

and monitor agreements with foreign countries for assigned geographic areas of responsibility.

(h) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(i) Perform such other duties as the Secretary of Defense and the USD(P) may prescribe.

#### § 387.4 Relationships.

(a) In the performance of assigned responsibilities and functions, the ASD(ISA) shall:

(1) Coordinate and exchange information with other DoD and federal organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) DoD Components shall coordinate all matters concerning the responsibilities and functions cited in § 387.3 with ASD(ISA).

#### § 387.5 Authorities.

The ASD(ISA) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M, which carry out policies approved by the Secretary of Defense, in assigned areas of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments of their designees. Instructions to Unified and Specified Commands shall be issued through the Joint Chiefs of Staff (JCS).

(b) Obtain such reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 5000.19<sup>2</sup> as necessary.

(c) Communicate directly with heads of DoD Components. Communications with the Unified and Specified Commands shall be coordinated with the JCS; all JCS security assistance communications (except those dealing with NATO and the European countries) shall be coordinated with the ASD(ISA).

(d) Establish arrangements for DoD participation in those non-DoD governmental programs for which primary cognizance is assigned.

(e) Communicated with other government agencies, representatives of the Congress, and the public, as appropriate, in carrying out assigned functions.

#### § 387.6 Effective date.

This part is effective September 27, 1985.

July 29, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-17552 Filed 8-3-88; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 370

[FRL-3423-4]

#### Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements; Clarification of Reporting Dates for Newly Covered Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of reporting dates.

**SUMMARY:** On October 15, 1987, EPA published a final rule for reporting under sections 311 and 312 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Under sections 311 and 312, facilities required to prepare or have available a material safety data sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act and its implementing regulations must submit the MSDS (or a list of the hazardous chemicals) and inventory forms to the State Emergency Response Commission, Local Emergency Planning Committee, and the local fire department. This notice clarifies the reporting dates for facilities which are newly covered by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard as of June 24, 1988.

#### DATES:

1. Initial submission of MSDSs or alternative list: September 24, 1988.

2. Initial submission of the inventory form containing Tier I information: March 1, 1989.

**ADDRESS:** The record supporting this notice is contained in the Superfund Docket located in Room Lower Garage at U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen Brody, Program Analyst, Preparedness Staff, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, or the Emergency Planning and Community Right To Know Information Line at 1-(800) 535-0202 or in Washington, DC at (202) 479-2449.

**SUPPLEMENTARY INFORMATION:** On August 24, 1987, OSHA revised its Hazard Communication Standard (52 FR 31852) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. The revised rule required the non-manufacturing sector of industry to be in full compliance with its provisions on May 23, 1988. On May 20, 1988, the U.S. Court of Appeals for the District of Columbia Circuit transferred several consolidated cases challenging the standard to the U.S. Court of Appeals for the Third Circuit, and in the interim ordered an administrative stay of the revised standard.

On June 24, 1988, the Third Circuit issued an order granting the stay requested by construction industry representatives. On July 8, 1988, the Third Circuit clarified its earlier order stating: "The order entered on June 24, 1988, is clarified to make clear that the stay applies only with respect to construction employers in the non-manufacturing sector." In a recently published Federal Register notice (53 FR 27679, July 22, 1988) OSHA announced that the revised Hazard Communication Standard has been in effect for all non-manufacturing establishments other than construction since June 24, 1988.

Section 311(d)(B) of Title III of SARA requires that the initial MSDS or list submission be made three months after the owner or operator of a facility is required to prepare or have available a MSDS for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act. Therefore, the date established for section 311 compliance for all newly covered employers is September 24, 1988. Section 312 requires that the same facilities subject to section 311 submit the inventory form containing Tier I information annually on March 1, beginning March 1, 1988. Thus, employers in the non-manufacturing sector excluding the construction industry must submit their Tier I inventory reports by March 1, 1989.

