TABLE 6.—ACTIONS FUNDED IN FY 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
2 mussels[3] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel[3] (LPN = 2)	Proposed listing
5 southeast fish[3] (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing
3 Colorado plants[3] (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parchute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 or 2009.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The least chub will be added to the list of candidate species upon publication of this 12–month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the least chub will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Utah Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Utah Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 4, 2010

Jeffrey L. Underwood

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. 2010–15070 Filed 6–21–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2008–0119; 92220–1113–0000–C6]

RIN 1018–AX01

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Tulotoma Snail From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the tulotoma snail (*Tulotoma magnifica*) from endangered to threatened, under the authority of the Endangered Species Act of 1973, as amended (Act). This proposed action is based on a review of the best available scientific and commercial data, which indicate that the endangered designation no longer correctly reflects the status of this snail. We have documented a substantial improvement in the species' distribution and numbers over the past 15 years, including the discovery of several populations that were unknown when the species was listed. Minimum flows and other conservation measures have been implemented below two dams in the Coosa River, improving habitat and resulting in the expansion of tulotoma snail numbers and range in the Coosa River. The Alabama Clean Water Partnership has also developed the Lower Coosa River Basin Management Plan to address nonpoint source pollution and watershed management issues in most Coosa River tributaries occupied by the tulotoma snail. While great strides have been made to improve the species status, additional efforts are required to address the remaining threats to the species. We are seeking comments from the public on this proposal.

DATES: We will accept comments received or postmarked on or before August 23, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 6, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2008–0119.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW08; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally

means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ray Aycock, Field Supervisor, Jackson Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A Jackson, MS 39213–7856 (telephone 601/321–1122; facsimile 601/965–4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal be as accurate and effective as possible. Therefore, we are requesting comments from other concerned government agencies, the scientific community, industry, Tribes, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to the tulotoma snail;

(2) Additional information on the range, distribution, and population size of the tulotoma snail and its habitat;

(3) The location of any additional populations of the tulotoma snail;

(4) Data on tulotoma snail population trends; and

(5) Current or planned activities within the geographic range of the tulotoma snail that may impact or benefit the species.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the Jackson Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Public Hearing

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. We must receive your request for a public hearing within 45 days after the date of this **Federal Register** publication (*see* **DATES**). Such requests must be made in writing and addressed to the Field Supervisor (*see* **FOR FURTHER INFORMATION CONTACT** section above).

Background

The tulotoma snail (*Tulotoma magnifica)* is a gill-breathing, operculate snail in the family Viviparidae. Operculate means that the snail has a rounded plate that seals the mouth of the shell while the snail is inside. The shell is globular, reaching a size somewhat larger than a golf ball, and typically ornamented with spiral lines of knob-like structures (Herschler *et al.* 1990, p. 815). Its adult size and ornamentation distinguish it from all other freshwater snails in the Coosa-Alabama River system. The tulotoma snail is normally referred to as simply the tulotoma in literature so from this point forward in this rule we will use this approach.

The tulotoma was described from the Alabama River in 1834 by T.A. Conrad, and collection records indicate a historical range of around 563 kilometers (km) (350 miles (mi)) in the Coosa and Alabama River drainages of Alabama (Herschler *et al.* 1990, pp. 815–817). Historical collection localities in the Coosa River System included numerous sites on the river itself as well as the lower reaches of several of its large tributaries in St. Clair, Calhoun, Talladega, Shelby, Chilto, Coosa, and Elmore Counties, Alabama (Herschler *et al.* 1990, pp. 815–817). The tulotoma was only recorded from two collection localities in the Alabama River System, the type locality near Claiborne, Monroe County, Alabama, and Chilachee Creek southwest of Selma, Dallas County, Alabama (Herschler *et al.* 1990, p. 815).

Tulotoma occur in cool, well-oxygenated, clean, free-flowing rivers and the lower portions of the rivers' larger tributaries (Herschler *et al.* 1990, p. 822). This species is generally found in riffles and shoals with moderate to strong currents, and has been collected at depths over 5 meters (m) (15 feet (ft)) (Hartfield 1991, p. 7). The species is strongly associated with boulder, cobble, and bedrock stream bottoms and is generally found clinging tightly to the underside of large rocks or between cracks in bedrock (Christman *et al.* 1996, p. 28).

