SUMMARY: This document reallots UHF television Channel *23 from Modesto to Ceres, California, as that community's first local television broadcast service, and reserves the channel for noncommercial educational usage, in response to a petition for rule making filed on behalf of Bet Nahrain, Inc. See 54 FR 29756, July 14, 1989. Coordinates for Channel *23 at Ceres are 37–35–24 and 120–57–06.

This allotment falls within the boundaries of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefor. Ceres is further removed from the affected markets than was the allotment at Modesto. Potential applicants must seek a waiver of the freeze. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–307, adopted June 10, 1991, and released June 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments for California, is amended by removing Channel *23+ at Modesto, and by adding Ceres, Channel *23+.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14982 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–467; RM–7443; RM–7596]

Radio Broadcasting Services; Gualala, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 263B1 to Gualala, California, in lieu of previously proposed Channel 246B1, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Dr. Gerhard Hanneman (RM–7443). See 55 FR 45624, October 30, 1990. CBS, Inc., licensee of Station KRQR(FM), Channel 247B, San Francisco, California, counterproposed the allotment of Channel 263B1 to Gualala (RM–7596), to which the petitioner consented. Coordinates for Channel 263B1 at Gualala are 38–46–00 and 123–31–42. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 5, 1991. The window period for filing applications for Channel 263B1 at Gualala, California, will open on August 6, 1991, and close on September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–467, adopted June 10, 1991, and released June 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments under California, is amended by adding Gualala, Channel 263B1.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–14983 Filed 6–21–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Uncompahgre Fritillary Butterfly Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service determines a butterfly, the Uncompahgre fritillary (*Boloria acrocnema*), to be an endangered species. Critical habitat has not been designated. This butterfly has been verified at only two major sites and two possible small colonies above 4,040 meters (13,200 ft.) elevation in the San Juan Mountains and southern Sawatch Range of southwestern Colorado. In 1989, the total known population was estimated to be less than 1,000 individuals. Taking by collectors, adverse climatic changes, lack of protective regulations, small population size, and low genetic variation endanger the species. Its habitat is potentially threatened by trampling from humans and livestock. This rule implements the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Western Colorado Suboffice, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 529 25½ Road, suite B–113, Grand Junction, Colorado 81505.

FOR FURTHER INFORMATION CONTACT: Mr. John Anderson, Biologist, (see **ADDRESSES** above) at (303) 243–2778.

SUPPLEMENTARY INFORMATION:

Background

The Uncompahgre fritillary butterfly was discovered on Uncompahgre Peak,

HeinOnline -- 56 Fed. Reg. 28712 1991

Hinsdale County, Colorado, on July 30, 1978. It was subsequently described as a new species (*Boloria acrocnema*) by Gall and Sperling (1980). The butterfly also has been included in the genus *Clossiana* (Ferris 1984), although this name is more properly considered a subgenus of *Boloria*.

The most recent treatment of North American butterflies lists this taxon as a species (Ferris 1989). Other major books published in the last 10 years also consider the Uncompahgre fritillary to be a full species (Ferris and Brown 1981, Gall 1983, Pyle 1981). However, one recent book considers the Uncompahgre fritillary to be a subspecies (*Boloria improba* ssp. *acrocnema*) of the dingy arctic fritillary (*Boloria improba*) (Scott 1986). For the purpose of this listing action, the Service will recognize this taxon at the species level. If the Uncompahgre fritillary is later recognized as a subspecies of *B. improba*, the designation of this taxon as an endangered species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

The Uncompahgre fritillary is a small butterfly with a 2–3 centimeter (1 in.) wingspan. Males have rusty brown wings criss-crossed with black bars; females' wings are somewhat lighter (Gall 1983). Underneath, the forewing is light ocher and the hindwing has a bold, white jagged bar dividing the crimson brown inner half from the purple-grey scaling on the outer wing surface. The body has a rusty brown thorax and a brownish black abdomen (Gall and Sperling 1980).

