hatchery Listing Policy states that hatchery programs will be considered part of an ESU/DPS if they exhibit a level of genetic divergence relative to the local natural population(s) that is not more than what occurs within the ESU/DPS. In applying the Hatchery Listing Policy, we use a variety of sources to reach conclusions about divergence.

Section 4(c)(2)(A) of the ESA requires regular review of listed species to determine whether a species should be delisted, reclassified, or retain its current classification (16 U.S.C. 1533(c)(2)). We completed our most recent 5-year review of the status of ESA-listed salmon ESUs and steelhead DPSs in California, Oregon, Idaho, and Washington in 2016 (81 FR 33468, May 26, 2016). As part of the 5-year review, we reviewed the classification of all West Coast salmon and steelhead hatchery programs, guided by our Hatchery Listing Policy. We considered the origin for each hatchery stock, the location of release of hatchery fish, and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s). A NMFS internal memorandum (Jones 2015) explains the results of our hatchery program review. Jones (2015) found that, based on the best scientific evidence available, some hatchery programs should be reclassified, that is, added to or removed from the description of the relevant ESUs/DPSs.

On October 21, 2016, we proposed to revise the NMFS Lists based on the aforementioned review and we solicited public comments (81 FR 72759). The proposed revisions to listed species descriptions included:

(1) Adding new hatchery programs that meet the Hatchery Listing Policy criteria for inclusion, or adding programs that resulted from dividing existing listed hatchery programs into separate programs with new names;

(2) Removing hatchery programs that have been terminated and do not have any fish remaining from the program, or removing previously listed hatchery programs that were subsumed by another listed program;

(3) Revising some hatchery program names for clarity or to standardize conventions for naming programs; and

(4) Making minor changes in terminology to standardize species descriptions.

The approach we used in the proposed rule and this final rule to determine which hatchery programs are included within an ESU or DPS is consistent with the approach taken in the 2016 status review. That is, as part of our status reviews, we reviewed hatchery programs under our Hatchery Listing Policy and concluded that some changes to the list of hatchery programs included in certain ESUs and DPSs were warranted. Those changes included updates to hatchery program names as well as the inclusion of new programs and the removal of programs that had been discontinued. However, as indicated in the 2016 status review, none of these changes resulted in a change to the listing status of an ESU or DPS because none of the changes affected the extinction risk of the ESU or DPS.

Comments Received in Response to the Proposed Rule and Responses

We received 23 comments on the proposed rule via *www.regulations.gov*, letter, or email. These comments were submitted by individuals, state agencies, non-governmental organizations, and tribes or tribal representatives. Many of the submissions included similar comments, and several were form letters. We reviewed all comments for substantive issues or new information and identified several broad issues of concern. In the text below we have organized comments by major issue categories, summarized the

comments for brevity and clarity, and addressed similar comments with common responses where possible. After considering all comments, we made changes or clarifications in the final rule as explained below.

Comment 1 – Genetic and Ecological Risk of Hatchery Programs: Numerous commenters stated their opposition to the release of hatchery fish into areas with natural populations. They also opposed adding new hatchery programs to ESA-listed ESUs or DPSs. Commenters stated that NMFS is failing to adequately address the deleterious genetic and ecological effects of hatchery fish, and requested that we convene a panel of experts to revise and update our Hatchery Listing Policy.

Response: This final rule arises from our obligation under ESA section 4(c)(2) to regularly assess the status of listed species and determine whether they should be de-listed or changed in classification from threatened to endangered or vice-versa. 16 U.S.C. 1531(c)(2). In 2016, we assessed the composition of salmonid ESUs and DPSs pursuant to the requirements of the ESA and our Hatchery Listing Policy to determine whether any changes were warranted.

The Hatchery Listing Policy was developed, in part, in response to the lawsuit *Alsea Valley Alliance* v. *Evans* (2001) (*Alsea* decision), where a U.S. District Court ruled that NMFS cannot exclude hatchery fish from an ESA listing if NMFS determines that such fish comprise part of the listed ESU/DPS under the applicable ESA standards. The Hatchery Listing Policy was subsequently upheld in the lawsuit *Trout Unlimited* v. *Lohn* (2009). In that case, the court upheld NMFS' determination to include both hatchery and natural fish in a listed steelhead DPS, despite the potential threats posed by hatchery fish. The court noted that the listing process comprises two distinct phases: the initial decision regarding the composition of the DPS, and the subsequent decision whether to list the DPS.

Our recommendation to include a hatchery program in an ESA-listed ESU or DPS does not reflect a de-emphasis of the risks from hatchery programs. The Hatchery Listing Policy guiding our recommendation acknowledges such risks and their impacts on the adaptive genetic diversity, reproductive fitness, and productivity of the ESU. If we determine that a hatchery program warrants inclusion in an ESU or DPS, we consider effects of the hatchery fish on the natural fish comprising the ESU/DPS in determining how the ESU/DPS should be classified under ESA section 4(c). For the hatchery programs that are being added, a summary of findings from this analysis can be found in Jones (2015).

The Hatchery Listing Policy states that hatchery programs will be considered part of an ESU/DPS if they exhibit a level of genetic divergence relative to the local natural population(s) that is not more than what occurs within the ESU/DPS. We are not changing or weakening our application of this moderate divergence criterion relative to how we have applied it in the past.

We do not believe there is a need to revise our Hatchery Listing Policy, and reiterate that the policy does recognize the risks from hatchery programs and allows us to evaluate them in a manner commensurate with the potential benefits of the programs.

Of note, many hatchery programs have undergone or are undergoing review under our ESA section 4(d) regulations at 50 CFR 223.203(d)(5) (4(d) Rule). When NMFS determines that a Hatchery and Genetic Management Plan (HGMP) meets the 4(d) Rule requirements and approves the HGMP, then the ESA's prohibitions against take of threatened species do not apply to program activities. When we list a hatchery program under the ESA, it does not automatically receive an exemption from the ESA's prohibitions against take. In evaluating whether to approve an HGMP under the 4(d) Rule, NMFS carries out consultation under ESA section 7 to ensure that HGMP implementation is not likely to jeopardize any listed species or destroy or adversely

modify its critical habitat. This provides another means for NMFS to evaluate the effects of hatchery fish on the ESU/DPS to which they belong and recommend management measures to improve hatchery operations.

Comment 2 – Use of Best Available Science: Numerous commenters stated that the Hatchery Listing Policy and the moderate divergence criterion are not consistent with the best available science. Three commenters stated that use of a criterion that focuses solely on genetics—without attention to life history, ecology, and population demographics—is inadequate. Related comments questioned the current relevance of supporting documents including the Jones (2011, 2015) memos and two reports, the Salmon and Steelhead Assessment Group's (SSHAG),"Hatchery Broodstock Summaries and Assessments for Chum, Coho, and Chinook," and the Salmonid Hatchery Inventory and Effects Evaluation Report (SHIEER) titled "An Evaluation of the Effects of Artificial Propagation on the Status and Likelihood of Extinction of West Coast Salmon and Steelhead under the Federal Endangered Species Act" (SSHAG 2003, SHIEER 2004).

Response: The best available information upon which to determine whether hatchery programs should be included in a salmon ESU or steelhead DPS is referenced in Jones (2015). This report, in conjunction with individual HGMPs and associated section 7 consultations, is the most comprehensive and current information available. In the few cases where commenters provided new information, we considered the information (see *Revisions to Threatened Species Descriptions* and *Revisions to Endangered Species Descriptions,* below). In most cases, commenters provided no new information for us to consider. Under the Hatchery Listing Policy, we base our determinations of species status under the ESA on the status of the entire ESU/DPS, including hatchery fish. We recognize that important genetic resources representing the ecological and genetic diversity of species can reside in hatchery fish as well as natural fish. We apply the

Hatchery Listing Policy in support of the conservation of naturally-spawning salmon and the ecosystems upon which they depend, consistent with section 2(b) of the ESA.