Regulations for compliance with sections 311 and 312 of Title III of SARA were promulgated on October 15, 1987

<sup>2</sup> See footnote 1 to § 387.1(a).



(52 FR 38344) and codified at 40 CFR Part 370. This final regulation established the minimum threshold quantities applicable to the reporting requirements of all facilities subject to OSHA's MSDS requirements under sections 311 and 312, including facilities newly subject to the requirements at a future date, such as those in the non-manufacturing sector. EPA's promulgation of a minimum threshold applicable to the non-manufacturing sector was based upon its initial analysis that the thresholds applicable to the manufacturing sector would be equally applicable to the non-manufacturing sector. Nevertheless, EPA stated in the preamble to that final rule that it was undertaking additional analysis of the applicability of these threshold levels to the universe of facilities newly-covered by the OSHA's MSDS requirements.

The study referred to in the October 15, 1987, final rule has been completed and confirms EPA's regulatory decision to apply the minimum threshold levels applicable to the manufacturing facilities to the non-manufacturing facilities. The study found that chemical usage by non-manufacturers is significant. A number of non-manufacturing industries use as many different hazardous chemicals as manufacturing industries. The MSDSs that non-manufacturers will be expected to maintain under OSHA's expanded HCS will include a substantial number of extremely hazardous substances and other chemicals that must be reported under provisions of SARA Title III. The study also found that the cost impacts of the sections 311 and 312 reporting requirements will not have a significant impact upon a substantial number of small businesses in the non-manufacturing industries.

In the October 15, 1987 final rule the Agency stated that the initial 10,000 pound threshold for reporting by manufacturers of hazardous chemicals that are not extremely hazardous substances (EHS) provides the appropriate balance between ensuring that the public has access to information on large volume chemicals and reducing the number of reports to manageable levels in the first years of the program. 52 FR 38344, 38352. The Agency found that a threshold equal to 10,000 pounds resulted in the reporting of roughly 13 to 22 percent of manufacturing facilities or 8 to 13 percent of chemicals. *Id.* The Agency's non-manufacturing industry study found that the percentage of facilities that will be required to report and the percentage of chemicals that will be reported by the non-

manufacturing sector using the 10,000 pound/TPQ or 500 pound threshold will be roughly similar to these figures. Although reporting at the same threshold by non-manufacturers as manufacturers will increase the number of MSDS submissions to State and local officials, the Agency's study also found that the merits of similar reporting between manufacturers and non-manufacturers, as well as the fact that many State right-to-know laws already include the non-manufacturing industry (which lessens the impact of the increase of MSDS submissions), justifies applying the same initial threshold level to the non-manufacturing industry as is currently applied to the manufacturing industry.

The Agency's study of the effects of applying the initial threshold promulgated in the October 15, 1987 rule to the non-manufacturing sector will be available in the docket on August 8, 1988. EPA will accept comments on the study.

#### List of Subjects in 40 CFR Part 370

Chemical, Hazardous substances, Extremely hazardous substance, Intergovernmental relations, Community right-to-know, Superfund Amendments and Reauthorization Act, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting, Recordkeeping requirements.

Dated: July 26, 1988.

Thaddeus L. Juszczak, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-17338 Filed 8-3-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 208 and 252

#### Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council has approved adding a new Subpart 208.79 to the Defense Federal Acquisition Regulation Supplement to restrict procurement of antifriction bearings and bearing components for use by the DoD to domestic sources. This restriction was deemed necessary to protect and strengthen the domestic industrial base

for an industry critical to national security.

**DATES:** This interim rule is effective on August 4, 1988. Comments on this proposed addition should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 3, 1988, to be considered in the formulation of the final rule. Please cite DAR Case 88-35 in all correspondence relating to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory E. Saunders, Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000, telephone (202) 695-7915.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The DAR Council published a proposed rule at 53 FR 10129 dated March 29, 1988. Comments were received from over 30 different respondents, both foreign and domestic. As a result of these comments, the following changes were made to the proposed rule:

(1) Definition of domestic manufacture was clarified.

