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Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and
Wildlife and Parks.

[FR Doc. 06-8191 Filed 9-25-06; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU77

Endangered and Threatened Wildlife and Plants; Prudency Determination for the Designation of Critical Habitat for *Trichostema austromontanum* ssp. *compactum*

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of proposed finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for *Trichostema austromontanum* ssp. *compactum*, a plant, is prudent. This taxon was listed as threatened under the Endangered Species Act of 1973, as amended (Act), on September 14, 1998; at that time we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the taxon and would not benefit the taxon. As a consequence of a settlement agreement we are withdrawing our previous not prudent finding. Further, on the basis of our review and evaluation of the best scientific and commercial information available, we believe that designation of critical habitat continues to be not prudent for *T. a. ssp. compactum*. As a result, we are proposing a new "not prudent" determination for *T. a. ssp. compactum*.

DATES: We will accept comments from all interested parties until November 27, 2006.

ADDRESSES: If you wish to comment on the proposed finding, you may submit your comments and materials identified by RIN 1018-AU77, by any of the following methods:

(1) E-mail:

fw8cfwocomments@fws.gov. Include "RIN 1018-AU77" in the subject line.

(2) Fax: 760/431-9624.

(3) Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) Hand Delivery/Courier: You may hand-deliver written documents to our office (see **ADDRESSES**).

(5) Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, telephone, 760/431-9440; facsimile, 760/431-9624.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this finding will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed finding are hereby solicited. Comments particularly are sought concerning:

(1) Reasons that designation of critical habitat may or may not be prudent for *T. a. ssp. compactum*;

(2) Specific information on management activities for this taxon and how those activities do or do not address threats identified in the listing rule;

(3) The possible risks and benefits of designating critical habitat for *T. a. ssp. compactum*; and

(4) Ways in which we could improve or modify this finding to increase public participation and understanding.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to

fw8cfwocomments@fws.gov in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018-AU77" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number (760) 431-9440.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their names and/or home addresses, etc. but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This

rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

It is our intent to discuss only those topics directly relevant to the not prudent critical habitat determination. For more information on biology and ecology of *Trichostema austromontanum* ssp. *compactum*, refer to the final rule listing this taxon as threatened published in the **Federal Register** on September 14, 1998 (63 FR 49006).

Taxonomy and Description

Trichostema austromontanum ssp. *compactum*, a member of the Lamiaceae (mint family), was described by F. Harlan Lewis (1945) based on specimens collected in 1941 by M. L. Hilend in Riverside County, California. The taxon occurs only on the northwestern margin of a single vernal pool (Bauder 1999, p. 13). *T. a. ssp. compactum* is a compact, soft-villous (with long, shaggy hairs) annual plant, approximately 4 inches (10 centimeters) tall, with short internodes (stem segments between leaves) (Lewis 1945, p. 284-386, Lewis 1993, p. 732), elliptic leaves, and blue flowers in a five-lobed corolla. The two stamens are blue. The fruit consists of four smooth, basally joined nutlets. This taxon flowers in July and August.

Threats

In the 1998 final listing rule, we stated that trampling and low numbers (small population size) threatened *Trichostema austromontanum* ssp. *compactum* (63 FR 49006). At the time of listing there were reports of on-going impacts caused by trampling associated with hikers and horses. It was observed that trampling by horses crushed plants and also created depressions that retained water where seeds and adult plants of *T. a. ssp. compactum* drown (Hamilton 1991, p. 2, 22; Hamilton 1996). Since listing, the California

Department of Parks and Recreation (CDPR), which manages the area, has taken several actions to minimize the threat of trampling to this taxon (see the "Prudency Determination" section for a detailed discussion).

