

used to cross-reference this action with the Unified Agenda.

#### List of Subjects in 49 CFR Part 665

Vehicle testing. Grant programs—transportation. Mass Transportation.

■ Accordingly, the interim rule amending 49 CFR part 665 which was published at 58 FR 58732, November 3, 1993, is adopted as a final without change.

Issued on: March 24, 2003.

Jennifer L. Dorn,

Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 224

[Docket No. 000303059-3034-03; I.D. No. 021700B]

RIN No. 0648-XA49

#### Endangered and Threatened Species; Final Endangered Status for a Distinct Population Segment of Smalltooth Sawfish (*Pristis pectinata*) in the United States

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

**ACTION:** Final rule; technical amendment

**SUMMARY:** NMFS published a proposed rule to list the U.S. population of smalltooth sawfish as endangered on April 16, 2001. After considering public comments on the proposed rule, NMFS is issuing a final rule to list the distinct population segment (DPS) of smalltooth sawfish in the United States as an endangered species. NMFS has determined that the U.S. DPS is in danger of extinction throughout its range.

NMFS is also making a technical amendment to the list of endangered marine and anadromous species to reinsert the listing of Atlantic salmon.

**DATES:** Effective May 1, 2003.

**ADDRESSES:** The complete administrative record for this regulation is available at NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702. The status review and proposed rule are also available electronically at the NMFS Web site at <http://www.nmfs.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Shelley Norton, NMFS, at the address above, 727-570-5312, or David O'Brien, NMFS, 301-713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS designated the smalltooth sawfish as a candidate species under the Endangered Species Act (ESA) on June 23, 1999 (64 FR 33467). On November 30, 1999, NMFS received a petition from the Center for Marine Conservation (now The Ocean Conservancy) requesting that NMFS list the North American populations of smalltooth sawfish and largemouth sawfish as endangered under the ESA. The petitioner's request was based on four criteria: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) the inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting its continued existence. On March 10, 2000, NMFS published its determination that the petition presented substantial information indicating that listing may be warranted for smalltooth sawfish, but not for largemouth sawfish. Concurrently, NMFS announced the initiation of a smalltooth sawfish formal status review (65 FR 12959, March 10, 2000).

In order to conduct a comprehensive review of smalltooth sawfish, NMFS created a status review team to investigate the status of the species with regard to the listing criteria provided by the ESA. In addition to its own resources and data, the status review team gathered all known records and data of smalltooth sawfish by contacting fishery managers, museums and other research collectors. The status review contains the best scientific and commercial information available on smalltooth sawfish at the time of the report. The document addresses the status of the species, the five listing determination criteria, and the effect of efforts underway to protect the species.

The Smalltooth Sawfish Status Review was completed in December 2000 and has undergone peer review. The findings of the Status Review have been accepted by NMFS and some of the findings are summarized here. The Status Review contains a more complete discussion and complete literature citations for the information summarized in this final rule. The Status Review is available at on the NMFS Web site (see **ADDRESSES**).

NMFS published the proposed rule to list the smalltooth sawfish on April 16,

2001 (66 FR 19414). Comments received on the proposed rule are discussed below.

In addition to this final rule to list the U.S. population of smalltooth sawfish as endangered, NMFS is also making a technical amendment to the list of endangered species (50 CFR 224.101) to reinsert the listing for Atlantic salmon, which was inadvertently deleted from the list.

#### Summary of Comments Received on the Proposed Rule

During the 60-day public comment period, NMFS received a total of 12 written comments: four from private citizens, seven from non-governmental organizations, and one from a local non-profit research laboratory. All commenters supported the proposed rule. Three of the commenters also requested that critical habitat be designated for the smalltooth sawfish. Several commenters requested that NMFS develop a recovery plan or program for the species. One commenter also requested the listing of the largemouth sawfish. A brief summary of the comments received on the proposed rule is presented below, along with NMFS' response to each comment.

**Comment 1:** Three commenters stated that critical habitat designation is necessary for the smalltooth sawfish and urged NMFS to designate critical habitat.

**Response:** Section 4(a)(3)(A) of the ESA requires that critical habitat be designated concurrently with a determination that a species is endangered or threatened, to the maximum extent prudent and determinable. When such a designation is not determinable at the time of final listing of a species, section 4(b)(6)(C)(ii) of the ESA, 16 U.S.C. 1533(b)(6)(C)(ii), provides for additional time to promulgate a critical habitat designation. NMFS has determined that designation of critical habitat for the sawfish is not determinable at this time.

NMFS has and continues to fund research that is necessary to identify the biological and physical habitat features that are essential to the conservation of the species. While more information is required before critical habitat can be designated, the available data suggest that shallow water, 1 meter or less, may be important nursery areas for the smalltooth sawfish; that river and creek mouths are important habitat elements; and that channels through shallow habitats may be important mating aggregation areas. During the next year NMFS will be gathering and reviewing the current and ongoing studies on the habitat use and requirements of