(2) Definition of commercial product clarified to indicate bearings or items described by and developed under (a) a military specification, (b) other DoD prepared specification or (c) purchase description are not considered commercial products.

(3) Wholly manufactured was eliminated and net export value was added as an alternate way.

(4) Exports to Canada were eliminated as a part of the allowable export baseline.

(5) Replace the 6 month phase-in provision with a 12 month phase-in.

(6) Changed to reflect that the Head of the Contracting Activity would grant waivers.

(7) Eliminated the waiving of the restriction after contract award and clarified the manner in which the waiver should be considered.

(8) Clarified the requirement regarding the plan to convert from foreign to domestic manufactured bearings.

(9) Added provision to flow the certification requirement down to the contractor who is purchasing the bearing.



**B. Regulatory Flexibility Act**

The coverage at Subpart 208.79 is not expected to have a significant impact on small businesses. It will impact only those small businesses that (1) manufacture antifriction bearings, or (2) use antifriction bearings in a subassembly, assembly, or end item sold to the DoD either directly or through a subcontract with a DoD contractor. Although there is no existing data to quantify the number of small businesses which may be impacted, it is estimated that only a small quantity will be affected. Further, because the restriction will be applied across the board giving the same advantages and disadvantages to all, and because commercial items are exempted from the restriction, any impact is expected to be minimal. Therefore, an Initial Regulatory Act Analysis has not been prepared. Please cite DAR Case 88-35 for any comments regarding this determination. In addition, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88-610D.

**C. Paperwork Reduction Act**

It is expected that this coverage will impose additional burden on contractors. A paperwork burden clearance for OMB Control Number 0704-0205 was submitted to OMB for review and approval. This clearance reflects an increase of 439,383 hours.

**D. Determination To Issue an Interim Regulation**

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary to protect and strengthen the domestic industrial base for an industry critical to national security.

**List of Subjects in 48 CFR Parts 208 and 252**

Government procurement.

Charles W. Lloyd,

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, it is proposed to amend 48 CFR Parts 208 and 252 as follows:

1. The authority citation for 48 CFR Parts 208 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

**PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

2. A new Subpart 208.79, consisting of sections 208.7901 through 208.7904, is added to read as follows:

**Subpart 208.79—Antifriction Bearings**

Sec.	
208.7901	Definitions.
208.7902	Policy.
208.7903	Procedures.
208.7904	Contract clause.

**Subpart 208.79—Antifriction Bearings****208.7901 Definitions.**

As used in this subpart:

"Bearing" means antifriction bearing or antifriction bearing assembly.

"Commercial product" means a product, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3(c) for an explanation of terms). It does not include bearings or items described by and developed under (a) a Military Specification, (b) other DoD prepared specification, or (c) purchase description.

"Custom/speciality Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. For the purposes of this definition, raw materials, such as preformed bar or rod stock and lubricants, need not be domestically mined or produced.

"Net Export Value" means the value of any bearing manufactured in whole or in part in the United States minus the value of any foreign manufactured components used in that bearing. The value of the imported components in any year may not exceed the value for calendar year 1987 for bearings sold to the Department of Defense. Raw materials, such as preformed bar or rod stock and lubricants, imported for use in domestic manufacture are excluded from the value of imported components.

"Other authorized manufacture" means manufacture in whole or in part by a company which has its corporate headquarters in a NATO participating country (see DFARS 25.001) and which has a United States subsidiary.

However a manufacturer's bearings are included within this term only to the extent that (a) the total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the net export value of bearings exported outside the United States by its United States subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/speciality bearings imported for sale to DoD and its contractors in a calendar year does not exceed the total value of such bearings imported in calendar year 1987. Subject to the sales restrictions in (a) and (b) above, bearings manufactured by the following manufacturers are other-authorized manufacture bearings: FAG Bearings Corporation (additional companies may be added to this list based on a survey of domestic firms).