Comment 3 – Justification for the Rule and Data Sources: Numerous comments asserted that the proposed rule did not provide adequate justification to support our proposed revisions. Comments requested more detail about the criteria, data, and analytical methods that we used to evaluate each hatchery program. Several comments asked how the level of divergence between hatchery and natural populations is measured. Other comments stated that pHOS (proportion of spawners of hatchery origin) and PNI (the proportionate natural influence in a natural salmon or steelhead population) metrics should have been explained and evaluated in the proposed rule. In sum, the commenters requested that we more clearly link our proposed revisions to supporting documentation, including the 5-year status reviews and relevant HGMPs.

Response: We apply the best available information when determining whether a hatchery program should be included in an ESU or DPS. The primary sources of information that NMFS considers in defining each ESU/DPS, including recently approved HGMPs, are referenced in Jones (2015), which was cited in the proposed rule. NMFS' most recent 5-year reviews (81 FR 33468, May 26, 2016), which were also cited in the proposed rule, describe relationships, risks, benefits, and uncertainties of specific hatchery stocks relative to natural populations of ESUs/DPSs. Links to these 5-year reviews can be found on our website (*https://www.fisheries.noaa.gov/action/2016-5-year-reviews-28-listed-species-pacific-salmon-steelhead-and-eulachon*). For many species, data are not available to quantitatively assess the level of genetic divergence between a hatchery stock and natural populations, and so surrogate information must be used.

We agree that the pHOS and PNI metrics are helpful in assessing the effects of hatchery programs and we did evaluate the most recently available pHOS and PNI information. The widely-used demographic metrics pHOS, pNOB (proportion of

broodstock of natural origin) and PNI are typically used as measures of genetic risk associated with program operations. In the absence of historical genetic databases, we use these metrics extensively in making decisions regarding levels of divergence. A summary of the analysis of these metrics for each hatchery program can be found in Jones (2015).

Comment 4 – Need for Approved HGMPs: A commenter stated that the listed ESU/DPS should only include hatchery programs that have been evaluated under the ESA. The commenter asserted that the proposed rule "notably leaves out the critical details within approved HGMPs that link to broodstock source, breeding and rearing protocols, monitoring and genetics," and "without that information any inclusion of additional hatcheries, or even previously included hatcheries, lacks the scientific rigor that is required to include a hatchery population within the DPS/ESU."

Response: Under our Hatchery Listing Policy, we assess whether hatchery programs should be included in an ESU or DPS based on the best available scientific information and the standards identified in the policy. By contrast, evaluation of an HGMP under the ESA is a separate process from our listing determinations under ESA section 4(c). HGMP reviews involve a separate, legal determination as to whether a hatchery program qualifies for an exemption from the ESA's take prohibition. The inclusion of a hatchery program in a listing does not authorize the propagation of that hatchery stock, and each hatchery program must still undergo ESA review before it can be exempted from the ESA's take prohibition.

Comment 5 – Reproductive Fitness of Hatchery Fish: A commenter asked, "Where are the documents that set forth the reproduction success rates of the genetically similar hatchery fish to establish whether they can promote wild fish recovery?"

Response: The relevant information associated with the decision herein is whether the level of genetic divergence of the hatchery stock is not more than what occurs within the natural population. Consequently, reproductive success was not evaluated. An

evaluation of available reproductive success information would occur during our consideration of an HGMP.

Comment 6 – Conservation Value of Hatchery Programs Using Local Broodstock: Several commenters stated that NMFS has acknowledged the limited conservation value of segregated hatchery programs using broodstocks derived from local populations, yet has adopted a standard that encompasses virtually all hatchery programs using local broodstock. Several commenters also recommended that we exclude "segregated" hatchery programs because they serve no conservation purpose (*e.g.*, the Deep River Net Pen-Washougal, Klaskanine Hatchery, Bonneville Hatchery, and Cathlamet Channel Net Pen Programs within the Lower Columbia River ESU). The commenter stated that high stray rates from these segregated hatchery programs result in the fish from these programs appearing to be "no more than moderately diverged" from natural populations, while the listed natural populations decrease in fitness and recovery potential as a result of genetic introgression from the hatchery strays.

Response: The fundamental issue in determining the listing status of a hatchery program is its divergence from natural populations, not the purpose of the hatchery (*i.e.*, conservation or harvest). Including a hatchery program in an ESU or DPS listing does not endorse its use for any purpose, but rather acknowledges that fish from the program are within the range of genetic diversity exhibited by naturally produced fish in the ESU/DPS. Many hatchery programs designed without conservation intent use local broodstock. We evaluate any potential impact associated with the release of hatchery program fish in the wild during our consideration of an HGMP.

Comment 7 – Genetic Introgression: Several commenters stated that genetic introgression (the transfer of genetic information) between hatchery and natural fish increases the likelihood that hatchery stocks will qualify for inclusion in an ESU/DPS listing when using the moderate divergence criterion. One commenter provided an

analysis for Puget Sound steelhead, calculating Fst/Gst for five listed natural populations and two unlisted, segregated hatchery programs derived from Chambers Creek hatchery broodstock. The commenter noted that in their example, NMFS correctly declined to list the segregated steelhead programs under the ESA, due to their high degree of domestication. The commenter stated that absent biologically credible, measurable criteria for determining divergence, decisions to either include or exclude hatchery populations from listing will be arbitrary and inconsistent.

Response: As stated above, NMFS is required to use the best available information when making ESA listing decisions. The ESA requires that we conduct status reviews for listed species every 5 years. Prior to our review, we publish a *Federal Register* notice requesting information pertinent to our reviews. We then review this information to inform our assessment of the species' ESA status. As part of that assessment, we consider species composition, including whether any hatchery programs should be included in the listed entity.

For many listed ESUs/DPSs, metrics such as Fst, or even pHOS and PNI (as mentioned in an earlier comment) are not available. As a result, mandating a quantitative genetics approach to our listing decisions is impossible due to such data limitations. As mentioned above, we are required to decide whether or not to include a hatchery program as part of a listed ESU/DPS using the best available information. The analysis of Puget Sound steelhead provided by the commenter noted above provides a good example of the limitations of genetic data. Based on molecular genetic markers, winter steelhead derived from Chambers Creek hatchery broodstock do not appear to be substantively diverged from other naturally-spawning populations, suggesting that such hatchery fish may warrant listing as part of the Puget Sound steelhead DPS. However, fish from this hatchery program are not listed due to domestication, which has occurred over several

generations and resulted in a noticeably earlier run timing and poorer productivity than natural typical Puget Sound steelhead populations.

In our analysis we use a qualitative categorization scheme based on SSHAG (2003), which we believe is the best way to consistently evaluate hatchery programs at this time. We categorize each hatchery program as category 1 through category 4, based on the program's degree of divergence from the natural population. Programs designated category 1 and 2 are included as part of the listed ESU/DPS because they have a minimal to moderate level of genetic divergence based on the best available information. Furthermore, our determination whether to include a hatchery program in a listing, as we mentioned above, is not to be conflated with program purpose or program type.

Comment 8 – Release Location: A commenter inquired about how release location affects our evaluation of the listing status of a hatchery program. The commenter stated that "if fish used in a hatchery program are of ESU origin and within the accepted divergence limits of the ESU, then it would seem that these fish, biologically, are part of the ESU, no matter the location of release from a hatchery program."

Response: We agree in circumstances where those release locations are within the ESU/DPS range, and this idea is the impetus for many of our decisions to add certain hatchery programs to the listing. However, there are a few exceptions, largely for reintroduction programs where listed fish are moved to a separate geographic location and used to create a stock that adapts, over time, to the new geographic location (*i.e.*, coho salmon in the Upper Columbia and Snake River Basins).