Regarding the threat posed by low numbers, the Service concluded in the final listing rule that the limited number of individual plants and the extremely localized range of *Trichostema austromontanum* ssp. *compactum*, make this taxon more susceptible to single disturbance events; such as trampling during the flowering season (63 FR 49006). According to Noss et al. (1997), a species distributed across multiple sites within its native range is less susceptible to extinction than another similar species confined to far fewer sites. As a result, being restricted to a single, small location clearly makes the species more vulnerable to stochastic (i.e., random, less predictable) threats. Using the three categories described by Noss et al. (1997), these threats would be (1) genetic (primarily loss of genetic variation), (2) demographic (principally extremely small population size), and (3) environmental (vernal pool changes and unknown stochastic events).

Previous Federal Actions

Trichostema austromontanum ssp. *compactum* was federally listed as threatened on September 14, 1998 (63 FR 49006). This taxon is not listed by the State of California. At the time of Federal listing, we determined that the designation of critical habitat was not prudent because the designation would likely encourage more visitors to the geographic location containing the single known occurrence, and would undermine attempts by the CDPR to protect the site. We determined that critical habitat designation would, therefore, increase the degree of threat to the taxon as well as provide no benefit for the taxon. At the time of listing, CDPR had initiated actions to decrease the public notoriety of the location and visibility of this taxon and accessibility by the public to the geographic location containing the single occurrence in an effort to decrease threats to this taxon. We believed a critical habitat designation would increase notoriety of the location and visibility of the taxon, the opposite of what the CDPR was trying to accomplish. The increased notoriety and visibility would potentially increase visitorship to the area, thus increasing the threat of trampling to the taxon.

On September 13, 2004, the Center for Biological Diversity (CBD) and California Native Plant Society (CNPS)

challenged our failure to designate critical habitat for this taxon and four other plant species (*Center for Biological Diversity, et al. v. Gale Norton, Secretary of the Department of the Interior, et al.*, ED CV-04-1150 RT (SGLx) C. D. California). The CBD and CNPS alleged that the Service failed to provide evidence in the final listing rule supporting its finding that critical habitat would not be beneficial to the species and establishing how the publication of critical habitat maps would increase the threat to the species. Without reaching any conclusions on the merits of the previous decision, the Service agreed to withdraw its previous not prudent finding and publish a proposed designation of critical habitat, if prudent, on or before September 20, 2006, and a final rule by September 20, 2007. This withdrawal of the previous not prudent finding and new proposed prudency determination complies with that settlement agreement.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. In our September 14, 1998 final rule (63 FR 49006), we determined that a designation of critical habitat could increase the degree of threat to *Trichostema austromontanum* ssp. *compactum*, and that such designation would also not be beneficial to the taxon.

In the final listing rule (63 FR 49019) we stated:

(1) *Trichostema austromontanum* ssp. *compactum* occurs only in a wilderness area on State [CDPR] lands with little potential for Federal involvement. Trails, signage, map notations, and references to the habitat area have been removed by the State to reduce impacts to this highly localized taxon;

(2) Designation of critical habitat would have little benefit to this taxon and would not increase the commitment or management efforts of the State; and

(3) Designation of critical habitat likely would be detrimental to this taxon because publishing maps and descriptions of the exact locality

identifies the site as a unique area. Such a distinction may encourage recreational use of the area and negatively impact the taxon.

Pursuant to the Court's April 14, 2005, stipulated settlement agreement and order, we are hereby withdrawing our previous "not prudent" determination. Consistent with the requirements of the Act and our aforementioned agreement and order, we are simultaneously making a new proposed determination of "not prudent" for *Trichostema austromontanum* ssp. *compactum*. An explanation of this proposed "not prudent" determination follows. We encourage the public to comment on this proposed determination as described in the "Public Comments Solicited" section above.