"Super-precision Bearings" means bearings having a precision classification of ABEC/RBEC 5 or higher;

**208.7902 Policy.**

(a) It has been determined that the ability of the United States bearing industry to meet industrial surge and mobilization requirements for bearings is in serious jeopardy. In view of the national security significance of bearings, the DoD has determined that except as provided in (b) below, all bearings, components of bearings, or items containing bearings, whether procured directly or installed in defense end-items and subassemblies shall be of domestic manufacture. This restriction shall remain in effect for contracts awarded through September 30, 1991. The restriction may be extended an additional two years if conditions warrant.

(b) This subpart does not apply to:

(1) Miniature and instrument bearings restricted by Subpart 208.73;

(2) Bearings covered by the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039	Bearing, double row, ball, sealed rod end, antifriction, self-aligning
MIL B 7942	Bearing, ball, airframe, antifriction
MIL B 8942	Bearings, plain, TFE lined, self-aligning
MIL B 8943	Bearing, journal plain and flanged, TFE lined
MIL B 8948	Bearing, plain rod end, TFE lined, self-aligning
MIL B 8952	Bearing, roller, rod end, antifriction self-aligning
MIL B 8976	Bearing, plain, self-aligning, all metal
MIL B 81820	Bearing, plain, self-aligning, self-lubricating, low speed oscillation



- MIL B 81934 Bearing, sleeve, plain and flanged, self-lubricating  
 MIL B 81935 Bearing, plain, rod end, self-aligning, self-lubricating  
 MIL B 81936 Bearing, plain, self-aligning (BeCU, CRES Race)

**208.7903 Procedures.**

(a) The Head of the Contracting Activity, without delegation, may waive the domestic bearings requirements of this subpart if there is a determination that there is no domestic bearing manufacturer that meets the requirement or if it is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestic manufacture bearing would cause unreasonable costs or delays.

(b) The determination of unreasonableness should be made in consideration of the DoD policy to assist the United States industrial mobilization base by awarding more contracts to domestic bearing manufacturers thereby increasing their capability to reinvest and to become more competitive.

(c) Before a waiver is granted for a multiyear contract or contract that may exceed 12 months, the contracting officer shall require offerors to submit a written plan for transitioning from the use of nondomestic to domestic manufacture bearings. The plan shall be reviewed to determine whether a domestic manufacture bearing can be qualified at a reasonable cost, and used in lieu of the foreign bearing during the course of the contract period. If approved, the plan shall be incorporated in the contract and shall:

(1) Identify the bearings that are not domestic or other authorized manufacture, application, and source of supply;

(2) Describe the transition, including cost and timetable, for providing a domestic manufacture bearing. The timetable for completing the transition should normally not exceed one year from the date of the waiver.

**208.7904 Contract clause.**

The clause set forth at 252.208-7006, Required Sources for Anti-friction Bearings, shall be inserted in all solicitations and resultant contracts, and before exercising an option, except:

(a) Where the contracting officer knows that the item being procured does not contain bearings;

(b) When purchasing commercial products;

(c) When purchasing foreign manufactured bearings, components of bearings, or foreign manufactured

products containing bearings overseas for use overseas;

(d) When purchasing for use in a cooperative or co-production project under an international agreement;

(e) When using small purchase procedures, other than in purchases of bearings as the end item.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Section 252.208-7006 is added to read as follows:

**252.208-7006 Required Sources for Antifriction Bearings.**

As prescribed in 208.7904 insert the following clause:

**Required Sources for Antifriction Bearings (Aug 1988)**

(a) For the purpose of this clause:

"Bearing" means antifriction bearing or antifriction bearing assembly.