Comment 9 – Puget Sound Steelhead Hatchery Program Divergence: One commenter stated that the Jones (2015) memo cited in the proposed rule seems to carry forward estimates of divergence between hatchery and natural production from the 2003 SSHAG document, which were overestimated out of caution, due to a lack of data. The commenter stated that more recent information is available in revised HGMPs for Puget

Sound steelhead, for example the proportion of natural-origin broodstock used in each hatchery program and the proportion of hatchery fish found in carcass surveys of the rivers. The degree of gene flow inferred from these revised HGMPs indicates that the 'moderate' divergence classification (category 2 in the Jones 2015 memo) should be replaced with 'minimal' divergence (category 1 in the Jones 2015 memo).

Response: There are only a few steelhead programs in Puget Sound where hatchery and natural fish are integrated. In Table 4 of Jones (2015), we identified three programs that are ongoing; the Green River Natural, the White River Supplementation, the Elwha River. We are adding the new Fish Restoration Facility program to the Puget Sound steelhead DPS. All of these are classified as category 1's with the exception of the Green River Natural program, which is classified as a category 1 or 2. Thus, we think our listing decisions are in line with the commenter's statement.

Comment 10 – Experimental Populations: Two commenters stated that hatchery fish used for experimental populations should "not necessarily" be excluded from listing. The commenters pointed out that hatchery fish used to establish an experimental population may meet the criteria for inclusion in an ESU/DPS and could potentially be used later for recovery.

Response: The ESA includes provisions in section 10 for designating experimental populations (50 CFR 17.80 through 17.86). All such populations have potential value for the recovery of salmon and steelhead, but ESA section 10(j) requires that they be designated either as essential or nonessential for recovery. Nonessential experimental populations (NEP) are treated as proposed for listing under the ESA for purposes of section 7 of the ESA, while essential populations are treated as a threatened species. To date, all salmon/steelhead hatchery programs associated with experimental populations are designated as nonessential. Under the ESA, NEPs do not receive the same level of protection as populations listed as threatened or endangered. Thus, we

believe it was more consistent with the ESA's treatment of NEPs to consider their associated hatchery programs as not listed. In the future, new salmon hatchery programs could be considered essential for recovery and thus experimental populations could include such hatchery fish in the listing.

Comment 11 – Winthrop National Fish Hatchery Program and Okanogan NEP: Two commenters requested clarification regarding the Winthrop National Fish Hatchery Program in the Upper Columbia spring-run Chinook salmon ESU. One comment stated that "it is unclear if the designated [section] 10(j) NEP program is included as part of this Winthrop National Fish Hatchery Program" and requested that NMFS include language in the species listing to eliminate any ambiguity. The other comment recommended that we include in the listing the Chief Joseph Hatchery Program that uses ESA-listed broodstock from the Winthrop National Fish Hatchery Program for rearing and release in the Okanogan NEP. This second commenter asserted that the fish at the Chief Joseph Hatchery are still of ESU origin and within the acceptable divergence level, and therefore should carry the protections of the ESA prior to their release into the NEP.

Response: The Okanogan NEP and the Winthrop National Fish Hatchery share a common broodstock, however the Okanogan NEP fish are reared in a separate hatchery (Chief Joseph Hatchery), and are released in a different river basin located outside the geographic range of the ESU. The Jones memo (2015) documents that the Winthrop National Fish Hatchery Program provides fish for the Okanogan spring Chinook salmon reintroduction. We agree that spring Chinook salmon from the Winthrop National Fish Hatchery being reared in the Chief Joseph hatchery should still be included as part of the Upper Columbia River spring-run Chinook salmon listing. However, upon release into the Okanogan River basin these fish would no longer be considered part of the endangered Upper Columbia spring-run Chinook salmon ESU. Consistent with our regulations at 50 CFR 223.102(e), such fish would instead be considered members of the

threatened NEP of Upper Columbia spring-run Chinook salmon when, and at such times as, they are found in the mainstem or tributaries of the Okanogan River from the Canada-United States border to the confluence of the Okanogan River with the Columbia River, Washington.

Comment 12 – STEP Programs: A commenter stated that Salmon and Trout Enhancement Programs (STEP) should be excluded from listing, stating that these programs lack monitoring of broodstock, release sites and strategies, and return rates.

Response: We base our listing determinations on the best scientific information available. While monitoring data may be limited for STEP programs, we have evaluated the origin and history of their broodstocks and conclude that several programs warrant inclusion in the ESU/DPS listing.

Comment 13 – Lower Columbia River Chinook Salmon Programs: One commenter stated that the Lower Columbia River Chinook salmon Cathlamet Channel Net Pens program and the Lower Columbia River coho salmon Clatsop County Fisheries Net Pen program should not be included in the Lower Columbia River Chinook salmon ESU. The basis for this comment is that these net pen programs produce Chinook salmon for selective harvest purposes and not for conservation.

Response: Non-biological considerations, including whether a hatchery program is planned to contribute to ESU recovery or to harvest, are not a factor in listing decisions. In this case, based on available biological information, spring-run Chinook salmon from net pens in the lower Columbia River are not more than moderately diverged from the Lower Columbia River Chinook Salmon ESU.

Comment 14 – Cowlitz River Spring Chinook Salmon Hatchery: A comment stated that the Cowlitz River spring-run Chinook salmon hatchery program is not listed and thus two programs that use this stock, Cathlamet net pens program and the Friends of the Cowlitz program, should be removed from listing.

Response: The commenter is in error. The Cowlitz River spring-run Chinook salmon hatchery program is included in the Lower Columbia River Chinook Salmon ESU and is listed under the ESA (50 CFR 223.102).

Comment 15 – Lower Columbia River Coho Salmon Description: The Lower Columbia River coho salmon ESU description contains Eagle Creek National Fish Hatchery Program, Bonneville/Cascade/Oxbow Hatchery Program, and Kalama River Type N Program, which provide broodstock sources to reintroduce coho in the Clearwater and Grande Ronde basins. A comment suggested adding to the ESU description that the listing "excludes Clearwater and Grande Ronde production groups."

Response: Snake River coho salmon were extirpated in the Snake River basin by 1986. Coho salmon were reintroduced to the Clearwater subbasin in 1994 and the Grande Ronde/Lostine subbasin in 2017 using broodstock from the Lower Columbia River ESU. Lower Columbia River coho salmon are described in the CFR as "naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls." By this definition, Lower Columbia River coho salmon occurring in the Snake River basin are excluded from the listing and we see no need to add the commenter's proposed new language.

Comment 16 – Snake River Sockeye Salmon Hatchery Programs: One comment stated that only the Redfish Lake Captive Broodstock Program is listed, and the recently-added "smolt production program" is not listed but should be.

Response: The commenter is correct. The Redfish Lake Captive Broodstock Program currently produces the eggs used in the new smolt production program. Therefore, the smolts produced for this new hatchery program are a category 1a (Jones 2015) and should be included in the Snake River sockeye salmon ESU. We will list this

program under Idaho Department of Fish and Game's program name, the "Snake River Sockeye Salmon Hatchery Program."

Comment 17 – Upper Salmon River Steelhead Programs: A commenter stated that the Upper Salmon River programs are similar to the Little Salmon River in that the programs are in the process of changing stocks that do not utilize B-run steelhead from Dworshak Hatchery.

Response: Currently these programs still use some fish from the Dworshak National Fish Hatchery for broodstock. Thus, these fish should be listed because the "parent" program is listed. NMFS may reconsider this listing decision once the programs in the Upper Salmon River no longer use Dworshak National Fish Hatchery steelhead.

Comment 18 – Dollar Creek Programs: A commenter suggested removing the Dollar Creek Program because it is subset of the McCall Hatchery.