Trichostema austromontanum ssp. *compactum* was listed based on threats of trampling associated with recreational activities and low numbers of individual plants. Prior to the CDPR taking steps to minimize the visibility of the sensitive habitat that supports *T. a.* ssp. *compactum* there was a clearly marked trail to the location. The area was used for many different types of recreational uses. These activities impacted the sensitive vegetation in the area by trampling live plants and creating multiple footprints in the wet soil around the margin of the vernal pool, further impacting habitat through soil compaction and alteration of hydrology (Hamilton 1983, 63 FR 49006). Since the taxon's listing, the CDPR has continued to implement management actions designed to reduce the visitation to this area. As stated in the 1998 listing rule, they have removed reference to the area from their trail maps and signs, and removed all markers for trails to this area in order to reduce recreational use. Although the taxon's location was in the public domain in the past, the exact location is no longer easily accessible to the public via normal information sources (e.g., internet). In contrast, the public notice requirements of the Act, including publication of site location information and a map in the **Federal Register**, is intended to make information readily accessible to the public in a form that is easy to understand.

The CDPR has continued their efforts to address the threats from trampling by further excluding recreational users from the area. In 2000, CDPR erected a barrier on the trail to the area to exclude horses and pack animals from this sensitive area. In 2002, they designated the vernal pool and the surrounding area as a Natural Preserve (CDPR 2002 p. 62). A Natural Preserve is a state

designation that places resource protection within the area over recreational use and, therefore, measures can be taken to ensure the long-term survival of *T. a. ssp. compactum*. Recent visits to the site suggest that there has been a decrease in equestrian use of the area as a result of the barrier installed along the trail (Wallace 2003, 2005; Snapp-Cook 2006).

As part of the process of determining the prudence of designating critical habitat for *Trichostema austromontanum ssp. compactum*, we met with CDPR to discuss management activities now being conducted for this taxon. The current and past actions that they have initiated, partially due to the listing of this taxon, appear to be adequate to protect and maintain the plant's habitat. On a 2006 field visit to the site, we only found signs of minimal human use at the vernal pool reflected in a worn trail passing the upper boundary of the vernal pool; however, we did not see evidence of higher impact activities such as trash or fire pits that would be associated with camping, nor hoof prints or horse manure that would be associated with equestrian use (Snapp-Cook 2006). This contrasted with the condition of the site prior to the CDPR implementing management actions for this plant and the condition of the site described at the time of listing (Hamilton 1983; 63 FR 49006). We were able to observe *T. a. ssp. compactum* around the margins of the vernal pool and none of the plants showed any signs of damage from trampling.

To support the effectiveness of the management measures that CDPR has put in place, a formal study to monitor the recreation use of the area is needed. The Service has recently helped the State of California to secure funding to conduct a study to determine the condition of the population and the effectiveness of the management by CDPR. Funding has also been secured to survey and sign the legal boundaries of the established Natural Preserve so the regulations of the Natural Preserve can be enforced. In addition to these two tasks, a seed banking program that includes collection of seeds, a conservation strategy, and monitoring, will be established. Through this funding, we are committed to work with CDPR, California Department of Fish and Game, the California Native Plant Society and Rancho Santa Ana Botanic Garden to establish a long-term conservation strategy for *T. a. ssp. compactum*. These actions should provide additional protection for this taxon and help to conserve this plant.

While the primary threat to *Trichostema austromontanum ssp. compactum*, trampling, appears to have been minimized, little information exists on the status of the taxon overall. To obtain all available information on this taxon, we initiated a 5-year status review. We published a notice announcing the initiation of this review for *T. a. ssp. compactum* and the opening of the first 60-day comment period in the **Federal Register** on July 7, 2005 (70 FR 39327). We published another notice reopening the comment period for an additional 60 days in the **Federal Register** on November 3, 2005 (70 FR 66842). As part of our review, we evaluated the federally-listed status of this taxon based on the threats to the plant and its habitat and recommended that no change be made to the listing status until a few specific conservation actions underway by the CDPR have been concluded. The completed 5-year review for this taxon is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Increased Threat to the Species