"Commercial product" means a product, other than bearings or items described by and developed under a Military Specification or other DoD prepared specification or purchase description, such as an item, material, component, subsystem, or system sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices (see FAR 15.804-3(c) for an explanation of terms);

"Custom/specialty Bearings" means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5;

"Domestic manufacture" means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. For purposes of this definition, raw materials, such as preformed bar or rod stock and lubricants, need not be domestically mined or produced.

"Net Export Value" as used in this subpart means the value of any bearing manufactured in whole or in part in the United States minus the value of any foreign manufactured components used in that bearing. The value of the imported components in any year may not exceed the value for calendar year 1987 for bearings sold to the Department of Defense. Raw materials, such as preformed bar or rod stock and lubricants, imported for use in domestic manufacture are excluded from the value of imported components.

"Other authorized manufacture" means manufacture in whole or in part by a company which has its corporate headquarters in a NATO participating country (see DFARS 25.001) and which has a United States subsidiary. However a manufacturer's bearings are included within this term only to the extent that (a) the total value of such bearings imported for sale to DoD and its contractors in a calendar year, does not exceed the net export value of

bearings exported outside the United States by its United States subsidiaries in calendar year 1987; and (b) the total value of super-precision or custom/specialty bearings imported for sale to DoD and its contractors does not exceed the total value of such bearings imported in calendar year 1987. A list of other authorized bearing manufacturers is at DFARS 208.7901;

"Super-precision Bearings" means antifriction bearings having a precision classification of ABEC/RBEC 5 or higher; and

(b) If the Offeror is a bearing manufacturer, the offeror agrees that, if awarded the contract, that—

(1) Bearings and components of bearings supplied under this contract will be of domestic or other authorized manufacture; and

(2) For bearings that are of other authorized manufacture, acceptance by the Government of this offer will not cause the manufacturer to exceed the sales levels described in the definition of the term "other-authorized manufacture".

(c) If the Offeror is not the bearing manufacturer, the offeror agrees that, if awarded the contract, that the bearings, components of bearings, or bearings installed in defense end-items or subassemblies supplied under this contract will be of domestic or other-authorized manufacture.

(d) The requirements in paragraphs (b) and (c) above may be waived, in whole or in part, by the Government. Before a waiver is granted for a multiyear contract or one that may exceed 12 months, the Contracting Officer will require each offeror to submit a written plan for the transition from bearings that are not of domestic or other authorized manufacture, to domestic manufacture bearings. The plan shall identify all bearings that are not of domestic or other authorized manufacture currently used, their application and source of manufacture, a plan for the transition to domestic manufacture bearings, the costs associated with the transition, and a timetable for transition. If approved, the plan will be incorporated into the contract.

(e) The Contractor will provide written certification upon delivery of the bearings, components of bearings, or defense end-items or subassemblies containing bearings, that to the best of its knowledge and belief, such bearings or components of bearings are of domestic or other-authorized manufacture.

(f) Paragraphs (c) and (d) do not apply to end items and components that are commercial products.

(g) Paragraphs (b), (c), and (d) do not apply to:

(1) Miniature and instrument bearings which are restricted by DFARS Subpart 208.73; and

(2) Bearings covered in the following Military Specifications, for contracts entered into prior to December 31, 1989.

- MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction self-aligning  
 MIL B 7949 Bearing, ball, airframe, antifriction  
 MIL B 8942 Bearings, plain, TFE lined, self-aligning  
 MIL B 8943 Bearing, journal plain and flanged, TFE lined



- MIL B 8948 Bearing, plain rod end, TFE lined, self-aligning  
 MIL B 8952 Bearing, roller, rod end, antifriction self-aligning  
 MIL B 8976 Bearing, plain, self-aligning, all metal  
 MIL B 81820 Bearing, plain, self-aligning, self-lubricating, low speed oscillation  
 MIL B 81934 Bearing, sleeve, plain and flanged, self-lubricating  
 MIL B 81935 Bearing, plain, rod end, self-aligning, self-lubricating  
 MIL B 81936 Bearing, plain, self-aligning (BeCU, CRES Race)

(h) The Contractor agrees to insert this clause, appropriately modified to reflect the identity of the parties, including this paragraph, in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no bearings or components of bearings.

