

National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, "Policies, directives, regulations, and guidelines of an administrative, financial, legal, technical or procedural nature or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." This guidance clearly qualifies as an administrative matter under this exclusion. The Service also believes that the exceptions to categorical exclusions (516 DM 2, Appendix 2) would not be applicable to such a decision, especially in light of the absence of environmental effects for such action.

#### Authority

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

Dated: November 26, 1996.

John G. Rogers,

*Acting Director, U.S. Fish and Wildlife Service.*

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### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Notice of Final Decision on Identification of Candidates for Listing as Endangered or Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of final decision.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) has decided to discontinue the practice of maintaining a list of species regarded as "category-2 candidates." Future lists of species that are candidates for listing under the Endangered Species Act (Act) will be restricted to those species for which the Service has on file sufficient information to support issuance of a proposed listing rule. A variety of other lists describe "species of concern" or "species in decline" and the Service believes that these lists are more appropriate for use in land management planning and natural resource conservation efforts that extend beyond the mandates of the Act. The Service is committed to working closely with the State natural resource and natural heritage agencies, Territories and Tribes, other Federal agencies, and other interested parties to cooperatively

identify new species that should be regarded as candidates for protection under the Act. The Service will continue to contract for, solicit, and accept information on the biological status and threats facing individual species on a continuing basis.

**ADDRESSES:** The complete record pertaining to this matter is available for inspection, by appointment, during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (telephone: 703/358-2171; facsimile: 703/358-1735) (see **ADDRESSES** section).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 28, 1996, the Service published a revised candidate notice of review in the Federal Register (61 FR 7596) that announced changes to the way the Service identifies species that are candidates for listing under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). The Service noted its intention to discontinue maintaining a list of species that were previously identified as "Category-2 candidates." Category-2 candidates were species for which the Service had information indicating that protection under the Act may be warranted but for which it lacked sufficient information on status and threats to determine if elevation to "category-1 candidate" status was warranted.

In addition to soliciting biological information on taxa that are candidates for listing under the Act, the Service also solicited public comments of a general nature when it announced the revisions to the candidate identification process in the February 28, 1996, notice (61 FR 7596). The candidate notice specified no closing date for comments of either a general or a species-specific nature. On September 17, 1996, the Service published in the Federal Register (61 FR 48875) a notice announcing that it would consider all public comments on the matter of discontinuing the practice of identifying category-2 candidate species that were received on or before October 17, 1996. In the September 17, 1996, notice (61 FR 48875), the Service stated that it would publish a subsequent notice in the Federal Register addressing comments received and indicating a final decision on this issue and how the Service

intends to identify species that are under consideration for possible addition to the list of endangered or threatened species.

As solicited in the Service's February 28, 1996, candidate notice (61 FR 7596), comments and information relating to the biological status and threats of particular taxa that are, or should be, regarded as candidates for protection under the Act may be submitted at any time to the Regional Director of the Region identified as having lead responsibility. Biological status and threat information for species that do not have a designated lead Region should be submitted to the Division of Endangered Species, Washington, D.C. (see **ADDRESSES** section).

When the Service first started publishing comprehensive lists of candidates and potential candidates, no comparable list existed because few organizations were tracking species of concern. Now, a number of agencies and organizations track species that may be declining, including State natural resource agencies and Natural Heritage Programs, Federal land-management agencies, the Biological Resources Division of the U.S. Geological Survey (USGS), professional societies, and conservation organizations. The added attention and wider range of focus means that there is vastly superior information available on species of concern than was maintained in the Service's list of category-2 species. Duplicative effort to maintain lists is not the best use of limited endangered species funding.

The quality of the information supporting the former category-2 list varied considerably, ranging from extremely limited or old data to fairly comprehensive assessments. It is the intent of the Service to work with all interested parties and to use scientifically credible sources of peer-reviewed information, when available, to identify new candidate species.

The need for a species of concern list extends beyond implementation of the Endangered Species Act. Using the old category-2 list as a "species of concern" list was inappropriate; it is widely believed that sensitive, rare, and declining species are more inclusive than those found in the old category-2 list. Many Divisions of the Fish and Wildlife Service, such as Migratory Birds, Refuges, Endangered Species, Habitat Conservation, Environmental Contaminants, and Fish and Wildlife Management Assistance will continue to work with partners to identify and protect species of concern.