The process of designating critical habitat would be expected to increase human threats to *Trichostema austromontanum ssp. compactum* by bringing publicity to this plant and its localized habitat with the publication of maps likely resulting in an increase in visitation to the site. We generally notify all major regional newspapers, local, State, and Federal agencies and other interested parties, including all Congressional offices in the local area when designating critical habitat to raise the visibility of our actions and involve the public. These actions would undermine the conservation efforts taken by the CDPR to reduce the threat of trampling to this taxon. For example, the designation of critical habitat often generates interest in a species and inspires people to study the species and visit the habitat. In the case of *T. a. ssp. compactum*, it takes careful and detailed training to recognize this taxon. The plant is small and blends in with other low-lying species on the ground. It is unlikely that even informed hikers could discern the plant's presence in particular areas. In addition, as discussed above, this area has been designated as a Natural Preserve, and CDPR manages the area to minimize recreational use. There are no signed trails or observation areas in place that could allow for interested persons to observe the plant from a non-intrusive location. Thus, even well-meaning and informed visitors may cause significant damage by inadvertently trampling

these tiny plants and adversely affecting the habitat.

The District Superintendent of the Inland Empire District of California State Parks has expressed concern to the Service that the critical habitat designation process may place this plant at increased risk via increased visitation (Watts 2006). Our publication of a critical habitat map identifying the location and subsequent publicity of this action would be counter to CDPR's conservation actions to make the area less visible. Prior to the CDPR taking actions to minimize the recreational impacts to this taxon, it was apparent that the plant was in danger of going extinct. The small size and delicate structure of this plant make it especially vulnerable to trampling by people and animals (Lewis 1945, p. 284–386; Hamilton 1996). The actions that CDPR undertook once these concerns were expressed began to reverse the negative impacts to the taxon from recreational activities. Following the listing of this plant, CDPR continued to provide measures that were designed to recover it. It is important that these and further conservation efforts continue so that this taxon no longer requires the protections afforded it under the Act. We believe that the identification of the specific areas essential to its conservation, based on past experiences and information concerning this taxon, would be expected to further increase the degree of threat to this plant from human activity and undo the conservation efforts and progress by CDPR.

In addition to increasing threats to this taxon and countering past and ongoing conservation actions by the State of California, designating critical habitat for this plant would not support our ongoing partnership with CDPR.

Most federally listed species in the United States will not recover without the cooperation of non-federal landowners. Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (i.e., 90–100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all. Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is

essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection. Therefore, to achieve the conservation of *Trichostema austromontanum* ssp. *compactum*, it is necessary to maintain our partnership with CDPR.

Benefits to the Species From Critical Habitat Designation

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

There is virtually no possibility of a Federal nexus for activities that may occur within *Trichostema austromontanum* ssp. *compactum*'s habitat. The San Jacinto Mountains have been botanically explored for over 100 years and only one population of this taxon has been found. Because of its association with vernal pool margins, other areas of suitable habitat likely do not exist in this mountain range. The Mount San Jacinto State Park Wilderness is protected from uses that would degrade or destroy natural resources. The specific area where this plant is found is designated as a Natural Preserve, which means that protection and management of sensitive resources is the highest priority for this area. Due to the fact that the taxon occurs only in a Natural Preserve on State lands, an area where no changes in land-use are planned for the foreseeable future, virtually no chance exists for a future Federal nexus that would result in a section 7 consultation for this taxon. In fact, the Service has not engaged in any consultations for *T. a. ssp. compactum* since its listing in 1998.

Another benefit of including lands in critical habitat is that the designation of critical habitat serves to educate

landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the affected species.

In this particular circumstance, any educational benefits that could be received through a designation of critical habitat have the high probability of undermining the conservation efforts by CDPR and causing harm to *Trichostema austromontanum* ssp. *compactum*. The designation of critical habitat often generates interest in a species and inspires people to study the species and visit the habitat. As discussed above, *T. a. ssp. compactum* is small and blends in with other low-lying species on the ground. Thus, someone attempting to learn more about this plant and its habitat would likely actually harm members of the population in the process.

The educational benefit is closely related to a second, more indirect benefit: that designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. However, as discussed above, CDPR is well aware of the areas important to *Trichostema austromontanum* ssp. *compactum*, and is actively implementing measures to conserve this taxon.