(End of clause)

[FR Doc. 88-17650 Filed 8-3-88; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Determination of Nonessential Experimental Population Status for an Introduced Population of the Yellowfin Madtom in Virginia and Tennessee

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service will reintroduce a small catfish, the yellowfin madtom (*Noturus flavipinnis*) (Federally listed as a threatened species), into the North Fork Holston River, Washington County, Virginia. This population is determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of the Act authorizes nonessential populations to be treated as if they were proposed species for the purposes of section 7. This releases Federal agencies from the Act's prohibition against jeopardizing this population by their actions. The yellowfin madtom once likely inhabited many of the lower gradient streams of the Tennessee River basin upstream of Chattanooga, Tennessee. Presently, populations are confined to only three stream reaches in the Tennessee River valley. This action is being taken in an effort to reestablish the yellowfin madtom within its historic range.

**EFFECTIVE DATE:** September 6, 1988.

**ADDRESSES:** Comments and materials relating to this final rule are available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at the above address.

#### SUPPLEMENTARY INFORMATION:

##### Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Pub. L. 97-304, was the creation of a provision (section 10(j)) which provides for the designation of specific reintroduced populations of listed species as nonessential experimental populations. Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j) of the 1982 Amendments, past and future reintroduced populations established outside the current range but within the species' historic range, may be designated, at the discretion of the Service, as experimental populations or nonessential experimental populations. Experimental population status allows the Service to treat an endangered species as threatened for the purposes of section 9 of the Act. Species listed as threatened can be managed with greater flexibility, especially regarding incidental take and regulated taking. As the yellowfin madtom is already listed as a threatened species with special rules (50 CFR 17.43), which provide that the fish may be taken in accordance with applicable State law, the species' status relative to section 9 will remain the same for any introduced populations.

Nonessential populations are experimental populations found to be nonessential to the continued existence of the species. These populations are treated as if the species were only proposed for listing under section 7 (except for subsection (a)(1)). Therefore, they are not subject to the provisions of section 7(a)(2) of the Act, which requires Federal agencies to ensure that their

activities are not likely to jeopardize the continued existence of a listed species. However, two provisions of section 7 would apply on lands that are not within the National Wildlife Refuge System or National Park System: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs, and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Where the species occurs on Refuge or Park System lands, all provisions of section 7 would apply. The organisms used to establish an experimental population will only be removed from an existing source if (1) the removal will not jeopardize the continued existence of the species and (2) a permit has been issued for the take of individuals from the donor population in accordance with the requirements of 50 CFR 17.31.

The yellowfin madtom was listed as a threatened species with critical habitat on September 9, 1977 (42 FR 45528). The species was probably once widely distributed in many lower gradient streams of the Tennessee River drainage upstream of the Chattanooga, Tennessee, area (Jenkins 1975). The species' present distribution (Burkhead and Jenkins 1982, Shute 1984) is represented by only three known populations (Citico Creek, Monroe County, Tennessee; Powell River, Hancock County, Tennessee; and Copper Creek, Scott and Russell Counties, Virginia). Three other historic populations (Chickamauga Creek, Catoosa County, Georgia; Hines Creek, Anderson County, Tennessee; and North Fork Holston River, Virginia) are believed to have been extirpated primarily due to human-related factors (impoundments, pollution, habitat modification, etc.).

The yellowfin madtom occupies small-to-medium-sized (25 to 135 feet wide) warm water streams with moderate current and clean water with little siltation (Jenkins 1975). The species is generally associated with cover (undersides of flat rocks, detritus, and stream banks) (Jenkins 1975, Shute 1984).