Christman *et al.* (1996, pp. 45–59) studied the life history of tulotoma in the Coosa River below Jordan Dam, Elmore County, Alabama. Tulotoma produce live born offspring year round, but reproduction peaks during the months of May to July, and at sizes of about 3 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) height of last whorl (HLW) or coil in a tulotoma shell. They grow rapidly during their first year reaching sizes of 11 to 14 mm (0.4 to 0.5 in), with females producing an average of 16 offspring. Females that live beyond their second year grow more slowly, and produce an average 28 juveniles per year. Christman *et al.* (1996, p. 61) found that few tulotoma survived longer than 2 years of life in the lower Coosa River.

At the time of listing in 1991, the tulotoma was known from five localized areas in the lower Coosa River drainage (56 FR 797; January 9, 1991). These included approximately a 3-km (1.8-mi) reach of the lower Coosa River between Jordan Dam and the City of Wetumpka (Elmore County, Alabama), and short reaches of four tributaries: 2 km (1.2 mi) of Kelly Creek (St. Clair and Shelby Counties, Alabama), 4 km (2.4 mi) of Weogufka Creek, and 3 km (1.8 mi) of Hatchet Creek (Coosa County, Alabama), and from a single shoal on Ohatchee Creek (Calhoun County, Alabama) (Herschler *et al.* 1990, p. 819). Each river reach is considered a population. A population can contain one or more colonies. A colony is defined as the tulotoma found under one rock or several rocks in close proximity to each other. A site is considered a specific location within the river reach, where specific colonies are located.

Spatial distribution and trends of these five tulotoma populations have been monitored for periods of 9 to 12 years (depending on the population) since 1991 (DeVries 2005, p. 3). The lower Coosa River population has expanded throughout a 10-km (6-mi) reach (Christman *et al.* 1996, pp. 23–25; DeVries 2005, p. 14; Hartfield 1991), and the species' numbers in this reach are estimated at over 100 million tulotoma (Christman *et al.* 1996, p. 59). Habitat in the Coosa River below Jordan Dam has improved and expanded due to implementation of a minimum flow regime below the dam and installation of an aeration system (Christman *et al.* 1996, p. 59, Grogan 2005, p. 3).

The overall density of tributary populations has not been estimated; however, colony size and distribution of tulotoma within the tributaries has been monitored and appear to be stable within a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005, pp.11–13). Habitat conditions within these three tributaries appear to have remained stable since listing (DeVries

2005, p. 4; 2008, pp. 5–9). The Kelly Creek tulotoma population has expanded into an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Powell 2005, Lochamy 2005), apparently as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008).

No tulotoma have been rediscovered from the Ohatchee Creek shoal population for 15 years, and it is now believed to be extirpated (DeVries 2005, pp.10). Impacts of nonpoint source pollution at the Ohatchee shoal, including excessive sedimentation and algal growth, have been observed (Hartfield 1992).

Since 1991, tulotoma populations have also been located at six additional locations, three in the Coosa River drainage, and three in the Alabama River. (DeVries 2005, p. 7; Garner 2003, 2006, 2008; Johnson 2008). In the lower Coosa River drainage the tulotoma has been discovered surviving in a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). The tulotoma population's range, colony size, and habitat in Choccolocco Creek have remained relatively stable since monitoring began in 1995 (DeVries 2005, p. 4). Tulotoma colony sizes in Weoka Creek have reached higher densities than any other tributary population; however, population trends have been monitored for only 3 years (DeVries 2005, p. 5). The Yellowleaf Creek tulotoma population is extremely localized and has not been monitored; however, occasional spot checks show the species continues to persist (Johnson 2006).

The additional three new populations were discovered in the Alabama River. A single localized colony was discovered near the type locality in the lower Alabama River below Claiborne Lock and Dam, Monroe County, Alabama (Garner 2006). Additionally, dead tulotoma shells were found in appropriate habitat over a 1.6-km (1.0-mi) reach (Garner 2006). During the summer of 2008, two colonies were located near Selma, Dallas County, Alabama (Johnson 2008), and a single robust colony containing approximately 150 tulotoma was discovered below R.F. Henry Lock and Dam, Autauga–Lowndes Counties, Alabama (Garner 2008). Both juvenile and adult tulotoma were present at the three sites. A single localized colony was also discovered below Millers Ferry Lock and Dam, Wilcox County, Alabama (Powell 2008). For additional details of the expansion of the tulotoma range, see the "Summary of Factors Affecting the Species" discussion below.