The result of such collaboration should be a far more comprehensive and

reliable accounting of biological resources that are declining or otherwise at risk. This approach is consistent with the purposes of numerous Federal environmental policies and statutes, not just the Act.

#### Summary of Comments and Recommendations

The Service received 163 comment letters—one from a Federal agency, 10 from State agencies, and 152 from individuals or groups. One commenter supported the proposed action, 159 expressed concerns, and 3 were either neutral or expressed support and opposition equally. Comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues. These issues and the Service's response to each are discussed below.

*Issue 1:* Commenters noted that the category-2 list was a critically important tool for agencies, researchers, and other partners in land-use planning. Commenters claimed that elimination of the category-2 list will prevent land-use planners from easily identifying which species are at risk. Respondents also commented that the category-2 list provided greater certainty to private landowners by notifying them of species for which management actions might later be needed.

*Service Response:* While a list of species of concern is highly useful in conserving plant and wildlife species, it is important to recognize that this purpose is far broader than the purposes of the Act. The Act is meant to serve as a "safety net," to identify species at risk of extinction and focus efforts to recover those species. There are numerous Federal laws, such as the National Forest Management Act and the Federal Land Management Planning Act, that have broad mandates to protect biodiversity. Limiting the application of these laws only to species under study for possible listing under the Act would be too narrowly focused.

The Service's former list of category-2 species was far from a thorough compilation of species of concern. In fact, the quality of the information supporting the category-2 list varied considerably, ranging from extremely limited or old data to fairly comprehensive assessments. When the Service first started publishing comprehensive lists of candidates and potential candidates, no comparable list existed because few groups were tracking species of concern. Now a number of groups track declining species, including State natural resource agencies and Natural Heritage Programs,

Federal land-management agencies, the Biological Resources Division of the USGS, professional societies, and conservation organizations. Given the Service's budgetary constraints and ever-increasing workloads, the Service can no longer afford to duplicate these efforts and instead must be a partner in contributing to these various sources.

The Service will continue to take a proactive role in species conservation. The Service acknowledges that an effective program for the conservation of endangered species requires a means of addressing species that have not yet been listed but that face immediate, identifiable risks. Numerous Service programs are already actively working with partners and other knowledgeable individuals to identify species of concern, identify research needs, set priorities for developing the information, and determine how to accomplish the work needed to resolve the species' status. For example, the Service's Refuges program works to conserve many declining species, not merely those that are listed under the Act. The Migratory Bird Management Office identifies "species of management concern" to focus attention on declining bird species and the Division of Habitat Conservation works with private landowners across the nation to conserve species and habitats through the "Partners for Wildlife" program.

Federal agencies, consultants, permit applicants, and others routinely request lists of species from the Service to use during project planning and for other purposes. These requests are often associated with activities that could require consultations under section 7 of the Act or section 10 permits. The Service will continue to be responsive by providing information on candidate, proposed and listed species and proposed or designated critical habitat. Where possible, the Service will refer the requestor to other appropriate sources for information on species of concern or other environmental issues that may occur in or near the project area.

Many agencies, such as the USFS, BLM, and DOD, are working with The Nature Conservancy's (TNC) Heritage system to evaluate including all "G1-G3" species and "T1-T3" subspecies on their sensitive lists. Such efforts should lead to the shared interagency use of a more comprehensive list than the Service's former category-2 list.

The mandates of most Federal land-managing agencies exceed those of the Act in protecting biodiversity on their lands. The Act is a tool to be used when species decline despite these other

mandates. To enhance interagency efforts to conserve candidates and other species of concern, the USFS, BLM, NPS, National Marine Fisheries Service, and the Service entered into a MOU that creates a framework for cooperation to conserve species and their habitats before they reach the point where listing may be necessary. Although the MOU was signed in January 1994, when the Service still maintained a category-2 list, compliance with the MOU is in no way dependent upon the existence of that list. The Service and these agencies remain committed to the concept of addressing conservation needs of both candidate species and other species of concern.