The Uncompahgre fritillary has the smallest total range of any North American butterfly species. Its habitat is limited to two verified major sites and two possible small colonies in the San Juan Mountains and southern Sawatch Range in Gunnison, Hinsdale, and possibly Chaffee counties in southwestern Colorado. One major site is the type locality on Uncompahgre Peak, which is managed by the Forest Service. The second major site was discovered in 1982 on land managed by the Bureau of Land Management and is not generally known. Because of the potential threat from collecting, the location of this colony is referred to herein only as "site 2."

Despite numerous attempts to locate other populations, no other major populations have been verified. In 1988, three individuals were captured at one new location and one individual was captured at another new location. These sites must be investigated to determine if they represent possible new colonies. There is a report of four (formerly five) colonies in the San Juan Mountains and southern Sawatch Range, but these unverified sites, if extant, have been kept secret by their discoverer. As the butterfly is found only in remote, generally inaccessible areas, it is possible that the species may occur in other mountain ranges in Colorado, but there have been no reports of the butterfly from these other mountain ranges.

All populations known to the Service are associated with large patches of snow willow (*Salix reticulata* spp. *nivalis*) above 4,040 meters (13,200 ft.), which provide food and cover. The species has been found only on northeast-facing slopes, which are the coolest and wettest microhabitat available in the San Juans (Brussard and Britten 1989). The females lay their eggs on snow willow, which also is the larval food plant, while adults take nectar from a wide range of flowering alpine plants.

Brussard and Britten (1989) believe that the species has a biennial life history, which means that it requires 2 years to complete its life cycle. Eggs laid in 1990 (even-year brood) would be caterpillars in 1991 and mature into adults in 1992. Similarly, eggs laid in 1991 (odd-year brood) would become adults in 1993. The odd- and even-year broods would function as essentially separate populations. It is assumed that odd- and even-year populations existed at both major sites historically, because there is anecdotal evidence that butterflies flew each year at these sites prior to 1987 (Brussard and Britten 1989).

During 1987 and 1988, field surveys and genetic studies were carried out by Dr. Peter Brussard and students under a contract funded by the Forest Service, Bureau of Land Management, and Fish and Wildlife Service (Brussard and Britten 1989). Though they visited over 50 sites that appeared to satisfy the butterfly's habitat requirements, they found only the few individuals at the two new sites previously mentioned.

These researchers believe there has been a decline in the butterfly's known population. Based on 1978–1988 data, the even-year broods at the two known sites appear to be declining. The odd-year brood at the type locality may be extinct, while the status of the odd-year brood at site 2 is unclear. On Uncompahgre Peak, the 1978 population (even-year brood) was estimated to be 800 individuals (Interagency Agreement 1984); the 1988 population was estimated to be 208 individuals (Brussard and Britten 1989). At site 2, the 1982 population was estimated to be between 1,000 and 1,500 individuals (Interagency Agreement 1984); the 1988 estimate was 492 individuals (Brussard and Britten 1989). There are anecdotal reports of an odd-year population at Uncompahgre Peak prior to 1987, but no Uncompahgre fritillaries were captured in 1987. The status of the odd-year population at site 2 is difficult to assess due to a lack of historical data on estimated population size. Assuming the species has a biennial life history, then adding the 1987 and 1988 data results in a total estimated population size at the two major sites of approximately 950 to 1,000 individuals.

In 1989, no population surveys were conducted. In 1990, a limited survey effort confirmed that the Uncompahgre fritillary persisted at site 2 (Seidl 1990, 1991). No Uncompahgre fritillaries were found at Uncompahgre peak in 1990 during three day trips; however, this does not constitute conclusive evidence that the butterfly no longer exists at Uncompahgre Peak. Thus, the limited data gathered since 1988 do not contradict the apparent downward trend shown for the 1978–1988 period.

Brussard and Britten (1989) also used electrophoretic techniques to examine population genetic variability. Their studies revealed only half the genetic variability in the Uncompahgre fritillary when compared to the Wind River Range, Wyoming, population of *Boloria improba harryi*, its closest geographic relative. This low genetic variability would indicate less environmental adaptability, i.e., a reduced ability to adapt to a changing environment. In fact, its range of habitat usage is less than that of *Boloria improba* populations in Wyoming and British Columbia.