Previous Federal Actions

The proposed rule to list the tulotoma as an endangered species was published on July 11, 1990 (55 FR 28573). The final rule listing the tulotoma as an endangered species was published on January 9, 1991 (56 FR 797). Recovery criteria for the tulotoma were outlined in the Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000). A 5-year review on the status of the tulotoma was completed on February 29, 2008, and can be found at: *http://www.fws.gov/southeast/5yearReviews/5yearreviews/TulotomaSnail.pdf.* Additional information regarding these previous Federal actions for the tulotoma can be obtained by consulting the species' regulatory profile found at: *http://ecos.fws.gov/speciesProfile/SpeciesReport.do?spcode=G04X.*

Recovery Achieved

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to a listed species and improving its status, and on criteria that may be used to determine when recovery is achieved. In 1994, the recovery goal, criteria, and tasks for the tulotoma were first proposed in the Technical Draft Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 1994, p. 21). The Technical Draft Recovery Plan stated that the tulotoma could be reclassified to threatened status when an in-progress study documented a stable or increasing population size due to flow and habitat improvements in the Coosa River below Jordan Dam.

The 1994 draft plan received wide review and interest, which resulted in the formation of the Mobile River Aquatic Ecosystem Coalition (Ecosystem Coalition), formed by representatives of State and Federal agencies, and business and citizen groups from throughout the Mobile River Basin (Basin). The first task of the Ecosystem Coalition was to produce a draft of an ecosystem plan addressing all listed aquatic species in the Basin. By the time the final Mobile River Basin Aquatic Ecosystem Recovery Plan (Ecosystem Plan) was published (U.S. Fish and Wildlife Service 2000) studies had been completed showing that status of tulotoma in the Coosa River had improved considerably due to habitat improvements. Therefore, the recovery criteria for reclassification of tulotoma to threatened status were modified to recommend reclassification to threatened status upon completion of a status review confirming a stable or increasing population of tulotoma in the Coosa River below Jordan Dam (U.S. Fish and Wildlife Service 2000, p. 21).

Our recent 5-year review of the tulotoma has documented an increase in extent and size of tulotoma populations in the Coosa River below Jordan Dam, an increase in range of 3 of 4 tributary populations known at the time of listing, and discovery of 6 previously unknown extant populations (U.S. Fish and Wildlife Service 2008).

The 2000 Ecosystem Plan addressed protecting habitat integrity and improving habitat quality, reducing impacts from permitted activities, promoting watershed stewardship, conducting basic research, establishing propagation programs if necessary, and monitoring species population size and distribution. Some recovery actions accomplished in the Coosa River under this plan include the establishment of minimum flows below Jordan Dam to improve habitat conditions in that reach, and the implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen in that reach. Watershed management plans have also been developed to address nonpoint source pollution in the lower Coosa Basin and the Alabama River Basin. These and other recovery accomplishments addressing threats to the tulotoma are presented in more detail in the "Summary of Factors Affecting the Species," below.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status.

Under section 3 of the Act, a species is "endangered" if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. "Range" refers to the range in which the species currently exists and is discussed further in the Conclusion section of this proposal below.

"Foreseeable future" is determined by the Service on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat projection timeframes, and environmental variability. The average lifespan of a tulotoma is about two years, with

females becoming fertile at the end of their first year. Tulotoma produce live-born offspring year-round; however, reproduction peaks in late spring and early summer. In monitoring of all tulotoma populations, multiple cohorts have been found which suggests demographic stability over time. As discussed further below, the primary threats to the tulotoma have been the destruction, modification, or curtailment of its habitat or range (Factor A), the inadequacies of regulatory mechanisms (Factor D), and other natural or manmade factors (Factor E). These threats can occur during variable timeframes, ranging from specific activities which can arise at any time, to the Alabama Department of Environmental Management's 5-year surface water quality assessment program, to the Federal Energy Regulatory Commission's 50-year hydroelectric certification of dams. For the purposes of this proposed rule, we define foreseeable future as a 20-year period, which encompasses 20 generations of tulotoma.