*Issue 2:* The Service should clarify the process it intends to use to identify potential candidate species. The commenters also asked for clarification on the mechanism the Service will use to determine which species need status reviews.

*Service Response:* The Service's Endangered Species Program will identify candidates for addition to the list of endangered or threatened species through a collaborative process among all Federal, State, Tribal, and private partners. The Service's Endangered Species staff will take an active role with these partners to identify species that should be candidates for listing under the Act, identify research needs, set priorities for developing the information and determine how to accomplish the work needed to resolve the conservation status of species.

Tools available to the Service and its partners for use as a foundation for identifying potential candidates include: the Natural Heritage Central Database of The Nature Conservancy (TNC) and the International Network of Natural Heritage Programs and Conservation Data Centres, the Service's list of Migratory Nongame Birds of Management Concern in the United States, species protected by State endangered species laws or identified by State agencies as rare or vulnerable, species identified by other Federal agencies as vulnerable or of management concern such as the USFS and BLM "sensitive species," and species identified by professional scientific societies as rare or vulnerable (e.g., the American Fisheries Society and National Audubon Society/Partners in Flight).

One of the most comprehensive information sources on rare or imperiled species is the Natural Heritage Central Database, developed by TNC and the network of State Natural Heritage programs. This database ranks the conservation status of species at the

global, national, and state levels and is available from TNC and the State Heritage programs. At present, the Service regards the species ranked G1, G2, or G3, and subspecies ranked T1, T2, or T3, in the TNC database as a reasonable subset of species and subspecies from which to identify those that may be candidates for listing under the Act.

When all available information has been evaluated, the Service will determine whether a species, subspecies, or distinct population segment meets the information standards and status criteria for listing and should be placed on the candidate list. Recognized subspecies and species, as well as distinct population segments, will be recommended by the Regional Director to the Service's Director for addition to the candidate list. Other species may warrant further review or monitoring or not warrant further consideration for listing.

A status review is the act of reviewing all the available information on a species to determine whether it should be considered for candidate status. Status reviews are a required component of the listing process (section 4(b)(1)(A) of the Act). The mechanism for identifying species needing status reviews has not significantly changed. Service offices will continue to work with State and Federal biologists and other knowledgeable individuals to identify the highest priority species of concern, identify research needs, set priorities for developing the information and determine how to accomplish the work needed to resolve species status. The Service will maximize its limited resources through a stronger emphasis on a collaborative process between the Service and its partners to rank these species by their need for study and accomplish these studies cooperatively. State agencies, often using funds partially provided under section 6 of the Act, conduct status reviews on species of concern annually. The Biological Resources Division of the USGS annually requests proposals for research on species-at-risk, including status assessments. Because the Service is involved in the call for proposals, it can help focus such proposals on priority species. The Service believes that this is a more effective and efficient way to develop and compile the information needed to make biologically and ecologically sound, cost-effective decisions.

Non-candidate species under petition for listing will require initiation of a status review whenever the Service makes a finding that the petitioners

presented substantial scientific data indicating that listing may be warranted. If the Service makes a 12-month finding of "warranted" or "warranted but precluded," the species would then be considered as a candidate species.

The Service will publish an annual Notice of Review to provide an updated list of candidate species to advise other Federal agencies, State and Tribal governments, local governments, industry, and the public of those species that are candidates for a listing proposal under the Act. Publishing this list annually, rather than biennially as before, will ensure that an updated list is always available. This will allow resource managers to alleviate threats and thereby possibly remove the need to list these species. The annual revision to the candidate list will also serve as recycled petition findings until a final determination can be made on whether to publish a listing proposal for a particular candidate species.

*Issue 3:* Commenters stated that the regularly updated Notices of Review for candidates have provided a key source of public information and a process for public review, input, and refinement. The commenters were concerned that without a category-2 list maintained by the Service, that publicly available information source will no longer exist. They stated that the public will not know where to submit new information or research results on former category-2 species.