Response: Dollar Creek is an egg box program that has its own HGMP. We will identify this program individually in the listing description because it is managed by a separate entity, it has a separate HGMP, and it is a separate line item in the 2018 – 2027 *U.S.* v. *Oregon Management Agreement* (*U.S.* v. *OR*). Identifying this program separately allows us to better track program implementation. In the proposed rule we identified this as the Dollar Creek Program, but have renamed it the South Fork Salmon River Eggbox Program as it is more consistent with the description in *U.S.* v. *OR*.

Comment 19 – Listing Status of Panther Creek: A commenter stated that we are treating populations in Panther Creek and Lookingglass Creek inconsistently. The commenter asked if functionally-extirpated populations that have been reestablished with "within ESU" stock (but not 'within-population') would be considered to be recovered?

Response: We are listing Panther Creek because the fish released there are from an already listed hatchery program within the same ESU, and this is consistent with how we have handled other reintroduction programs within the same ESU/DPS for the

purpose of reintroducing fish into functionally extirpated populations (*e.g.*, Lookingglass in the Grande Ronde River Basin).

Comment 20 – Wells Fish Hatchery Program Description: One commenter stated that the Wells Fish Hatchery program releases Columbia River steelhead smolts directly into the Columbia River and other locations, so it is not clear why in the listing language the Methow and Okanogan are listed in parentheses and the Columbia River is excluded. The commenter recommends deleting 'in the Methow and Okanogan' in the listing language.

Response: The Wells Program has three separate components: releases into the Methow River, the Twisp River, and the Columbia River. The Methow River and Twisp River releases use Methow River steelhead. Previously, the rationale for excluding the Columbia River release was because it uses Wells hatchery stock, which was created using fish from all steelhead populations returning to the Upper Columbia. Given the Wells stock is not representative of any one single population, we have decided not to list components of the Wells Program that propagate this stock.

Comment 21 – Upper Willamette River Chinook Salmon: A commenter stated that the Jones (2015) memo did not adequately address the relationships between hatchery and natural populations of Chinook salmon and steelhead in the Willamette River. The commenter stated that recent genetic analysis by Oregon State University and the FWS suggests that the "Willamette River population is more appropriate (sic) considered one stock and not divided between Upper Willamette and Lower Columbia River." The commenter suggests a more accurate delineation would be "Willamette River stock" and "Columbia River stock." Furthermore, the commenter stated that Jones (2015) did not analyze this new genetic data, nor did it analyze proposed HGMPs for hatchery populations under the Willamette Biological Opinion or the Portland General Electric

Hydropower Settlement Agreement, which requires long term changes to the hatchery populations and releases.

Response: This comment addresses how the Upper Willamette River Chinook salmon and Lower Columbia River Chinook salmon ESUs are defined, which is not the subject of this rulemaking.

Comment 22–ESU Description: Several comments requested that we revise ESU/DPS descriptions for various reasons.

Response: This final rule addresses hatchery programs associated with listed ESU/DPSs. Our recently-completed 5-year reviews did not recommend modifications to the composition of any ESU/DPS apart from the modifications related to hatchery programs addressed in this final rule.

Comment 23– Naming of Hatchery Programs: A commenter stated that it is unclear what strategy NMFS used to name the different hatchery programs included in the proposed changes.

Response: We acknowledge that naming conventions are not always consistent. Hatchery program names sometimes include reference to stocking location and sometimes they do not. For programs with submitted HGMPs, we use program names provided in the HGMP. In general, our intention is to use program names that are commonly accepted and which provide sufficient description to identify the program.

Comment 24– Consistency with Alsea Decision: A commenter stated that the proposed rule is inconsistent with the *Alsea* decision.

Response: NMFS issued the "Interim Policy on Artificial (Hatchery) Propagation of Pacific Salmon under the Endangered Species Act" (Interim Policy) in 1993. The Interim Policy provided that hatchery salmon and steelhead would not be listed under the ESA unless they were found to be essential for recovery of a listed species (*i.e.*, if the hatchery population contained a substantial portion of the remaining genetic diversity of

the species). The result of this policy was that a listing determination for a species depended solely upon the relative health of the naturally spawning component of the species. In most cases, hatchery fish were not relied upon to contribute to recovery, and therefore were not listed.

As explained above, a federal court ruled in the *Alsea* decision that NMFS made an improper distinction under the ESA by excluding certain hatchery programs from the listing of Oregon Coast coho salmon, even though NMFS had determined that these hatchery programs were otherwise a part of the same ESU as the listed natural populations. The Court set aside NMFS' 1998 listing of Oregon Coast coho salmon because it impermissibly excluded hatchery fish within the ESU from listing and therefore listed an entity that was not a species, subspecies or DPS. While the *Alsea* decision only addressed Oregon Coast coho salmon, it prompted NMFS to reconsider the inclusion of hatchery fish in ESA listings for other West Coast salmon and steelhead species.

In 2005, NMFS issued the Hatchery Listing Policy, which superseded the Interim Policy. Under the Hatchery Listing Policy, hatchery stocks with a level of genetic divergence relative to the local natural populations that is no more than what occurs within the DPS are: (a) considered part of the DPS; (b) considered in determining whether the DPS should be listed under the ESA; and (c) to be included in any listing of the DPS. Thus, the proposed rule and this final rule are consistent with the *Alsea* decision.

Comment 25– Administrative Procedure Act (APA) Compliance: A commenter suggested that updates to the list of hatchery programs included with listed ESU/DPSs is in violation of the APA because relevant data were not made available to the public**.**

Response: This rule was published as a proposed rule (81 FR 72759, October 21, 2016) and the public was entitled to contact NMFS and request additional information.

We provided links to our most recent 5-year status reviews and Jones (2015) memos as well as NMFS staff contact information to obtain any additional supporting information.

Comment 26– ESA Compliance: Several commenters stated that the proposed rule does not comply with the requirements of section 4 of the ESA and requested that we re-issue the proposed rule and re-open for public comment. Commenters also stated that to update the list of hatchery programs included with listed ESU/DPSs, NMFS must engage in consultation under section7(a)(2) of the ESA.

Response: As noted in the **Background** section above, in accordance with section 4(c)(2)(A) of the ESA, we completed our most recent 5-year reviews of the status of ESA-listed salmon ESUs and steelhead DPSs in California, Oregon, Idaho, and Washington in 2016 (81 FR 33468, May 26, 2016). At that time, we evaluated hatchery stocks associated with the relevant ESUs/DPS as part of a hatchery program review (Jones 2015), which in turn informed the overall ESA status reviews. Our evaluation addressed a number of factors regarding hatchery fish, including the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s) as well as the role and impacts of hatchery programs on key viability parameters such as abundance, productivity, spatial structure, and diversity. As a result of those 2016 status reviews, we concluded that the species membership of several salmonid hatchery programs warranted revision and advised the public that we would make those revisions through a subsequent rulemaking (*i.e*., this *Federal Register* document).

ESA sections 4 and 7 serve different purposes. Under section 4, NMFS determines whether a species should be listed as endangered or threatened based on section 4's standards. Under ESA section 7, Federal agencies must engage in consultation with NMFS or the FWS prior to authorizing, funding, or carrying out actions that may affect listed species. It would not make sense for NMFS to carry out section 7

consultation over whether to list a species, as section 7 only applies to species that are already listed.

Comment 27– National Environmental Policy Act (NEPA) Compliance: Multiple commenters stated that the proposed rule violates NEPA and NMFS must prepare an Environmental Impact Statement (EIS).

Response: ESA listing decisions are non-discretionary actions by the agency which are exempt from the requirement to prepare an environmental assessment or EIS under NEPA. See NOAA Administrative Order 216 6.03(e)(1) and *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981).

Summary of Changes made between the Proposed and Final Rules

Please refer to the proposed rule (81 FR 72759) for details on the rationale for our decision for each affected hatchery program. We carefully considered all comments received in response to the proposed rule and, as a result, have made the appropriate changes in this final rule. Below we summarize the changes made between the proposed and final rules.