We evaluate whether the species must be listed as endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, we evaluate both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. The following analysis examines all five factors currently affecting or that are likely to affect tulotoma within the foreseeable future.

For the purposes of this analysis, we will evaluate all five factors currently affecting, or that are likely to affect, the tulotoma to determine whether the currently listed species is threatened or endangered. The five factors listed under section 4(a)(1) of the Act and their application to the tulotoma are:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* When listed in 1991, the tulotoma was believed to inhabit less than 2 percent of its 563-km (350-mi) historical range. A Coosa River population of tulotoma was known to survive below Jordan Dam. Populations were also known from four Coosa River tributaries: Kelly, Weogufka, Hatchet, and Ohatchee Creeks. All of these populations were isolated by dams and impounded waters and considered to be vulnerable to nonpoint source pollution. Population trends were unknown, but were believed to be possibly declining.

At the time of listing, hydropower discharges were limiting the range and abundance of tulotoma to only a 3-km (1.8-mi) reach of the Coosa River below Jordan Dam. Water discharges for hydropower purposes were released from Jordan Dam for only 2.25 hours per day, and flow consisted of only dam seepage at other times. As a result of the low water quantity, water quality problems, particularly low dissolved oxygen and elevated temperatures, were a significant limiting factor to tulotoma below Jordan Dam. In 1992, the Alabama Power Company (APC) established minimum flows in the Coosa River below Jordan Dam, and later installed a draft tube aeration system to ensure dissolved oxygen levels are maintained at or above State standards (Grogan 2005, pp. 2–3). The APC also initiated studies to document the range, numbers, demographics, and life history of tulotoma in the reach of the Coosa River below Jordan Dam and to determine the effects of the new minimum flow regime (Christman *et al.* 1996, p. 18). Other studies were also conducted to monitor long-term population trends in this reach of river (*e.g.,* De Vries 2005). As a result, numerous tulotoma colonies have been discovered or become established in the upper portion of the reach, and in the downstream areas the tulotoma has extended its range laterally within the channel in habitats made available by the constant minimum flows. Thousands of colonies consisting of millions of tulotoma now inhabit a 10-km (6-mi) reach of the Coosa River below the Jordan Dam (Christman *et al.* 1996, p. 59; DeVries 2004, pp. 8–10, 2005 p. 14).

In 1991, tulotoma were also known to occur in 2 km (1.2 mi) of Kelly Creek, 4 km (2.4 mi) of Weogufka Creek, 3 km (1.8 mi) of Hatchet Creek, and from a single shoal on Ohatchee Creek (Herschler *et al.* 1990, p. 819). These four known tributary populations of tulotoma were considered to be extremely localized, vulnerable to water quality or channel degradation, and susceptible to decline and extirpation from effects of nonpoint source pollution and stochastic events within their respective watersheds. Studies and surveys since listing have extended the known range of three of these populations, and tulotoma is now known to occur in a 13.7-km (8.5-mi) reach of Weogufka Creek, a 14-km (8.8-mi) reach of Hatchet Creek, and a 5.8-km (3.6-mi) reach of Kelly Creek (DeVries 2005 pp. 11–13). Tulotoma colony sizes within these three populations have remained stable over a 12-year period (DeVries 2005, pp. 11–13). The Kelly Creek tulotoma population has expanded into an approximately 8-km (5-mi) reach of the middle Coosa River above and below the confluence of Kelly Creek (Garner 2003, Powell 2005, Lochamy 2005), apparently as a result of implementation of pulsing flows below Logan Martin Dam to improve dissolved oxygen levels (Krotzer 2008). No tulotoma have been relocated from the Ohatchee Creek shoal population for 15 years, and it is now believed to be extirpated (DeVries 2005, p.10).