*Service Response:* The Service will continue to accept data and other information on all species. The Service's Notice of Review for candidate species, published annually, requests information on the species currently considered candidates as well as any other species that may warrant candidate status. The addresses of the Service's regional offices and the states for which they have jurisdiction are included in the Notice of Review.

The process of providing new information or research results to the Service has not changed. The Service will continue to receive such information for review and consideration. Under a current cooperative agreement with TNC, the Service shares information with TNC for incorporation into the Natural Heritage Central Database. A number of other currently available tools used to identify species of concern in order to focus research efforts and for planners to use in their decision-making process were listed under Issues 1 and 2.

*Issue 4:* Commenters noted that prior to the new candidate policy, category-2 species were considered in section 7 consultations and Habitat Conservation

Plans (HCPs). They stated that excluding those species from section 7 consultations and HCPs may result in further declines in their status, in some cases to the point of requiring listing.

*Service Response:* The consideration of category-2 candidates in project planning was always discretionary because candidate species receive no statutory protection under the Act. The Service recognizes that the category-2 candidate list was used as a planning tool; however, more complete and more appropriate lists are now available for that purpose (as discussed in Issue 1).

Under both section 7 and 10, the Service will continue to encourage the protection of candidate species and species of concern, but the Act does not mandate protection for either group. For example, under section 10, the Service encourages applicants for incidental take permits to consider candidate species and other unlisted species. The Service's final HCP Handbook (completed in November 1996) provides that unlisted species, such as candidate species, former category-2 species, and other species of concern, may be included in HCPs for listed species. Furthermore, under section 7 and section 10, the Service will continue to aid in the identification of listed, proposed, and candidate species that may be in or near a project area. The Service will also refer the requestor to other appropriate sources for information on species of concern or environmental issues concerns that may occur in or near the project area (see Issue 1).

*Issue 5:* Commenters claimed that elimination of the category-2 candidate list is a major Federal action under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and requires preparation of an EIS. Furthermore, because other Federal agencies, such as USFS and BLM, have afforded protection to category-2 species and will no longer be compelled to do so, the commenters asserted that an EIS must be prepared to evaluate this and all other direct, indirect, and cumulative impacts associated with eliminating the category-2 list.

*Service Response:* The Service does not consider its decision to discontinue the maintenance of a list of category-2 candidate species in Notices of Review to be a major Federal action significantly affecting the quality of the human environment for purposes of NEPA. (See NEPA section of this notice below for a more detailed discussion.)

The purpose of the NEPA is to ensure that Federal agency planning and decisions consider environmental values. The Service recognizes that the

category-2 list was used as a planning tool by various Federal, State, and Tribal agencies but these management entities can and should avail themselves of other information sources (as described previously in Issue 1) to fill this need. Therefore, the discontinuance of the category-2 list is not a significant loss as characterized under NEPA. As stated above, other lists of species of concern are more accurate and comprehensive than the former category-2 list, and nothing in the Act requires Federal agencies to use or consider that specific list.

*Issue 6:* Commenters noted that limited financial resources should be concentrated on species of greatest concern in a cost-effective manner before very costly "emergency room" measures, such as captive breeding, are required. They were concerned that under the new candidate policy, prelisting (candidate conservation) funds will not be available for species of concern and that it will also become more difficult for Service offices to obtain badly needed section 6 (Cooperative Endangered Species Grants to States and Territories) proposals for such species.

*Service Response:* Funding for the endangered species program has fallen short of program needs. Therefore, it is important that appropriations under the Act be directed primarily toward species for which the Service has direct statutory responsibility under the Act. As such, expenditure of candidate conservation allocations must be limited to activities related to identifying candidate species and conserving candidate species. In fiscal year 1997 the Service will direct roughly four-fifths of its appropriations (for candidate conservation) to candidate conservation agreements and activities and one-fifth to status assessments for species of concern that may warrant candidate status. Clearly, such a policy achieves the stated goal of focusing funding on those species thought to be in gravest peril.

Section 6 funds allocated to State and Territorial fish and wildlife agencies may be used for status assessments for species that may warrant candidate status and for conservation and recovery of listed, proposed, and candidate species. Candidate status determination activities have often occurred through section 6 of the Act. The Service will continue to work closely with the States and Territories through existing cooperative agreements to determine the assessments that should have the highest priority for funding. The Service will also continue to work with States and Territories to strengthen or develop

cooperative agreements for section 6 activities.