The species faces many threats. As it is one of the few new North American butterfly species discovered in the last half century, it is attractive to collectors. Its sedentary nature, weak flying ability, and tendency to fly low to the ground make it easy to collect. Possible overcollection is considered the greatest human-caused threat to the species. Other actual or potential threats to the species include adverse climatic changes, lack of protective regulations, small population size, and low genetic variability. There is a minor potential threat from trampling by humans and livestock.

On November 5, 1979, the Service was petitioned by Lawrence F. Gall to list the butterfly under provisions of the Act of 1973. In response, the Service published a notice of status review on the butterfly on February 6, 1980 (45 FR 8029), which solicited public comments. Comments from the public supported listing and protection under the Act, but

HeinOnline -- 56 Fed. Reg. 28713 1991

the Service did not propose its listing. Subsequently, the Service included the butterfly in a notice of petition findings on January 20, 1984 (49 FR 2485), which stated that listing the butterfly was warranted but precluded, and noted that it was a category 2 species (a species which may be appropriate to list, but for which there is not enough biological data at the time to support listing). Its status was changed from category 2 to category 1 (a species for which there is sufficient biological data on hand to support listing) in the Invertebrate Notice of Review published on May 22, 1984 (49 FR 21664). The Service made 1-year findings that listing the species was warranted but precluded on May 10, 1985 (50 FR 19761); January 9, 1986 (51 FR 996); June 30, 1987 (52 FR 24312); July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52746); and April 25, 1990 (55 FR 17475). On October 15, 1990 (55 FR 41721), the Service published a proposed rule to determine that the species was endangered.

Summary of Comments and Recommendations

In the October 15, 1990, proposed rule and associated notifications all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Gunnison Country Times and the Rocky Mountain News on October 31, 1990, which invited general public comment. Fourteen comments, including 3 from other Federal agencies, 1 from the State of Colorado, and 10 from conservation organizations and individuals, were received.

Written comments received during the comment period are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. After describing generally supportive comments, four issues and the Service's response to each are discussed.

Thirteen of the fourteen persons who commented supported listing of the Uncompahgre fritillary as an endangered species. Four comments stated that they believed the Uncompahgre fritillary would receive increased protection by being listed under the Act. One commentor, although not specifically opposing the rule, stated that he believed the species would not receive additional benefits from being listed, because he believed that the Forest Service and Bureau of Land Management already prohibited collecting and patrolled the colonies during the butterfly's flight season. He also stated his belief that rare butterflies benefitted most from benign neglect and by having the location of their populations kept secret.

With regard to threats to the species, seven commentors stated they believed that collection of specimens for scientific or commercial purposes was a threat. Three commentors mentioned that grazing was a threat, although two mentioned that steps already had been taken to eliminate or reduce grazing at the known colonies. Two commentors mentioned recreational use as a threat. This recreational use is represented by potential disturbance to the habitat by hikers. Some trails through or near the colony areas already have been moved. One commenter believed that no further mark-recapture studies should be allowed because trampling of the caterpillar food plants by researchers could be a major mortality factor for the butterfly. Two commentors mentioned that the butterfly's low genetic variability was a factor contributing to its susceptibility to colony loss and extinction. One commentor mentioned that, based on his studies of the butterfly and its nearest relatives, the Uncompahgre fritillary was a narrow habitat specialist and that was a factor in its endangerment. One commentor stated that because of global warming and the butterfly's susceptibility to drought its chances for long-term survival were nil. One commentor mentioned that mining was a potential threat. One commentor stated that the colony areas should be closed to off-road vehicles, implying that off-road vehicles such as mountain bikes might constitute a threat to the species.

Issue 1: Whether critical habitat should be designated. Three commentors believed that designation of critical habitat would not be prudent. They believed that because collecting of specimens was a primary threat, critical habitat designation would increase that threat from collectors. In contrast, another commentor argued that critical habitat for the Uncompahgre fritillary should be designated. He stated that without critical habitat designation, degradation of the butterfly's habitat could occur as long as the continued existence of the species was not immediately threatened. This commentor also stated that because most butterfly collectors know the location of the two major colonies, the Uncompahgre fritillary would not be further jeopardized by specifically revealing the colony locations.