Although the Ohatchee Creek population has apparently become extirpated (DeVries 2005, p. 10), other tributary stream surveys have located three populations in the Lower Coosa River drainage that were unknown at the time of listing. Tulotoma are now known from a 0.8-km (0.5-mi) reach of Choccolocco Creek, a 0.4-km (0.25-mi) reach of Yellowleaf Creek, and about 2 km (1.2 mi) of Weoka Creek (DeVries 2005, pp. 10–13). Although very localized, the Choccolocco Creek population has remained stable in colony size and numbers over the past decade (DeVries 2005, pp. 10–11). The Weoka Creek population has only been sampled twice since its discovery; however, tulotoma colonies are abundant in the stream reach, and average colony size is larger than any other tributary population (DeVries 2005, pp.13–14.) The Yellowleaf Creek population is localized, small, and has not been routinely monitored; however, occasional spot checks show the species continues to persist (Johnson 2006).

Tulotoma colonies have also been discovered at three locations in the Alabama River: Near the type locality in Monroe County, Alabama (Garner 2006); a locality in Dallas County, Alabama (Johnson 2008); and at a location in Autauga–Lowndes Counties, Alabama (Garner 2008). The presence of juvenile and adult tulotoma at the three sites indicates that the newly discovered colonies are self-maintaining. In addition, a single localized colony was also recently discovered in Wilcox County, Alabama (Powell 2008).

The 1991 listing rule (56 FR 797) noted the vulnerability of localized tributary populations to nonpoint source pollution, specifically siltation from construction activities. The extirpation of the Ohatchee Creek population is suspected due to sedimentation and nutrient enrichment from nonpoint sources in the watershed. Although other monitored tulotoma populations have remained stable or expanded since listing, they remain

vulnerable to water and habitat quality degradation, particularly in the tributaries. Lower Choccolocco Creek is on the State list of impaired waters for organic pollution due to contaminated sediments (Alabama Department of Environmental Management (ADEM) 2006 p. 5). Yellowleaf Creek and several other lower Coosa River watersheds have been identified as High Priority Watersheds (i.e., vulnerable to degradation) by the Alabama Clean Water Partnership (ACWP) (ACWP 2005a, Chapter 12) due to the high potential of nonpoint source pollution associated with expanding human population growth rates and urbanization. For example, the headwaters of Yellowleaf Creek are about 5 km (3 mi) southeast of the greater metropolitan area surrounding Birmingham, Alabama, and the watershed is highly dissected by county roads. High sediment discharge has been identified as an issue in Kelly Creek (ACWP in prep., p. 43), and potential fecal coliform problems have been documented at several locations in Choccolocco Creek (ACWP in prep., p. 38). However, the ACWP has also developed locally endorsed and supported plans to address nonpoint source pollution and maintain and improve water quality in the lower Coosa River Basin (ACWP 2005a, pp. 3.1–3.48) and in the middle Coosa River Basin (AWCP in prep., pp. 49–50) (see Factor D section below for further detail on monitoring plans). Full implementation of current programs and plans will reduce the vulnerability of tributary populations to nonpoint source pollution.

In summary, the range of tulotoma has increased from 6 populations occupying 2 percent of its historical range in 1991, to 11 populations occupying 10 percent of the historical range. In addition, these populations are found in a wide range of historically occupied habitats, including large coastal plain river, large high-gradient rivers, and multiple upland tributary streams. Populations known at the time of listing have been monitored and, with the exception of Ohatchee Creek, found to be stable or increasing. Four of the six populations discovered since 1991 have been monitored for 2 to 12 years. The Choccolocco Creek population has remained stable for 12 years. The Yellowleaf Creek population has not been routinely monitored and we cannot determine a population trend beyond mere presence or absence; however, occasional spot checks show the species continues to persist (Johnson 2006). The Weoka Creek and Lower Alabama River populations have been observed and monitored for a period of 4 and 2 years, respectively; however, this is not a sufficient amount of time to be able to determine a population trend.

Habitat-related threats have been addressed in the Coosa River through establishing minimum flows or pulsing flows below Jordan and Logan Martin Dam, respectively. Habitat conditions have improved; occupied habitat has expanded in the Coosa River below Jordan Dam; and tulotoma numbers are now estimated at greater than 100 million individuals. The ranges of tulotoma populations in Kelly, Weogufka, and Hatchet Creek have expanded 2 to 5 fold since listing. Tulotoma colony densities within these populations have remained stable or expanded.