Threatened Species at 50 CFR 223.102

Revisions to Threatened Species Descriptions

Salmon, Chinook (Puget Sound ESU)

In response to the proposed rule we received numerous comments requesting name changes to listed hatchery programs to ensure consistency with HGMPs. A few comments corrected errors we had made in the proposed rule. In response to these comments, we made the following changes between the proposed and final rules:

(1) We had proposed updating the name of the Keta Creek Hatchery Program to the Fish Restoration Facility Program. Instead, we are removing the Keta Creek Hatchery Program from listing, as it never existed and was previously

listed in error. However, we are adding the Fish Restoration Facility Program, which is a new program.

(2) We had proposed to add the Bernie Kai-Kai Gobin (Tulalip) Hatchery-Skykomish Program. We want to correct the description of this action. This update is not the addition of a new program but rather a program name change from the existing Tulalip Bay Program to the Bernie Kai-Kai Gobin (Tulalip) Hatchery-Skykomish Program.

(3) We had proposed updating the name of the Harvey Creek Hatchery Program to the Brenner Creek Hatchery Program. In fact, the Harvey Creek and Brenner Creek hatchery programs are two distinct programs based on geography and run-timing. The Harvey Creek Hatchery Program (summer-run and fall-run) was already listed as part of the ESU. The updated listing language will better describe these programs as the Harvey Creek Hatchery Program (summer-run), and the now distinct Brenner Creek Hatchery Program (fall-run).

(4) We are changing the name of the Marblemount Hatchery Program (spring-run subyearlings and summer-run). This program is now considered to be two distinct programs: the Marblemount Hatchery Program (spring-run) and Marblemount Hatchery Program (summer-run). This name change was not described in the proposed rule.

(5) We are changing the names of several other programs and these changes were not described in the proposed rule. We are changing the names of: the Whitehorse Springs Pond Program to the Whitehorse Springs Hatchery Program (summer-run); the Diru Creek Program to the Clarks Creek Hatchery Program; the Issaquah Hatchery Program to the Issaquah Creek Hatchery Program; the White Acclimation Pond Program to the White River

Acclimation Pond Program; the Clear Creek Program to the Clear Creek Hatchery Program; and the Kalama Creek Program to the Kalama Creek Hatchery Program.

(6) There was a typographical error in the proposed rule referring to the "Hamma Hatchery Program." The correct name for this program is the Hamma Hamma Hatchery Program.

Salmon, Chinook (Snake River spring/summer-run ESU)

We are making two changes that differ from those described in the proposed rule.

(1) We proposed updating the name of the Big Sheep Creek Program to the Big Sheep Creek-Adult outplanting from Imnaha Program. Instead, we are removing this program from listing as a separate program, because it is now considered to be part of the listed Imnaha River Program.

(2) We proposed to add the Dollar Creek Program. We will be adding this new program, but it will be named the South Fork Salmon River Eggbox Program.

Salmon, Coho (Lower Columbia River ESU)

We are making two changes that differ from those described in the proposed rule.

(1) We removed the Kalama River Type-S Coho Program because it was terminated.

(2) The North Fork Toutle River Hatchery Program will now be named the North Fork Toutle River Type-S Hatchery Program.

Steelhead (Puget Sound DPS)

We are changing the name of the Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers Program to the Hood Canal Supplementation Program.

Steelhead (Snake River Basin DPS)

We are making three changes that differ from those described in the proposed rule.

(1) We are adding the South Fork Clearwater Hatchery Program, as proposed, but we correct the name for this program to be the South Fork Clearwater (Clearwater Hatchery) B-run Program.

(2) We are removing the individual listings of the Lolo Creek Program and the North Fork Clearwater Program, because they are now considered to be part of the listed Dworshak National Fish Hatchery Program.

(3) We had proposed to add the Squaw Creek, Yankee Fork, and Pahsimeroi River Programs as discrete programs. In fact, these releases of listed hatchery fish are considered to be part of the Salmon River B-run Program and so we are not listing these tributary release sites as individual programs.

Endangered Species at 50 CFR 224.101

Revisions to Endangered Species Descriptions

Salmon, Chinook (Upper Columbia River spring-run ESU)

We are adding the new Chief Joseph spring Chinook Hatchery Program (Okanogan release). For further explanation, see *Issue – Winthrop National Fish Hatchery Program and Okanogan NEP* in the response to comments, above.

Salmon, Sockeye (Snake River ESU)

In the proposed rule we recommended minor changes in terminology to standardize species descriptions in regulations, but we did not propose any changes in hatchery programs included in this ESU. In response to comments, we are adding the Snake River Sockeye Salmon Hatchery Program.

In Table 1 we summarize this final rule's revisions to hatchery programs associated with listed species descriptions for Pacific salmon and steelhead species listed under the ESA.

Table 1. West Coast Salmon and Steelhead Hatchery Programs Addressed in This Final Rule

ESU/DPS (Listing Status), and Name of Hatchery Program	Run Timing	Location of Release (Watershed, State)	Type of Update	Reason for Update
Lower Columbia River Chinook salmon (Threatened)				
Klaskanine Hatchery Program	Fall (Tule)	Klaskanine River (OR)	Add	Existing release now classified as a separate and distinct program
Deep River Net Pens-Washougal Program	Fall (Tule)	Deep River (WA)	Add	Existing release now classified as a separate and distinct program
Bonneville Hatchery Program	Fall (Tule)	Lower Columbia River Gorge (OR)	Add	Existing release now classified as a separate and distinct program
Cathlamet Channel Net Pens Program	Spring	Lower Columbia River (WA/OR)	Add	Existing release now classified as a separate and distinct program
Puget Sound Chinook salmon (Threatened)				
Marblemount Hatchery Program (spring-run)	Spring	Cascade River (WA)	Name Change	Previously listed as Marblemount Hatchery Program (spring subyearlings and summer-run)
Marblemount Hatchery Program (summer-run)	Summer	Skagit River (WA)	Name Change	Previously listed as Marblemount Hatchery Program (spring subyearlings and summer-run)
Harvey Creek Hatchery Program (summer-run)	Summer	Stillaguamish River (WA)	Name Change	Previously listed as Harvey Creek Hatchery (summer-run and fall-run)
Brenner Creek Hatchery Program (fall-run)	Fall	Stillaguamish River (WA)	Add	Existing release now classified as a separate and distinct program
Whitehorse Springs Hatchery Program (summer-run)	Summer	Stillaguamish River (WA)	Name Change	Previously listed as Whitehorse Springs Pond Program
Issaquah Creek Hatchery Program	Fall	Sammamish River (WA)	Name Change	Previously listed as Issaquah Hatchery Program
White River Acclimation Pond Program	Spring	White River (WA)	Name Change	Previously listed as White Acclimation Pond Program
Clarks Creek Hatchery Program	Fall	Puyallup River (WA)	Name Change	Previously listed as Diru Creek Hatchery Program
Clear Creek Hatchery Program	Fall	Nisqually River (WA)	Name Change	Previously listed as Clear Creek Program
Kalama Creek Hatchery Program	Fall	Nisqually River (WA)	Name Change	Previously listed as Kalama Creek Program
Bernie Kai-Kai Gobin (Tulalip) Hatchery-Skykomish Program	Summer	Skykomish River/Tulalip Bay (WA)	Name Change	Previously listed as Tulalip Bay Program
Bernie Kai-Kai Gobin (Tulalip) Hatchery-Cascade Program	Spring	Snohomish River/Tulalip Bay (WA)	Add	New program
Soos Creek Hatchery Program (Subyearlings and Yearlings)	Fall	Green River (WA)	Name Change	Previously listed as two programs: the Soos Creek Hatchery Subyearlings Program and the Soos Creek Hatchery Yearlings Program