Good habitat for the yellowfin madtom is currently located in the North Fork Holston River, Smyth, Washington, and Scott Counties, Virginia. The establishment of an experimental population in this now unoccupied historic habitat will greatly enhance the recovery potential of this species. During the late summer or early fall of 1988 or 1989, 100 to 200 captive-reared madtoms (taken in the spring and



summer of 1988 or 1989 from nests on Citico Creek, Monroe County, Tennessee) will be reintroduced into one or two pools on the North Fork Holston River, Washington County, Virginia. The techniques for rearing and transplanting the species were developed in 1986 and 1987 when a reintroduction was made into Abrams Creek, Blount County, Tennessee. The success of this introduction attempt is being evaluated.

Based on studies conducted on the Citico Creek population (Shute 1984; David Etnier, Peggy Shute, and Randy Shute, University of Tennessee, personal communication, 1986), it is believed that approximately 125 yellowfin madtom nests exist in Citico Creek each year. The yellowfin madtom nests each contain about 90 eggs. Three to four nests would be taken, and, allowing for natural mortality, these would yield the desired 100 to 200 individuals for stocking. The removal of three to four nests represents only about 3 percent of each year's total clutches. This amount of loss is well within the limits of natural loss that would likely occur on an average reproductive year (D. Etnier, P. Shute, and R. Shute, personal communication, 1986). Therefore, the Service has determined that the removal of the animals from Citico Creek to be used in the North Fork Holston River transplant is not likely to jeopardize the continued existence or viability of the Citico Creek population. Furthermore, the creation of this experimental population, as proposed, will further the conservation of the species throughout its range.

#### Status of Reintroduced Population

This reintroduced population of yellowfin madtoms is being designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The nonessential experimental population status, which is necessary to gain the acceptance of the Virginia Commission of Game and Inland Fisheries for the reintroduction effort, is appropriate for the following reasons: Reproducing populations of the yellowfin madtom presently exist in three river reaches. The removal of individuals from the extant population in Citico Creek, Monroe County, Tennessee, is not expected to adversely affect the viability of that population (see Background section above). Therefore, the loss of the introduced population would not reduce the likelihood of the survival of the species in the wild. In fact, the anticipated success of this reintroduction will enhance the species' recovery potential by extending its

current range and reoccupying currently unutilized historic habitat.

#### Summary of Comments and Recommendations

In the September 8, 1987, proposed rule (52 FR 33850) and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and interested parties were contacted and requested to comment. Six written comments were received and are summarized below.

Support for the proposal was received from the Tennessee Department of Conservation, U.S. Forest Service, and the Virginia Cooperative Fishery Research Unit. The State of Virginia Department of Game and Inland Fisheries and the Tennessee Valley Authority provided no specific comments, but did request that the Service inform them of the exact location of the transplant site. The Service will coordinate the release of the fish with these agencies, and specific site data will be provided prior to the release.

The Smyth County Board of Supervisors objected to the proposal to establish a nonessential experimental population of the yellowfin madtom in the North Fork Holston River. However, they provided no reason for their objection.

A Service biologist met with the Board and explained the proposed rule specifically emphasizing the greatly reduced protection the Act provides to nonessential experimental populations. The Board voted again to oppose the reintroduction.

The proposed rule stated that the yellowfin madtom would be introduced into the North Fork Holston River in Smyth County, Virginia. Discussion with ichthyologists knowledgeable with the species indicates that suitable sites for introduction are available downstream in Washington and Scott Counties, Virginia (Charles Saylor, Tennessee Valley Authority; David Etnier, University of Tennessee; and Robert Jenkins, personal communications, 1987). The Service has discussed the use of Washington County as a reintroduction site with the Washington County Administrator, and he had no objection to reintroducing the fish into his county. Therefore, because of Smyth County's objection and the availability of suitable sites in Washington County, Virginia, the final rule has been modified to show that the reintroduction will be made into North Fork Holston

River in Washington County, Virginia, rather than Smyth County, Virginia. If the reintroduction is successful and the species expands its range downstream and upstream in the North Fork Holston River, the species could be considered for delisting before any of these fish ever reach Smyth County, Virginia.