Response: At present, possible overcollection is perceived to be a greater threat to the Uncompahgre fritillary than potential habitat degradation. Because of this, the Service finds that designation of critical habitat is not prudent at this time. The Service believes that many collectors do not know the location of site 2, and only a few collectors are aware of other locations where only a few individual butterflies have been found. Designation of critical habitat requires publication of detailed maps of the location of critical habitat in the **Federal Register** and would only serve to increase the likelihood of illegal collection of the butterflies.

Issue 2: Whether listing would add to the protection already received by the butterfly. Three commentors stated that they believed the butterfly would gain added protection through its being listed under the Act, while another commentor believed that listing would probably not be beneficial because he believed the Bureau of Land Management and Forest Service already prohibited collection of butterflies at the two major colony sites. This commentor also believed that, in general, rare butterflies benefitted from benign neglect and having their population sites kept secret by their discoverer.

Response: The Service feels that listing is necessary to bring into effect the various conservation provisions of the Act including, but not limited to, prohibitions against taking, interagency consultation, recovery planning, and cooperation with the State of Colorado's conservation program. Moreover, though there is a collecting ban at the Uncompahgre Peak site, there is no such ban at site 2. The inadequacy of existing regulatory mechanisms and the additional protections that would follow from listing the Uncompahgre fritillary as endangered are discussed further under Factor D.

Issue 3: Whether the Uncompahgre fritillary is more widespread. One commentor listed 11 alleged "colonies," including seven locations known to the Service: The two major sites, a small satellite colony on Uncompahgre Peak, two places near site 2 (including one where a single individual butterfly was observed), and two other sites (one in the southern Sawatch Range, where either a single or a few butterflies were found). In the past, this commentor claimed to have found five new colonies, but would not disclose their locations. Based on the fact that Dr. Brussard and colleagues found only one of his undisclosed colonies in their searches, this commenter extrapolated

HeinOnline -- 56 Fed. Reg. 28714 1991

that there must be 40–50 colonies in the San Juans and southern Sawatch Range. He recommended that the Service use a helicopter and qualified butterfly colony locators to find all the probable colonies.

Response: The Service agrees that the Uncompahgre fritillary may be more abundant than is currently known but it must make its assessment of endangerment based on the best available scientific and commercial data available. The Service cannot accept this commenter's four undisclosed colonies as fact without independent scientific confirmation of their location and magnitude. Until such time that sufficient populations are verified that are not threatened, the Service must consider the Uncompahgre fritillary as an endangered species.

Issue 4: Whether the Uncompahgre fritillary is a subspecies. One commenter stated that the Uncompahgre fritillary is a subspecies of the dingy arctic fritillary (*Boloria improba*), while another commenter stated that she is aware of the issue and believes that the butterfly is a full species. The first commenter stated as his evidence that the Uncompahgre fritillary is similar in appearance, hostplants, and habits to Wyoming and Alberta populations of *Boloria improba*. He stated that Edward Pike and Clyde Gillette, two advanced amateurs, also believe that *Boloria acrocnema* should be referred to as *Boloria improba acrocnema*. In their letters, Dr. Brussard and Dr. Britten referred to the butterfly as *Boloria acrocnema*, but also used the name *Boloria improba/acrocnema* group or complex for the grouping that includes both species.

Response: The Service is aware that the known occurrences of the Uncompahgre fritillary are at the southernmost end of a series of *B. improba* populations extending down the Rocky Mountain cordillera from the Arctic. Whether the Uncompahgre fritillary is referred to as a species or subspecies depends on whether it is reproductively and behaviorally compatible with *B. improba* populations. Currently, no direct information exists on which to make this decision, but the preponderance of expert opinion is that the full species designation is most suitable. In any event, even if considered as a subspecies, the decision to list would be unaffected because endangered subspecies also qualify for full protection under the Act.