Icy Creek Hatchery	Fall	Green River (WA)	Remove	Program now considered part of the listed Soos Creek Hatchery Program
Keta Creek Hatchery Program	N/A	Green River (WA)	Remove	Program never existed and was previously listed in error
Fish Restoration Facility Program	Fall	Green River (WA)	Add	New program
Hupp Springs Hatchery-Adult Returns to Minter Creek Program	Spring	Minter Creek, Carr Inlet (WA)	Name Change	Previously listed as Hupp Springs Hatchery Program
Rick's Pond Hatchery	Fall	Skokomish River (WA)	Remove	Program terminated
Sacramento River winter-run Chinook salmon (Endangered)				
Livingston Stone National Fish Hatchery (Supplementation and Captive Broodstock)	Winter	Sacramento River (CA)	Add	New program
Snake River fall-run Chinook salmon (Threatened)				
Idaho Power Program	Fall	Salmon River (ID)	Name Change	Previously listed as Oxbow Hatchery Program
Snake River spring/summer-run Chinook salmon (Threatened)				
South Fork Salmon River Eggbox Program	Summer	South Fork Salmon River (ID)	Add	Existing release now classified as a separate and distinct program
Panther Creek Program	Spring/ Summer	Salmon River (ID)	Add	New program
Yankee Fork Program	Spring/ Summer	Yankee Fork (ID)	Add	New program
Big Sheep Creek Program	Spring/ Summer	Imnaha River (OR)	Remove	Program now considered part of the listed Imnaha River Program
Upper Columbia River spring-run Chinook salmon (Endangered)				
Nason Creek Program	Spring	Wenatchee River (WA)	Add	New program
Chewuch River Program	Spring	Chewuch River (WA)	Remove	Program now considered part of the listed Methow Composite Program
Chief Joseph spring Chinook Hatchery Program (Okanogan release)	Spring	Okanogan (WA)	Add	New program
Upper Willamette River Chinook salmon (Threatened)				
McKenzie River Hatchery Program	Spring	McKenzie River (OR)	Name Change	Previously listed as McKenzie River Hatchery Program (ODFW Stock #23)
North Santiam River Program	Spring	North Fork Santiam River (OR)	Name Change	Previously listed as Marion Forks Hatchery/North Fork Santiam Hatchery Program (ODFW Stock #21)
Molalla River Program	Spring	Molalla River (OR)	Name Change	Previously listed as South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River
South Santiam River Program	Spring	South Fork Santiam River (OR)	Name Change	Previously listed as South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River
Willamette Hatchery Program	Spring	Middle Fork Willamette River (OR)	Name Change	Previously listed as Willamette Hatchery Program (ODFW Stock #22)

Clackamas Hatchery Program	Spring	Clackamas River (OR)	Name Change	Previously listed as Clackamas Hatchery Program (ODFW Stock #19)
Columbia River chum salmon (Threatened)				
Big Creek Hatchery Program	Fall	Big Creek (OR)	Add	New program
Hood Canal summer-run chum salmon (Threatened)				
Hamma Hamma Fish Hatchery Program	Summer	Hamma Hamma River (WA)	Remove	Program terminated
Jimmycomelately Creek Fish Hatchery Program	Summer	Sequim Bay (WA)	Remove	Program terminated
Lower Columbia River coho salmon (Threatened)				
Clatsop County Fisheries/ Klaskanine Hatchery	N/A	SF Klaskanine River (OR)	Add	Existing release now classified as a separate and distinct program
Clatsop County Fisheries Net Pen Program	N/A	Youngs Bay (OR)	Add	Existing release now classified as a separate and distinct program
Kalama River Type-S Coho Program	N/A	Kalama River (WA)	Remove	Program terminated
Big Creek Hatchery Program	N/A	Big Creek (OR)	Name Change	Previously listed as Big Creek Hatchery Program (ODFW Stock #13)
Sandy Hatchery Program	Late	Sandy River (OR)	Name Change	Previously listed as Sandy Hatchery Program (ODFW Stock #11)
Bonneville/Cascade/Oxbow Complex Hatchery Program	N/A	Lower Columbia River Gorge (OR)	Name Change	Previously listed as Bonneville/ Cascade/Oxbow Complex (ODFW Stock #14) Hatchery
North Fork Toutle River Type-S Hatchery Program	N/A	North Fork Toutle River	Name Change	Previously listed as North Fork Toutle River Hatchery Program.
Oregon Coast coho salmon (Threatened)				
Cow Creek Hatchery Program	N/A	South Fork Umpqua River (OR)	Name Change	Previously listed as Cow Creek Hatchery Program (ODFW Stock #18)
Southern Oregon/Northern California Coast coho salmon ESU (Threatened)				
Cole Rivers Hatchery Program	N/A	Rogue River (OR)	Name Change	Previously listed as Cole Rivers Hatchery Program (ODFW Stock #52)
Ozette Lake sockeye (Threatened)				
Umbrella Creek/Big River Hatcheries Program	N/A	Lake Ozette (WA)	Name Change	Previously listed as two programs: the Umbrella Creek Hatchery Program and the Big River Hatchery Program
Snake River sockeye (Endangered)				
Snake River Sockeye Salmon Hatchery Program	N/A	Upper Salmon River (ID)	Add	New program
California Central Valley steelhead (Threatened)				
Mokelumne River Hatchery	Winter	Mokelumne River (CA)	Add	New program
Lower Columbia River steelhead (Threatened)				
Clackamas Hatchery Late Winter-run Program	Late Winter	Clackamas River (OR)	Name Change	Previously listed as Clackamas Hatchery Late Winter-run Program (ODFW Stock #122)
Sandy Hatchery Late Winter-run Program	Late Winter	Sandy River (OR)	Name Change	Previously listed as Sandy Hatchery Late Winter-run Program (ODFW Stock #11)

Hood River Winter-run Program	Winter	Hood River (OR)	Name Change	Previously listed as Hood River Winter-run Program (ODFW Stock #50)
Upper Cowlitz River Wild Program	Late Winter	Upper Cowlitz River (WA)	Add	New program
Tilton River Wild Program	Late Winter	Upper Cowlitz River (WA)	Add	New program
Middle Columbia River steelhead (Threatened)				
Deschutes River Program	Summer	Deschutes River (OR)	Name Change	Previously listed as Deschutes River Program (ODFW Stock #66)
Umatilla River Program	Summer	Umatilla River (OR)	Name Change	Previously listed as Umatilla River Program (ODFW Stock #91)
Puget Sound steelhead (Threatened)				
Fish Restoration Facility Program	Winter	Green River (WA)	Add	New program
Hood Canal Supplementation Program	Winter	Hood Canal (WA)	Name Change	Previously listed as Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers
Snake River Basin steelhead (Threatened)				
Salmon River B-run Program	Summer (B)	Salmon River (ID)	Add	Existing release now classified as a separate and distinct program
South Fork Clearwater (Clearwater Hatchery) B-run program	Summer (B)	SF Clearwater River (ID)	Add	Existing release now classified as a separate and distinct program
East Fork Salmon River Natural Program	Summer (A)	Salmon River (ID)	Name Change	Previously listed as East Fork Salmon River Program
Lolo Creek Program	Summer (B)	Clearwater River (ID)	Remove	Now considered part of the listed Dworshak National Fish Hatchery Program
North Fork Clearwater Program	Summer (B)	Clearwater River (ID)	Remove	Now considered part of the listed Dworshak National Fish Hatchery Program
Little Sheep Creek/Imnaha River Program	Summer (A)	Imnaha River (OR)	Name Change	Previously listed as Little Sheep Creek/Imnaha River Hatchery Program (ODFW Stock #29)
Upper Columbia River steelhead (Threatened)				
Okanogan River Program	Summer	Okanogan River (WA)	Name Change	Previously listed as Omak Creek Program

Note: Updates to listing descriptions consist of three types: "Add" (a new program that meets Hatchery Listing Policy criteria, or an existing program that was divided into separate programs); "Remove" (a program terminated or now considered to be part of another listed program); or "Name Change" (a change to the name of a hatchery program that already was listed). N/A indicates that run-timing is not specified for the program.

