10. The State of Maine, FWS, and the National Fish and Wildlife Foundation have joined to fund habitat monitoring and improvement projects in the rivers, including spawning barrier removal, replacement of water control structures, temperature and water quality monitoring, and riparian zone protection and rehabilitation.

## Proposed Determination

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

The Services propose to list the populations of anadromous Atlantic salmon in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias and Dennys rivers as threatened under the Act. Both the naturally reproducing populations of Atlantic salmon in these seven rivers and the river specific hatchery populations for these seven rivers are included in the DPS.

Prohibitions and Proposed Protective Measures

With respect to the seven populations of Atlantic salmon proposed for listing, the Services propose to adopt joint regulations which apply all prohibitions of 50 CFR 17.31 to the DPS, allowing exceptions for incidental take under sections 4(d) and 10 of the Act. This regulation applies most section 9 prohibitions and exceptions to threatened species, including protective measures to prohibit taking, interstate commerce, and other Act prohibitions applicable to endangered species, with the exceptions provided under section 10 of the Act. The Services also propose to adopt specific regulations under section 4(d) that will apply to the DPS of Atlantic salmon identified as threatened (see Special Rule).

These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions (codified at 50 CFR 17.21 for endangered fish or

wildlife), in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 17.31 of 50 CFR prohibits certain activities that directly or indirectly affect threatened species. The proposed rule provides that any violation of applicable State law or regulation concerning the taking of Atlantic Salmon will also be a violation of Federal law. By including this provision, the Services intend to notify the public that any State law or regulation concerning the "take" of Atlantic Salmon which is more specific or more protective of a listed species than existing federal law, may be enforced as if it were Federal law pursuant to the Act.

As announced in a recent joint policy (59 FR 34272, July 1, 1994), the Services will identify at the time a final rule is published, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the range of a species. Activities that the Services believe could result in "take" of anadromous Atlantic salmon within the DPS include, but are not limited to, the following:

(1) Targeted recreational and commercial fishing, bycatch associated with commercial and recreational fisheries, and poaching;

(2) Introduction of non-indigenous Atlantic salmon stock or other species not indigenous to the DPS rivers;

(3) Discharges (point and non-point sources) or dumping of toxic chemicals, silt, fertilizers, pesticides, herbicides, heavy metals, oil, organic wastes or other pollutants into waters supporting the species;

(4) Blockage of migration routes;

(5) Destruction/alteration of the species' habitat (i.e. instream dredging, rock removal, channelization, discharge of fill material, operation of heavy equipment within the stream channel, manipulation of river flow, etc.);

(6) Hatchery practices that are likely to cause genetic, disease, or ecological impacts to the DPS.

The Services believe that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Fishing for other species if conducted in conformance with the Atlantic salmon conservation plan required by the special rule and approved by the Services;

(2) Harvest of landlocked Atlantic salmon at locations delineated by the Maine Department of Inland Fisheries and Wildlife; and

(3) Unavoidable losses in river specific hatchery stocks due to standard culture techniques.

(4) Federally approved projects that involve activities, such as instream dredging, rock removal, channelization, discharge of fill material, operation of heavy equipment within the stream channel, or manipulation of river flow, when such activity is conducted in accordance with any reasonable and prudent measures given by the Services in accordance with section 7 of the Act.

Permits may be issued, under section 10 of the Act, to carry out otherwise prohibited activities involving endangered or threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, 17.31, 222.22, and 222.23 for threatened and endangered fish and wildlife. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for educational purposes, and/or for incidental take in the course of otherwise lawful activities. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Chief, Division of Endangered Species in the FWS Hadley, Massachusetts, office, or the Chief, Protected Resources Division, in the NMFS Gloucester, Massachusetts, office (see ADDRESSES).

## Special Rule

The implementing regulations for threatened wildlife under the Act incorporate the section 9 prohibitions for endangered wildlife (50 CFR 17.31 and 50 CFR 222.21), except when a special rule promulgated pursuant to section 4(d) applies (50 CFR 17.31 (c)). Section 4(d) of the Act provides that whenever a species is listed as a threatened species, the Services shall issue regulations deemed necessary and advisable to provide for the conservation of the species. Conservation means the use of all methods and procedures necessary to bring the species to the point at which the protections of the Act are no longer necessary. Section 4(d) also states that the Services may, by regulation, extend