Increased Threat to the Species Outweighs Benefits of Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the degree of threat from human activity to *Trichostema austromontanum* ssp. *compactum*. There is a strong possibility that through the designation of critical habitat negative impacts to the habitat would occur. The dissemination of location information is likely to result in an increased threat to the plant from trampling. Designation of critical habitat will undermine the conservation actions that CDPR has already put into place for this taxon. These ongoing conservation actions appear to have minimized the primary threat to this taxon; and as discussed above, we believe that designation of critical habitat would reverse these efforts and increase the threat of trampling to this plant. Furthermore, we have determined that there is no benefit of critical habitat designation to *T. a. ssp. compactum* because (1) it is highly unlikely that a Section 7 consultation will occur for this taxon; (2) the general educational

benefits afforded by critical habitat designation are minimal for this particular taxon; and (3) designation of critical habitat would undermine ongoing conservation efforts and hinder our partnership with CDPR. Based on our determination that critical habitat designation would increase the degree of threats to *T. a. ssp. compactum* and our inability to determine a benefit of designation, we believe the increased threat to *T. a. ssp. compactum* from the designation of critical habitat far outweighs any benefits of designation.

Summary

Pursuant to the Court's April 14, 2005, stipulated settlement agreement and order we are withdrawing our previous "not prudent" determination. Further, on the basis of our review of the best scientific and commercial information available, we have reaffirmed that designation of critical habitat is not prudent for *Trichostema austromontanum* ssp. *compactum*. We have determined that the designation of critical habitat would increase the degree of threat to this taxon and will undermine the conservation actions that CDPR has already put into place for this taxon. These ongoing conservation actions appear to have minimized the primary threat to *T. a. ssp. compactum*; and as discussed above, we believe that designation of critical habitat would reverse these efforts and increase the threat of trampling to this taxon. Furthermore, we have determined that there is no benefit of critical habitat designation to *T. a. ssp. compactum*, and that, even if some benefit from designation may exist, the increased threat to the plant from human activity far outweighs any potential benefit to the taxon. We therefore propose that it is not prudent to designate critical habitat for *T. a. ssp. compactum* at this time.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent peer reviewers regarding the science in this proposed rule. The purpose of such review is to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed determination to the peer reviewers immediately following publication in the **Federal Register**, and will invite the

peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed prudency determination. We will consider all comments and information received during the comment period on this proposed determination during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed determination easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed determination clearly stated? (2) Does the document contain technical jargon that interferes with the clarity? (3) Does the format of the document (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section helpful in understanding the proposed determination? (5) What else could we do to make this proposed determination easier to understand? Send a copy of any comments on how we could make this proposed determination easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed determination does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This determination will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register**

on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of *Trichostema austromontanum* ssp. *compactum*. Therefore, no tribal lands will be affected by this finding.

References Cited

A complete list of all references cited in this finding is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06-8190 Filed 9-25-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060906236-6236-01; I.D. 083006B]

RIN 0648-AU83

Fisheries of the Northeastern United States; Method For Measuring Net Mesh Size

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing how fishing net mesh size is measured in the Northeast. This proposed change would increase the weight used to measure mesh larger than 120 mm (4.72 inches) in all fisheries. The intent of this proposed rule is to ensure consistent and accurate measurements of fishing net mesh size.

DATES: Written comments must be received no later than 5 p.m. local time on October 26, 2006

ADDRESSES: Comments may be submitted by any of the following methods:

E-mail: MeshRegChange@noaa.gov
Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Please write on the envelope: Comments on Proposed Change to Mesh Measurement Regulations.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

NOAA Office of Law Enforcement, U.S. Coast Guard, and state enforcement partners have recently issued a clarification of the method used in measuring fishing net mesh size. This protocol closely follows the regulatory language, at 50 CFR Part 648, that a wedge-shaped net measurement gauge be allowed to settle under a specified weight, without shaking the net or pressing on the gauge to force it deeper into the mesh opening. This clarification eliminated some of the