References

Copies of previous **Federal Register** notices and related reference materials are available on the Internet at *https://www.fisheries.noaa.gov/rules-and-regulations,*

http://www.westcoast.fisheries.noaa.gov/, or upon request (see **FOR FURTHER INFORMATION CONTACT** section above).

Classification

Executive Order 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 final rule is exempt from review under Executive Order 12866. This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

Federalism

In accordance with Executive Order 13132, we determined that this rule does not have significant federalism effects and that a federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this final rule will be shared with the relevant state agencies. The revisions may have some benefit to state and local resource agencies in that the ESA-listed species addressed in this rulemaking are more clearly and consistently described.

Civil Justice Reform

The Department of Commerce has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. In keeping with that order, we are revising our descriptions of ESA-listed species to improve the clarity of our regulations.

National Environmental Policy Act of 1969

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of

criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th Cir. 1981), we have concluded that NEPA does not apply to ESA listing actions. (See NOAA Administrative Order 216–6.)

Government-to-Government Relationship with Tribes

Executive Order 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 Indian tribal governments or communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule. Nonetheless, during our preparation of the proposed and final rules, we solicited information from tribal governments and tribal fish commissions. We informed potentially affected tribal governments of the proposed rule and considered their comments in formulation of the final rule. We will continue to coordinate on future management actions pertaining to the listed species addressed in this final rule.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

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

Dated: November 23, 2020.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, we amend 50 CFR parts 223 and 224 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, §223.201-202 also issued under 16 U.S.C. 1361 *et seq*.; 16 U.S.C. 5503(d) for §223.206(d)(9).

2. In § 223.102, amend the table in paragraph (e) by revising the entries for "Salmon, Chinook (Lower Columbia River ESU);" "Salmon, Chinook (Puget Sound ESU);" "Salmon, Chinook (Snake River fall-run ESU);" "Salmon, Chinook (Snake River spring/summer-run ESU);" "Salmon, Chinook (Upper Willamette River ESU);" "Salmon, chum (Columbia River ESU);" "Salmon, chum (Hood Canal summer-run ESU);" "Salmon, coho (Lower Columbia River ESU);" "Salmon, coho (Oregon Coast ESU);" "Salmon, coho (Southern Oregon/Northern California Coast ESU);" "Salmon, sockeye (Ozette Lake ESU);" "Steelhead (California Central Valley DPS);" "Steelhead (Central California Coast DPS);" "Steelhead (Lower Columbia River DPS);" "Steelhead (Middle Columbia River DPS);" "Steelhead (Puget Sound DPS);" "Steelhead (Snake River Basin DPS);" and "Steelhead (Upper Columbia River DPS)" to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species[1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
* * * * * * *					
Fishes					
* * * * * * *					
Salmon, Chinook (Lower Columbia River ESU)	*Oncorhynchus tshawytscha*	Naturally spawned Chinook salmon originating from the Columbia River and its tributaries downstream of a transitional point east of the Hood and White Salmon Rivers, and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Not included in this DPS are: (1) spring-run Chinook salmon originating from the Clackamas River; (2) fall-run Chinook salmon originating from Upper Columbia River bright hatchery stocks, that spawn in the mainstem Columbia River below Bonneville Dam, and in other tributaries upstream from the Sandy River to the Hood and White Salmon Rivers; (3) spring-run Chinook salmon originating from the Round Butte Hatchery (Deschutes River, Oregon) and spawning in the Hood River; (4) spring-run Chinook salmon originating from the Carson National Fish Hatchery and spawning in the Wind River; and (5) naturally spawned Chinook salmon originating from the Rogue River Fall Chinook Program. This DPS does include Chinook salmon from the following artificial propagation programs: the Big Creek Tule Chinook Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Tule Chinook Program; Warrenton High School STEP Tule Chinook Program; Cowlitz Tule Chinook Program; North Fork Toutle Tule Chinook Program; Kalama Tule Chinook Program; Washougal River Tule Chinook Program; Spring Creek National Fish Hatchery (NFH) Tule Chinook Program; Cowlitz Spring Chinook Program in the Upper Cowlitz	70 FR 37160, June 28, 2005	226.212	223.203

		River and the Cispus River; Friends of the Cowlitz Spring Chinook Program; Kalama River Spring Chinook Program; Lewis River Spring Chinook Program; Fish First Spring Chinook Program; Sandy River Hatchery Program; Deep River Net Pens-Washougal Program; Klaskanine Hatchery Program; Bonneville Hatchery Program; and the Cathlamet Channel Net Pens Program			
Salmon, Chinook (Puget Sound ESU)	*Oncorhynchus tshawytscha*	Naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, Chinook salmon from the following artificial propagation programs: the Kendall Creek Hatchery Program; Marblemount Hatchery Program (spring-run); Marblemount Hatchery Program (summer-run); Brenner Creek Hatchery Program (fall-run); Harvey Creek Hatchery Program (summer-run); Whitehorse Springs Hatchery Program (summer-run); Wallace River Hatchery Program (yearlings and subyearlings); Issaquah Creek Hatchery Program; White River Hatchery Program; White River Acclimation Pond Program; Voights Creek Hatchery Program; Clarks Creek Hatchery Program; Clear Creek Hatchery Program; Kalama Creek Hatchery Program; George Adams Hatchery Program; Hamma Hamma Hatchery Program; Dungeness/Hurd Creek Hatchery Program; Elwha Channel Hatchery Program; Skookum Creek Hatchery Spring-run Program; Bernie Kai-Kai Gobin (Tulalip) Hatchery-Cascade Program; North Fork Skokomish River Spring-run Program; Soos Creek Hatchery Program (subyearlings and yearlings); Fish Restoration Facility Program; Bernie Kai-Kai Gobin (Tulalip) Hatchery-Skykomish Program; and Hupp Springs Hatchery-Adult Returns to Minter Creek Program	70 FR 37160, June 28, 2005	226.212	223.203

Salmon, Chinook (Snake River fall-run ESU)	*Oncorhynchus tshawytscha*	Naturally spawned fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. Also, fall-run Chinook salmon from the following artificial propagation programs: the Lyons Ferry Hatchery Program; Fall Chinook Acclimation Ponds Program; Nez Perce Tribal Hatchery Program; and the Idaho Power Program	70 FR 37160, June 28, 2005	226.205	223.203
Salmon, Chinook (Snake River spring/summer-run ESU)	*Oncorhynchus tshawytscha*	Naturally spawned spring/summer-run Chinook salmon originating from the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins. Also, spring/summer-run Chinook salmon from the following artificial propagation programs: the Tucannon River Program; Lostine River Program; Catherine Creek Program; Lookingglass Hatchery Program; Upper Grande Ronde Program; Imnaha River Program; McCall Hatchery Program; Johnson Creek Artificial Propagation Enhancement Program; Pahsimeroi Hatchery Program; Sawtooth Hatchery Program; Yankee Fork Program; South For Salmon River Eggbox Program; and the Panther Creek Program	70 FR 37160, June 28, 2005	226.205	223.203
Salmon, Chinook (Upper Willamette River ESU)	*Oncorhynchus tshawytscha*	Naturally spawned spring-run Chinook salmon originating from the Clackamas River and from the Willamette River and its tributaries above Willamette Falls. Also, spring-run Chinook salmon from the following artificial propagation programs: the McKenzie River Hatchery Program; Willamette Hatchery Program; Clackamas Hatchery Program; North Santiam River Program; South Santiam River Program; and the Mollala River Program	70 FR 37160, June 28, 2005	226.212	223.203
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Salmon, chum (Columbia River ESU)	*Oncorhynchus keta*	Naturally spawned chum salmon originating from the Columbia River and its tributaries in Washington and Oregon. Also, chum salmon from the following	70 FR 37160, June 28, 2005	226.212	223.203