*Issue 7:* Commenters asserted that the evaluation of former category-2 species for possible inclusion on the February 28, 1996, Notice of Review was inadequate because Service Regional offices did not have enough time to properly evaluate over 4,000 category-2 species. In addition, commenters stated that the Service violated the public notice and comment requirements of the Act and the Administrative Procedure Act (APA) by putting its new policy on candidate species into effect on February 28, 1996, without requesting a public comment period and evaluating public comments.

*Service Response:* A Notice of Review is a snapshot of the species that the Service considers candidates at the time. Service staff will continue to evaluate species of concern and elevate to candidate status those that meet the appropriate criteria.

Service Field and Regional offices were provided sufficient advance notice to evaluate candidate lists for the February 28, 1996, Notice of Review. The data call for the update of the plant notice was issued in January 1995, with a response due in 90 days. An update of all plant and animal taxa that the Regions recommended for category-1 status was requested on May 17, 1995. In addition, Regional offices were asked on August 31, 1995, to provide comments or corrections on a draft notice of review.

In a notice published in the Federal Register on September 17, 1996 (61 FR 48875), the Service notified the public that the comment period for the new candidate policy would remain open until October 17, and that public comments would be taken into consideration in developing the final decision. All procedural requirements of the Act and the APA have been met.

*Issue 8:* A commenter requested clarification on a statement in the February 28, 1996, notice of review regarding whether species not known to exist in the wild could qualify for candidate status.

*Service Response:* Species not currently known to exist in the wild, captivity, or cultivation cannot be considered for candidate status. However, the Service has not, nor did it intend to, remove species from consideration for candidate status if they are believed to be extinct in the wild but known to be extant in captivity or cultivation. Species that are presently known only in captivity or cultivation, but that otherwise meet the criteria for listing established by section 4 of the

Act, may be considered as candidates for possible listing.

*Issue 9:* Commenters stated that they do not believe that public confusion constitutes a reasonable basis for eliminating the category-2 list. Various commenters suggested changing the name of the list to "watch list," "species of concern," or "species of uncertain status," rather than eliminating the list altogether.

*Service Response:* As discussed also in the Background section and Issue 1 above, the Service's decision to discontinue the category-2 list was based on numerous factors. The quality of the information for category-2 species was inconsistent and maintenance of such a list by the Endangered Species program is highly duplicative of other efforts. A combination of factors, including budgetary priorities, duplicative functions, uncertain data quality, and public confusion, forms the basis for the decision to discontinue maintenance of a list of category-2 species. The Service simply lacks the resources to continue such a list at a time of shrinking budgets, especially when mandatory section 4 demands are increasing and when non-Federal sources are providing a superior product.

#### Decision

After review of comments and further consideration, the Service discontinues the maintenance of a list of category-2 species. The Service's Endangered Species Program will identify candidates for addition to the list of endangered or threatened species through a collaborative process between the public and private sectors. The Service, through all its appropriate programs, will take an active role with its partners and other knowledgeable individuals to identify and conserve species of concern, identify research needs, set priorities for developing the information and determine how to accomplish the work needed to resolve the status of species.

Tools available to the Service and its partners for use as a foundation for identifying potential candidates include: the Natural Heritage Central Database of TNC and the International Network of Natural Heritage Programs and Conservation Data Centres, the Service's list of Migratory Nongame Birds of Management Concern in the United States, species protected by State endangered species laws or identified by State agencies as rare or vulnerable, species identified by other Federal agencies as vulnerable or of management concern (e.g., the USFS's and BLM's "sensitive species"), and

species identified by professional scientific societies as rare or vulnerable (e.g., the American Fisheries Society and National Audubon Society/Partners in Flight). The most comprehensive single source of information on rare or imperilled species is the Natural Heritage Central Database, developed by TNC and the network of State Natural Heritage programs, which ranks the conservation status of species at the global, national, and state levels. This information is available from TNC and the State Heritage programs.