Tulotoma remains extirpated from approximately 90 percent of its historical range, and surviving populations remain isolated, localized, and vulnerable to nonpoint source pollution. These conditions are expected to continue for the foreseeable future. While monitored populations have persisted and expanded over the past two decades, and a program to address nonpoint source pollution in the Coosa and Alabama rivers and their tributaries has been established by ACWP and ADEM, the tulotoma continues to be threatened by the destruction, modification, or curtailment of its habitat and range such that the tulotoma is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization was not a threat when the species was listed in 1991 but the final listing rule noted the vulnerability and susceptibility of the localized populations to overcollecting should the tulotoma with its ornate shell become important to the commercial pet trade (56 FR 797; January 9, 1991). However, there has been no evidence to date that any commercial use in the pet trade industry has occurred.

Overutilization for any purpose is not currently considered a threat, and is not anticipated to emerge as a threat within the foreseeable future.

C. *Disease or predation.* The January 9, 1991, final rule (56 FR 797) listing the tulotoma found no evidence of disease or predation as a threat, and we are not aware of any evidence since listing that suggests tulotoma is threatened by disease or predation or likely to become so within the foreseeable future.

D. *The inadequacy of existing regulatory mechanisms.* At the time of the 1991 listing, existing laws were considered inadequate to protect the tulotoma. It was not officially recognized by Alabama as needing any special protection or given any special consideration under other environmental laws when project impacts were reviewed.

Tulotoma are now protected under State law from take or commerce. The Alabama Department of Conservation and Natural Resources (ADCNR) recognize tulotoma as a Species of Highest Conservation Concern (Mirarchi *et al.* 2004, p. 120; ADCNR 2005, p 301). The persistence of tulotoma and the improvement of some populations over time is an indication that existing regulatory mechanisms are now providing some measure of consideration and protection of the species. For example, the Alabama Total Maximum Daily Load (TMDL) Program has been implemented to identify and reduce water pollution in impaired waters (ADEM 2007). Under this program, Choccolocco Creek has been identified as impaired, and plans are under development to remove contaminated sediments. The Alabama Clean Water Partnership (ACWP) has been organized to educate and coordinate public participation in water quality issues, particularly nonpoint source pollution and implementation of TMDLs (*http://www.cleanwaterpartnership.org*). The ACWP, in coordination with ADEM, has developed a Lower Coosa River Basin Management Plan and an Alabama River Basin Management Plan to address nonpoint source pollution and watershed management issues (AWCP 2005a, p. I; AWCP 2005b, p. xv–xvii). The Lower Coosa Plan includes the watersheds of the Yellowleaf, Weogufka, Hatchet, and Weoka Creek populations, along with the Coosa River below Jordan Dam, while the Alabama River Basin Plan includes the watersheds of the newly discovered Alabama River tulotoma population. A draft Middle Coosa River Basin Management Plan, which includes Choccolocco and Kelly Creeks, is under development (AWCP in prep., pp. i, v–vi, 43). These plans are a mechanism to identify water quality problems in the drainages, educate the public, and coordinate activities to maintain and improve water quality in the basins; however, they have yet to be fully implemented.

Federal status under the Act continues to provide additional protections to the tulotoma not available under State laws. For example, during recent water shortages due to an

extended drought in the Southeast, emergency consultation under section 7 of the Act was conducted between the U.S. Fish and Wildlife Service, Federal Energy Regulatory Commission (FERC), and APC representatives on efforts to conserve water by decreasing minimum flows below Jordan Dam. The consultation identified measures to be implemented to minimize impacts to tulotoma and monitor the effects of the reductions (*e.g.,* FERC 2007, pp 1–8). Therefore, but for the protections of the Act, the tulotoma is still threatened by the inadequacies of existing regulatory mechanisms such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

E. *Other natural or manmade factors affecting its continued existence.* Random events such as droughts and chemical spills (stochastic events), and genetic drift were identified in the final listing rule as threats to the species due to its restricted range, isolation of the populations, and the inability for genetic exchange between populations to occur. The tulotoma's restricted range and isolation remain the greatest cause of concern for the species' continued existence, and are factors that further compound the effects of the other threats identified above. Each population is vulnerable to changes in land use within their respective watershed that might result in detrimental impacts (*e.g.,* urbanization and increased nonpoint pollution). All populations also remain independently vulnerable to stochastic threats such as droughts or chemical spills. These threats, however, have been somewhat offset by the extension of the ranges of the populations known at listing, and by the discovery of additional populations within the historical range of the species.