Summary of Factors Affecting the Species

After a through review and consideration of all information available, the Service has determined that the Uncompahgre fritillary butterfly should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Uncompahgre fritillary butterfly (*Boloria acrocnema*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment if its Habitat or Range

The populations of the butterfly known to the Service are on Federal land. The Uncompahgre Peak habitat is in the Big Blue Wilderness in the Uncompahgre National Forest, while site 2 is in a wilderness study area or land administered by the Bureau of Land Management. Both areas are above timberline, hence there are not threats from logging. Mining activity does not appear to be a threat to the known population. Historically, herds of sheep were driven over both mountains where the butterflies occur, but the Bureau of Land Management and Forest Service do not allow grazing at the major sites.

Traffic deviating from the main hiking trail to the summit of Uncompahgre Peak could impact the colony on that mountain, but there seems to be no evidence that hikers or pack horses have damaged the nature of the butterfly's habitat. One day's observation by the author of this rule demonstrated that hikers do not linger or rest in the colony area. Moreover, pack horses are uncommon on this trail. A hiking trail passes near site 2, but routing changes were made to the trail to reduce the likelihood that hikers will deviate from the trail and cross through the butterfly site. Trampling of the colonies by collectors or biologists is a potential threat, but there has been no demonstrated habitat change due to this factor.

The other two locations are small and remote, and no information on extent habitat-related threats is available.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Uncompahgre fritillary butterfly has been the subject of intense sampling by biologists and collectors since its discovery. In 1981, collection of the species for research or marketing to private collectors probably exceeded 100 adults, or up to 20 percent of the Uncompahgre Peak population (Interagency Agreement 1984). The genus *Boloria* is extremely popular with collectors. Specimens of *B. acrocnema* have been offered by dealers for prices exceeding $100 for males and even higher prices for females (Gall 1983). Collecting from small colonies or repeated handling and marking (particularly of females and/or in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability. Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Continual walking over the colony areas by collectors or researchers could result in mortality of the butterfly's early stages or change the nature of the habitat. Extremely small populations, such as those of the Uncompahgre fritillary, should not be subjected to undue pressure from collectors or researchers.

C. Disease or Predation

There are no known diseases of the butterfly that could threaten its continued existence. Wilcove (1980) recorded an instance of direct predation on the butterfly by a brown-capped rosy finch (*Leucosticte australis*), and identified other potential avian predators. However, there is no indication as yet that predation is a significant threat.

D. The Inadequacy of Existing Regulatory Mechanisms

The Uncompahgre Peak site is in the Big Blue Wilderness. In addition to wilderness management restrictions, the Forest Service has prohibited the collection of butterflies on Uncompahgre Peak since 1984. Nevertheless, it has been reported that some collectors may be collecting the species despite the ban. There is no sheep grazing on the site at the present time, and there is a proposal to restrict horse use on an area downslope from the butterfly site. Site 2 is located in a wilderness study area. The Bureau of Land Management has terminated grazing in this area, but there is no prohibition against collecting. The Colorado Division of Wildlife does not possess the legal authority to protest the species. The Colorado Natural Areas Program has registered, but not yet designated, the Uncompahgre Peak site as a State Natural Area. This means that the site has been identified as one deserving special attention, but a management agreement (for a Natural Area) has not been finalized. In 1984, the Forest Service and Bureau of Land Management signed an interagency

HeinOnline -- 56 Fed. Reg. 28715 1991

agreement for the conservation of the Uncompahgre fritillary. The parties are implementing this agreement, but the level of implementation is limited by available funding.

These voluntary efforts on the part of the Forest Service, Bureau of Land Management, and the Colorado Natural Areas Program are commendable. Having identified the Uncompahgre fritillary as a species in need of protection, they have taken important steps to protect this species. However, these species-specific protections are discretionary and could be withdrawn or lapse in effectiveness if funding diminishes. Federal listing of the butterfly would provide a greater level of protection. Listing would ensure that Federal Agencies would not take actions likely to jeopardize the species, and promote efforts toward species recovery. It also would allow for the prosecution of collectors under Federal law and provide for the issuance of permits to limit and manage those who wish to conduct scientific studies of the butterfly. Finally, it would improve the cooperating agencies' chances of obtaining additional funding to protect, research, and recover the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Many other factors threaten the continued existence of the Uncompahgre fritillary. First, the butterfly exists only in the highest, wettest peaks in southwestern Colorado. Biologists who completed population surveys of the butterfly in 1987–88 believe that several recent drought years have stressed the butterfly, which evidently requires a cool and wet microhabitat to successfully complete development (Brussard and Britten 1989). Climatic stress may be a major factor underlying recent population declines. If so, populations of the butterfly would possible disappear if predictions about global warming become a reality (Brussard, Univ. of Nevada, *in litt.*, 1990).