		artificial propagation programs: the Grays River Program; Washougal River Hatchery/Duncan Creek Program; and the Big Creek Hatchery Program			
Salmon, chum (Hood Canal summer-run ESU)	*Oncorhynchus keta*	Naturally spawned summer-run chum salmon originating from Hood Canal and its tributaries as well as from Olympic Peninsula rivers between Hood Canal and Dungeness Bay (inclusive). Also, summer-run chum salmon from the following artificial propagation programs: the Lilliwaup Creek Fish Hatchery Program; and the Tahuya River Program	70 FR 37160, June 28, 2005	226.212	223.203
Salmon, coho (Lower Columbia River ESU)	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Also, coho salmon from the following artificial propagation programs: the Grays River Program; Peterson Coho Project; Big Creek Hatchery Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Coho Program; Warrenton High School STEP Coho Program; Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers; Cowlitz Game and Anglers Coho Program; Friends of the Cowlitz Coho Program; North Fork Toutle River Type-S Hatchery Program; Kalama River Type-N Coho Program; Lewis River Type-N Coho Program; Lewis River Type-S Coho Program; Fish First Wild Coho Program; Fish First Type-N Coho Program; Syverson Project Type-N Coho Program; Washougal River Type-N Coho Program; Eagle Creek National Fish Hatchery Program; Sandy Hatchery Program; Bonneville/Cascade/Oxbow Complex Hatchery Program; Clatsop County Fisheries Net Pen Program; and the Clatsop County Fisheries/Klaskanine Hatchery Program	70 FR 37160, June 28, 2005	226.212	223.203
Salmon, coho (Oregon Coast ESU)	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from coastal rivers south of the Columbia River and north of	76 FR 35755, June 20, 2011	226.212	223.203

		Cape Blanco. Also, coho salmon from the Cow Creek Hatchery Program			
Salmon, coho (Southern Oregon/Northern California Coast ESU)	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from coastal streams and rivers between Cape Blanco, Oregon, and Punta Gorda, California. Also, coho salmon from the following artificial propagation programs: the Cole Rivers Hatchery Program; Trinity River Hatchery Program; and the Iron Gate Hatchery Program	70 FR 37160, June 28, 2005	226.210	223.203
Salmon, sockeye (Ozette Lake ESU)	*Oncorhynchus nerka*	Naturally spawned sockeye salmon originating from the Ozette River and Ozette Lake and its tributaries. Also, sockeye salmon from the Umbrella Creek/Big River Hatchery Program	70 FR 37160, June 28, 2005	226.212	223.203
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Steelhead (California Central Valley DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Sacramento and San Joaquin Rivers and their tributaries; excludes such fish originating from San Francisco and San Pablo Bays and their tributaries. This DPS includes steelhead from the following artificial propagation programs: the Coleman National Fish Hatchery Program; Feather River Fish Hatchery Program; and the Mokelumne River Hatchery Program	71 FR 834, Jan. 5, 2006	226.211	223.203
Steelhead (Central California Coast DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Russian River to and including Aptos Creek, and all drainages of San Francisco and San Pablo Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin Rivers. Also, steelhead from the following artificial propagation programs: the Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project)	71 FR 834, Jan. 5, 2006	226.211	223.203
Steelhead (Lower Columbia River DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable	71 FR 834, Jan. 5, 2006	226.212	223.203

		barriers from rivers between the Cowlitz and Wind Rivers (inclusive) and the Willamette and Hood Rivers (inclusive); excludes such fish originating from the upper Willamette River basin above Willamette Falls. This DPS includes steelhead from the following artificial propagation programs: the Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program; Sandy Hatchery Late Winter-run Program; Hood River Winter-run Program; Lewis River Wild Late-run Winter Steelhead Program; Upper Cowlitz Wild Program; and the Tilton River Wild Program			
Steelhead (Middle Columbia River DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excludes such fish originating from the Snake River basin. This DPS includes steelhead from the following artificial propagation programs: the Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program; and the Deschutes River Program. This DPS does not include steelhead that are designated as part of an experimental population	71 FR 834, Jan. 5, 2006	226.212	223.203
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Steelhead (Puget Sound DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, steelhead from the following artificial propagation programs: the Green River Natural Program; White River Winter Steelhead	72 FR 26722, May 11, 2007	226.212	223.203

		Supplementation Program; Hood Canal Supplementation Program; Lower Elwha Fish Hatchery Wild Steelhead Recovery Program; and the Fish Restoration Facility Program			
Steelhead (Snake River Basin DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Snake River basin. Also, steelhead from the following artificial propagation programs: the Tucannon River Program; Dworshak National Fish Hatchery Program; East Fork Salmon River Natural Program; Little Sheep Creek/Imnaha River Hatchery Program; Salmon River B-run Program; and the South Fork Clearwater (Clearwater Hatchery) B-run Program	71 FR 834, Jan. 5, 2006	226.212	223.203
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Steelhead (Upper Columbia River DPS)	*Oncorhynchus mykiss*	Naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Yakima River to the U.S.-Canada border. Also, steelhead from the following artificial propagation programs: the Wenatchee River Program; Wells Complex Hatchery Program (in the Methow River); Winthrop National Fish Hatchery Program; Ringold Hatchery Program; and the Okanogan River Program	71 FR 834, Jan. 5, 2006	226.212	223.203
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[1]Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. 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.*

4. In § 224.101, amend the table in paragraph (h) by revising the entries for "Salmon, Chinook (Sacramento River winter-run ESU)"; "Salmon, Chinook (Upper Columbia River spring-run ESU)"; "Salmon, coho (Central California Coast ESU);" and "Salmon, sockeye (Snake River ESU)" to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

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(h) * * *

Species[1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
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Fishes					
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Salmon, Chinook (Sacramento River winter-run ESU)	*Oncorhynchus tshawytscha*	Naturally spawned winter-run Chinook salmon originating from the Sacramento River and its tributaries. Also, winter-run Chinook salmon from the following artificial propagation programs: the Livingston Stone National Fish Hatchery (Supplementation and Captive Broodstock)	70 FR 37160, June 28, 2005	226.204	NA
Salmon, Chinook (Upper Columbia River spring-run ESU)	*Oncorhynchus tshawytscha*	Naturally spawned spring-run Chinook salmon originating from Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam (excluding the Okanogan River subbasin). Also, spring-run Chinook salmon from the following artificial propagation programs: the Twisp River Program; Chief Joseph spring Chinook Hatchery Program (Okanogan release); Methow Program; Winthrop National Fish Hatchery Program; Chiwawa River Program; White River Program; and the Nason Creek Program	70 FR 37160, June 28, 2005	226.212	NA
Salmon, coho (Central California Coast ESU)	*Oncorhynchus kisutch*	Naturally spawned coho salmon originating from rivers south of Punta Gorda, California to and including Aptos Creek, as well as such coho salmon originating from tributaries to San Francisco Bay. Also, coho salmon from the following artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program; the Scott Creek/King Fisher Flats Conservation Program; and the Scott Creek Captive Broodstock Program	70 FR 37160, June 28, 2005; 77 FR 19552, Apr. 2, 2012	226.210	NA
Salmon, sockeye (Snake River ESU)	*Oncorhynchus nerka*	Naturally spawned anadromous and residual sockeye salmon originating from the Snake River basin. Also, sockeye salmon	70 FR 37160, June 28, 2005	226.205	NA

		from the Redfish Lake Captive Broodstock Program and the Snake River Sockeye Salmon Hatchery Program.			
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[1]Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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[FR Doc. 2020-26287 Filed: 12/16/2020 8:45 am; Publication Date: 12/17/2020]