In general, larger populations are more resilient to stochastic events than extremely small populations. For example, due to the extended 2007 drought in the Southeast, minimum flows below Jordan Dam were ramped down in order to conserve water in upstream reservoirs for water supply and hydroelectric production. The reduction in flows resulted in the stranding and estimated mortality of more than 73,000 tulotoma (APC 2008, 43). Although this loss was relatively insignificant in a population estimated at more than 100 million individual tulotoma, it demonstrates the vulnerability of range-restricted populations to stochastic events. Other drought impacts noted below Jordan Dam included high amounts of suspended algal material and fine sediment deposition (Powell 2008).

The documentation of more tulotoma populations distributed in different watersheds makes range-wide extinction from localized activities or stochastic threats less likely. In addition, although populations remain isolated from each other, the robust size of most populations reduces the threat of genetic drift and bottlenecks. However, each tulotoma population remains vulnerable to natural or human-induced stochastic events within its respective watershed, as demonstrated by the loss of the Ohatchee Creek population. Assessments of five tulotoma tributary populations following the severe 2007 drought found little to no changes in distribution and density of the tulotoma in Kelly, Weogufka, Hatchet, or Choccolocco Creeks (DeVries 2008, p. 3–15). However, tulotoma recruitment was not observed in the Choccolocco Creek population (DeVries 2008, pp. 9–11), and colony densities had declined at Weoka Creek (DeVries 2008, p. 15). The assessment was unable to determine if the Weoka Creek tulotoma decline was attributed to the drought or human impacts (DeVries 2008, p. 15). Therefore, Factor E is still a threat to the tulotoma such that it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Conclusion

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the tulotoma in preparing this proposed rule. As identified above, three of the five listing factors continue to pose a known threat to the tulotoma: The present or threatened destruction, modification, or curtailment of its habitat or range; inadequacy of regulatory mechanisms; and other natural or manmade factors affecting its continued existence.

The Mobile River Basin Aquatic Ecosystem Recovery Plan (U.S. Fish and Wildlife Service 2000) criteria state that the tulotoma should be considered for reclassification from endangered to threatened status when an updated status review of the species was completed, and confirmation made of a stable or increasing tulotoma population in the Coosa River below Jordan Dam. The 5-year review of the status of tulotoma has documented an increase in extent and size of tulotoma populations in the Coosa River, Kelly Creek, Weogufka Creek, and Hatchet Creek (U.S. Fish and Wildlife Service 2008). Threats to the species have also been reduced due to habitat improvements in the Coosa River, the identification of six drainage populations of the species that were unknown at the time of listing, development of watershed management plans, and protection of tulotoma under State laws. However, delisting criteria have not been fulfilled for the tulotoma as watershed plans that protect and monitor water quality and habitat quality in occupied watersheds have not been fully implemented.

Significant Portion of the Range Analysis

Having determined that the tulotoma meets the definition of threatened, we must next consider whether there are any significant portions of its range that are in danger of extinction. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range" (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. If any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is

threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; conversely, if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms "resiliency," "redundancy," and "representation" are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

For the tulotoma we applied the process described above to determine whether any portions of the range warranted further consideration for an endangered status. We concluded through the five-factor analysis, in particular Factors A, D, and E that the existing or potential threats are consistent throughout its range, and there is no portion of the range where one or more threats is geographically concentrated. Because the low level of threats to the species is essentially uniform throughout its range, no portion warrants further consideration.

Habitat quality is variable throughout the range of the tulotoma. However, the basic biological components necessary for the tulotoma to complete its life history are present throughout the areas currently occupied by each population, and there is no particular location or area that provides a unique or biologically significant function necessary for tulotoma recovery. The quantity of habitat available to each surviving population of tulotoma is also variable. Although the threats identified above are common to all areas currently occupied by tulotoma, the magnitude of the threats are likely higher in the stream reaches where tulotoma colonies are currently extremely localized, such as Yellowleaf and Choccolocco creeks and the Alabama River. However, due to habitat limitations and the resulting small range of tulotoma in each of these stream reaches (each less than 2 percent of currently occupied range) they are not significant to the species in a noticeable or measurable way. Therefore, we have determined that there are no portions of the range that qualify as a significant portion of the range in which the tulotoma is in danger of extinction.