If the species does have a biennial life history, then the possible extinction of the odd-year population at Uncompahgre Peak is cause for concern. Odd-year and even-year broods function essentially as separate populations. It may be possible for an extinct odd-year population to be re-established if a few individuals from the even-year brood at the same site take 3 years instead of 2 years to complete development, but re-establishment would be very slow.

The small population size and limited genetic variability of the species is itself a threat. The small size of the known populations makes them vulnerable to extinction from natural (e.g., drought, exceptionally warm temperatures) or human (e.g., overcollection) causes. In addition, random demographic effects (e.g., skewed sex ratios) and/or loss of alleles due to random genetic effects could cause permanent loss of one or both populations.

As noted earlier, this butterfly has the smallest known range of any North American species when the total area occupied by the two verified major colonies are considered. Although small habitat size might normally be a threat in itself, the colonies are placed such that snow avalances, fire, or other kinds of calamities are not likely.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Uncompahgre fritillary butterfly (*Boloria acrocnema*) as endangered. Since the species' discovery in 1978, only two major colonies and two possible small colonies have been verified, and, based on available data, the total population has declined. The odd-year population at the type locality already may be extinct. Despite the administrative protections currently being implemented, the remaining populations are endangered by taking by collectors, adverse climatic changes, lack of protective regulations, small population size, and low genetic variation. The species' habitat is potentially threatened by trampling from humans and livestock. These factors could lead to the species' extinction throughout all or a significant portion of its range. Therefore, the Uncompahgre fritillary qualifies for endangered status as defined by the Act.

The Service recognizes that listing the species may increase collection pressures due to the loss of protective anonymity. However, the Service is required to list species deserving of the Act's protection, and final listing will provide additional protection, as explained above, and encourage actions to recover the species. The decision not to designate critical habitat will reduce any possible threat of increased overcollection that might result from listing the species.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time that a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the Uncompahgre fritillary. As discussed under Factor B in the "Summary of Factors Affecting the Species," possible overcollection of this butterfly is one of the major threats to its existence. Though some collectors know of the Uncompahgre Peak site, the exact location of site 2 is not generally known. Publication of the exact location of these sites would endanger the species further. The Forest Service and the Bureau of Land Management, upon whose land the butterfly occurs, are aware of the location of the butterfly populations and the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the management measures already in place, the recovery process, and section 7 procedures.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Current Federal involvement and management for the species was discussed earlier. Long-term monitoring should be continued, as well as research into the species' life history and habitat requirements. If possible, artificial recolonization should be attempted to

HeinOnline -- 56 Fed. Reg. 28716 1991

establish additional colonies in suitable habitat to reduce the risk of extinction.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in inter-State commerce in the course of commercial activity, or sell or offer for sale in inter-State or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations on animals and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2093 or FTS 921–2093).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Author

The primary author of this final rule is Dr. Paul A. Opler, Office of Information Transfer, U.S. Fish and Wildlife Service, 1025 Pennock Place, Suite 212, Fort Collins, Colorado 80524 (303/493–8401; FTS 323–5401).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 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						
INSECTS							
*	*	*	*	*	*	*	
Butterfly, Uncompahgre fritillary.	*Boloria acrocnema*	U.S.A. (CO)	NA	E	427	NA	NA
*	*	*	*	*	*	*	

HeinOnline -- 56 Fed. Reg. 28717 1991

Dated: June 6, 1991.
Suzanne Mayer,
Acting Director, Fish and Wildlife Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 900793-1062]

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Emergency interim rule; effective date extension and modification of permit criteria for Hawaii longline fishery moratorium.