When all available information has been evaluated, the Service will determine if a particular species meets the information standards and status criteria for recognition as a candidate species, and if so, the Regional Director will recommend to the Service's Director that the species be added to the candidate list. Other species may warrant further review or monitoring or not warrant further consideration for candidate status at that time. Non-candidate species petitioned for listing will require initiation of a status review when the Service makes a 90-day finding of "substantial information." If the Service makes a 12-month finding of "warranted" or "warranted but precluded," the species would then become a candidate. The annual update of the candidate notice of review will serve as recycled petition findings until such time as a final determination can be made on whether a proposed listing rule should be published.

#### National Environmental Policy Act

As stated in the September 17, 1996, notice (61 FR 48875), the Service does not consider its decision to discontinue the maintenance of a list of category-2 species in Notices of Review to be a major Federal action significantly affecting the quality of the human environment for purposes of the NEPA.

Further, the Department of the Interior's Departmental Manual (DM) categorically excludes from consideration under NEPA, "activities which are educational, informational, advisory or consultative to other agencies, public or private entities, visitors, individuals, or the general public" (516 DM 2, Appendix 1, item 1.11). Notices of Review serve the purpose of informing Federal agencies, state agencies, and the general public of species that are candidates for possible addition to the lists of endangered or threatened wildlife and plants. They also serve as data-gathering tools to assist the Service in developing the best available scientific and commercial data on such species. There is no statutory or regulatory mandate on how to structure

or when to publish these notices. Therefore, even if the Service's decision to discontinue maintenance of a list of category-2 species in Notices of Review were considered an "action" for purposes of the NEPA, this categorical exclusion would apply. The Service also believes that the exceptions to categorical exclusions (516 DM 2, Appendix 2) would not be applicable to this decision, especially in light of the absence of environmental effects for such action.

#### Authority

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

Dated: November 27, 1996.

John G. Rogers,

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 961008282-6332-02; I.D. 092796A]

RIN 0648-A197

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Red Hind Spawning Aggregations

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement a regulatory amendment prepared by the Caribbean Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). The regulatory amendment adjusts the boundary of the existing red hind spawning aggregation seasonal/area closure in the EEZ off western Puerto Rico and adds two additional red hind spawning aggregation seasonal/area closures. The intended effect is to protect red hind spawning aggregations by prohibiting fishing in these areas during the spawning season. This rule also contains a technical change to the regulations to alter minimally the

boundary of the mutton snapper spawning aggregation area off the southwest coast of St. Croix, U.S. Virgin Islands (USVI), to make it compatible with USVI regulations.

**EFFECTIVE DATE:** December 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of Puerto Rico and USVI is managed under the FMP. The FMP was prepared by the Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The background and rationale for the measures in the regulatory amendment were included in the preamble to the proposed rule (61 FR 55127, October 24, 1996) and are not repeated here.

#### Comments and Responses

*Comment:* The Center for Marine Conservation (CMC) supports management measures to protect two additional spawning aggregations for red hind but is concerned about the reduction in the size of the existing spawning aggregation seasonal/area closure around Tourmaline Bank. CMC wants the Council to reconsider a rejected measure to prohibits the sale of red hind during the closed season. In addition, CMC notes the need for additional conservation measures, such as the establishment of marine reserves, to protect red hind critical habitat.

*Response:* NMFS agrees with CMC's assessment of the need for additional protective measures to address the continuing decline in red hind populations off Puerto Rico. Closed areas are one of the best ways to protect the spawning stocks and prevent overfishing. Puerto Rico is currently considering a series of marine reserves, including one in the Tourmaline Bank area, to protect reef fish, corals, and reef invertebrates in its waters (0 to 9 nautical miles offshore). The Council is working with the fishing industry to identify and establish closed areas in Federal waters throughout the U.S. Caribbean. The Council intends to reassess the need for a possible prohibition on the sale of red hind during the spawning season if the spawning area closures are unsuccessful in arresting population declines.

The decision to establish the original spawning aggregation closure off western Puerto Rico was based on the best information available at that time. New information now demonstrates that the area originally established includes habitat unsuitable for red hind, such as