Section 4(a)(3)(a) of the Act requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic and other relevant impacts of specifying any particular area as critical habitat. While the Team has completed its analysis of the biological status of anadromous Atlantic salmon in the United States, it has not been able to address either the prudency or determinability of critical habitat designation. Therefore, during the comment period for this listing proposal the Services will seek additional agency and public input on critical habitat, along with information on the proposed listing of Atlantic salmon in the DPS rivers. The Services will use this and other information in formulating a decision on critical habitat designation for the Atlantic salmon.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, the Services are soliciting comments and information from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties. Specifically, the Services are soliciting information regarding: (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species; (2) the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act; (3) additional information concerning the range, distribution, and population size of this species; (4) current or planned activities in the subject area and their possible impacts on this species; (5) additional efforts being made to protect native, naturallyreproducing populations of Atlantic salmon; (6) relationship of existing hatchery populations to natural populations within the DPS and in the four river populations designated as candidate species (60 FR 14410, March 17, 1995), or species of concern, for FWS; (7) the development of a special section 4(d) regulation to allow incidental take of Atlantic salmon in accordance with an approved State conservation plan; and (8) additional information on the status and threats to the anadromous Atlantic salmon in the Penobscot, Kennebec, and St. Croix rivers and Tunk Stream.

The Services are also requesting information on areas that may qualify as critical habitat for the identified DPS of

Atlantic salmon. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential for the conservation of the species. Essential features should include, but are not limited to: (1) Space for individual and population growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, the Services are requesting information describing: (1) The activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of restrictions on Federal activities that are likely to result from the designation.

The economic cost to be considered in the critical habitat designation under the Act is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities' (50 CFR 424.19). The Services must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the Act to avoid jeopardy to the species and from the taking prohibitions under section 9 of the Act. Comments concerning economic impacts should distinguish between the costs of listing from the incremental costs that can be directly attributable to the designation of specific areas as critical habitat.

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

National Environmental Policy Act

The FWS has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. The notice for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244). Sections 4(b)(1) of the Act restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6 Cir. 1981), the NMFS has determined that listing actions under the Act are excluded from the normal requirements of the NEPA.

Classification

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

The proposed special rule in 50 CFR part 425 was reviewed under Executive Order 12866. The Services certify that the proposed revisions to 50 CFR 425 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Significant adverse impacts are not expected as a result of the proposed rule because the rule is intended to reduce the likelihood of persons conducting otherwise lawful activities being in violation of section 9 of the Act. No direct costs, enforcement costs, information collection, or recordkeeping requirements are required by this proposed rule beyond those already required by existing regulations. The proposed rule does not contain any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and does not require a Federalism assessment under Executive Order 12612 because it would have no significant Federalism effects described in that order. Finally, the Services have determined that the proposed regulation does not require the preparation of a Takings Implication Assessment under the requirements of Executive Order 12630, "Government Actions and Interference with Constitutionally Protected Property Rights.'

Authors

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List of Subjects in

50 CFR Part 17

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