SUMMARY: The Secretary of Commerce (Secretary) modifies and extends an emergency rule now in effect that establishes a moratorium on issuing permits for the longline fishery for pelagic management unit species around Hawaii. The eligibility criteria for limited entry permits issued during the moratorium are modified. The purpose of this extension of the emergency rule is to provide a continued period of stability necessary for the Western Pacific Fishery Management Council (Council) and NMFS to carry out a systematic, long-range fishery planning process; reduce the crisis atmosphere in the fishery; maximize fishing opportunities for fishermen; and minimize speculative sale of permits. The purpose of modifying the emergency provisions is to correct unanticipated discrepancies between the emergency and the long-term management plan. The modifications are expected to clarify ambiguities and relieve hardships on certain participants in the fishery.

EFFECTIVE DATE: The amendments to § 685.15 (a)(2) through (c)(4) are effective from 0000 hours local time June 19, 1991. The interim regulations published on April 12, 1991, (56 FR 14866), as amended by this document, are extended from 0000 hours local time July 12, 1991, through 2400 hours local time October 9, 1991.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514-6660, or Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, Honolulu, Hawaii (808) 523-1368.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule (56 FR 14866, April 12, 1991) temporarily amending the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) and its implementing regulations. The rule, which was made effective from 0001 hours local time April 23, 1991, establishes a moratorium on additional entry into the Hawaii longline fishery to provide a period of stability and allow for development of an amendment to the FMP providing for long-term management.

Under the moratorium, permits for the fishery are limited to persons who certify that they were: (1) Owners of vessels when those vessels made landings in Hawaii of longline-caught management unit species prior to December 5, 1990; (2) persons who were owners of vessels that had engaged in transshipments of longline-caught management unit species in the exclusive economic zone (EEZ) off Hawaii prior to December 5, 1990; (3) persons who made a substantial financial commitment or investment in gear prior to December 5, 1990, for a vessel owned by the person and located in Hawaii prior to December 5, 1990, so that the vessel could participate in the fishery; or (4) persons who by June 21, 1990, had made a substantial financial commitment or investment in the construction of a new fishing vessel for participation in the fishery and intended contemporaneously with the investment to participate in the fishery. Permits are not transferable from one owner to another during the emergency period except in cases of extreme hardship such as death or terminal illness preventing the vessel owner from participating in the fishery. The hardship determination will be made by the Regional Director in consultation with the Council. A permit holder can also replace the originally qualifying vessel with another vessel provided the Regional Director determines that the replacement vessel has comparable harvesting capacity.

At its meeting on May 16, 1991, the Council voted to request that the Secretary extend the moratorium for another 90-day period, and to institute immediately three modifications to the emergency rule: (1) Extend permit eligibility to persons who, prior to June 21, 1990, had made substantial financial commitment or investment in the refitting of a vessel for participation in the fishery in the EEZ surrounding Hawaii and who can establish intent to participate in the fishery prior to or at the time of the commitment or investment; (2) allow a permit holder to transfer a limited entry permit with the sale of the vessel one time during the combined emergency moratorium and subsequent moratorium through a regular plan amendment; and (3) clarify application of the rule to vessels owned by corporations and partnerships.

The Council requested that the proposed modifications be made effective as soon as possible.

The requested modifications will make the provisions of the emergency rule identical to the provisions agreed upon for the subsequent plan amendment. The Council would like these modifications to be effective as soon as possible because of the financial hardships that would result if they were not implemented during the emergency period. At least 12 longline vessels that will qualify for limited entry permits when the planned 3 year moratorium is implemented are otherwise prohibited from participating in the longline fishery during the emergency period. Preventing these fishing vessels from fishing during the emergency period will cause hardships not intended by the Council. The Council also recognized that if permits cannot be transferred with the sale of the vessel, fishing opportunities will be limited, with severe adverse effect on the value of the owners' vessels, which are their most significant asset. In addressing this concern by allowing the one-time transfer of permits, the Council also intended to minimize any speculative sale of permits.

The Council is proceeding with an amendment to the FMP to extend the moratorium for 3 years. The purpose of the moratorium is to allow the Council, NMFS, and industry to continue with data collection and analysis; evaluation of long-term management alternatives, including limited entry, and selection of a long-term management regime.

Other Matters

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. Because the circumstances in the fishery at the time of implementation of the emergency

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