In summary, based on habitat improvements, the numbers of tulotoma populations now known (8 discrete drainage populations), the robust size of most of these populations (numbering in the thousands to tens of millions of individual tulotoma), the stability of monitored populations over the past 15 years, and current efforts toward watershed quality protection, planning, and monitoring, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the tulotoma to become "in danger of extinction in a significant portion of its range." We have determined that threats still exist to the tulotoma, specifically as a result of water quality and quantity issues as discussed in Factors A, D, and E. Due to these continued threats, we believe the tulotoma meets the definition of threatened, and, therefore, we are proposing to downlist its status from endangered to threatened under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing increases public awareness of threats to the tulotoma, and promotes conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and provides for recovery planning and implementation. 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 the tulotoma. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect the tulotoma or its habitat, the responsible Federal agency must consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of the tulotoma. Federal agency actions that may require consultation include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, codified at 50 CFR 17.21 and 50 CFR 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harm, harass, and pursue, hunt, shoot, wound, kill, trap, capture

or collect, or to attempt to engage in any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species of wildlife. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to Service agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the U.S. Fish and Wildlife Service, Ecological Services Office, 1208–B Main Street, Daphne, Alabama 36526 (telephone 251/441–5181). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7217, facsimile 404/679–7081).

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to reclassify the tulotoma from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. Anyone taking, attempting to take, or otherwise possessing a tulotoma, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the tulotoma.

Should this rule become final, recovery objectives and criteria for tulotoma will be revised in the Recovery Plan. Recovery actions directed at the tulotoma will continue to be implemented as outlined in the current Recovery Plan (U.S. Fish and Wildlife Service 2000), including: (1) Protecting habitat integrity and quality; (2) informing the public about recovery needs of tulotoma; (3) conducting basic research on the tulotoma and applying the results toward management and protection of the species and its habitats; (4) identifying opportunities to extend the range of the species; and (5) monitoring the populations.

Finalization of this proposed rule would not constitute an irreversible commitment on our part. Reclassification of the tulotoma to endangered status would be possible if changes occur in management, population status, habitat, or other actions that would detrimentally affect the populations or increase threats to the species.

Peer Review

In accordance with our policy published on July 1, 1994 (50 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed downlisting. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input, and any additional information we receive, as part of our process of making a final decision on the proposal. Such communication may lead to a final regulation that differs from this proposal.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or Environmental Impact Statement, as defined in the National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands affected by this proposal.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this

action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of references cited is available upon request from the Jackson, Mississippi Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this document is Paul Hartfield, Jackson, Mississippi Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Therefore, for the reasons stated in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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 revising the entry in the List of Endangered and Threatened Wildlife for "Snail, tulotoma" under SNAILS 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						
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Snail, tulotoma	*Tulotoma magnifica*	U.S.A. (AL)	Entire	T	412	NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: May 13, 2010.

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–14708 Filed 6–21–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 100315147–0233–01]

RIN 0648–XV31

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would adjust the North and South Atlantic swordfish quotas for the 2010 fishing year to account for 2009 underharvest and implement International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 09–02 and 09–03, which maintain the U.S. allocation of the international total allowable catch (TAC). This rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico, by establishing annual quotas.

DATES: Comments on this proposed rule may be submitted by July 22, 2010.

ADDRESSES: You may submit comments, identified by 0648–XV31, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*
- Fax: 301–713–1917, Attn: Delisse Ortiz
- Mail: 1315 East-West Highway, Silver Spring, MD 20910

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Delisse Ortiz or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

Copies of the supporting documents—including the 2007 Environmental Assessment (EA), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP)—are available from the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/*.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

North Atlantic Swordfish Quota

ICCAT recommendation 06–02 established a North Atlantic swordfish TAC of 14,000 metric tons (mt) whole weight (ww) through 2008. Of this TAC, the U.S. baseline quota was 3,907.3 mt ww (2,937.6 mt dw). ICCAT recommendation 08–02 extended