#### Location of Reintroduced Population

The area for reintroduction of the yellowfin madtom is totally isolated from existing populations of the species. The madtom will be released into the North Fork Holston River, Washington County, Virginia. This site is separated from other existing populations by both Tennessee River and tributary reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections act as barriers to movement by the fish and assure that the Holston River population will remain geographically isolated and easily identifiable as a distinct population.

#### Management

This translocation project will be a joint cooperative effort among the Virginia Commission of Game and Inland Fisheries, the Tennessee Wildlife Resources Agency, and the U.S. Fish and Wildlife Service. Present plans call for the release of 100 to 200 young-of-the-year animals in the late summer or early fall of 1988. Subsequent releases will be made contingent on funds in 1989 and later years. Released animals will be monitored to determine survival, reproductive success, and general health.

This nonessential experimental population would be treated as a threatened species under all provisions of the Act, except section 7. Under section 7 (other than subsection (a)(1) thereof) a nonessential experimental population shall be treated, except when it occurs in an area of the National Wildlife Refuge or National Park Systems, as a species proposed to be listed under the Act as a threatened species. All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. In addition, members of this experimental population could be taken in accordance with applicable State laws. Thus, if a fisherman accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

#### National Environmental Policy Act

An environmental assessment under the National Environmental Policy Act



has been prepared and is available to the public at the Service's Asheville Field Office (see "ADDRESSES" section), Atlanta Regional Office (U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303), or the Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Arlington, Virginia 22201 (202/235-1975). This assessment formed the basis for the decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

#### Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). No private entities

will be affected by this action. The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

#### References Cited

- Burkhead, N.M., and R.E. Jenkins. 1982. Five-year status review of the yellowfin madtom, *Noturus flavipinnis*, a threatened ictalurid catfish of the Tennessee drainage. Unpublished report to the U.S. Fish and Wildlife Service. 10 pp.
- Jenkins, R.E. 1975. Status of the yellowfin madtom, *Noturus flavipinnis*. Unpublished report to U.S. Office of Endangered Species International Activities, Washington. 11 pp.
- Shute, P.W. 1984. Ecology of the rare yellowfin madtom (*Noturus flavipinnis*) Taylor, in Citico Creek, Tennessee. Masters thesis. University of Tennessee, Knoxville, TN. 100 pp.

#### Author

The principal author of this final rule is Richard G. Biggins (see "ADDRESSES" section) (704/259-0321 or FTS 672-0321).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by revising the entry "Madtom, yellowfin" under FISHES to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Madtom, yellowfin.....	<i>Noturus flavipinnis</i> .....	U.S.A. (TN, VA).....	Entire, except where listed as an experimental population below.	T	28, 317	17.95(e)	17.44(c)
Do.....	do.....	do.....	North Fork Holston River and its tributaries, VA, TN; South Fork Holston River and tributaries upstream to Ft. Patrick Henry Dam, TN; and Holston River and tributaries downstream to John Sevier Detention Lake Dam, TN.	XN	317	NA	17.84(e)

#### § 17.84 [Amended]

3. Amend Title 50 CFR 17.84 by adding new paragraph (e) as follows:

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) The yellowfin madtom population identified in paragraph (4) of this subsection is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to the population identified in paragraph (e)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) Any violation of State law regulating the take of this species from the population identified in paragraph (e)(4) of this section will also be a violation of the Endangered Species Act.

(4) This experimental population of the yellowfin madtom is found in the North Fork Holston River watershed, Washington, Smyth and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. The reintroduction site is within the historic range of this species but it is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs, and it is unlikely that they could move 100 river miles through these large reservoirs, the possibility of this population contacting extant wild populations is unlikely.

Dated: June 24, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-17540 Filed 8-3-88; 8:45 am]

BILLING CODE 4310-55-M

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 611 and 663

[Docket No. 80749-8149]

#### Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.