

Communications Act, 47 U.S.C. 203, and part 61 of this chapter. Carriers regulated as non-dominant, as defined in § 61.3 of this chapter, and providing detariffed interexchange services pursuant to § 61.19 of this chapter must comply with all applicable public disclosure, and maintenance of information requirements in §§ 42.10, and 42.11 of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 001025297-0297-01; I.D. 101000E]

RIN 0648-XA58

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Lower Columbia River Coho Salmon

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

ACTION: Notice of finding and request for information.

SUMMARY: NMFS has received a petition to list the lower Columbia River populations of coho salmon (*Oncorhynchus kisutch*) on an emergency basis and to designate critical habitat under the Endangered Species Act (ESA). NMFS determines that the petition presents substantial scientific information indicating that a listing may be warranted, but that there is insufficient evidence to support an emergency listing. NMFS solicits information and comments pertaining to these coho salmon populations and their habitats, and seeks suggestions from the public for peer reviewers for any proposed listing determination that may result from the agency's status review of the species.

DATES: Information and comments must be received by January 2, 2001.

ADDRESSES: Information and comments on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street - Suite 500, Portland, OR 97232. Comments will not be accepted if submitted via e-mail or the Internet. However, comments may be sent via fax to (503) 230-5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231-2005 or Chris Mobley, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Reference materials regarding this rule can also be obtained from the internet at www.nwr.noaa.gov.

Background

On July 24, 2000, NMFS received a petition from Oregon Trout, Native Fish Society, and Oregon Council of Trout Unlimited to list wild populations of lower Columbia River coho salmon as endangered under the ESA. The petitioners further requested that NMFS list these populations on an emergency basis and concurrently designate critical habitat for them in accordance with the ESA. Copies of this petition are available from NMFS (See **ADDRESSES**).

Lower Columbia River coho salmon populations have been the subject of two previous ESA status reviews. The first review resulted from a June 7, 1990, petition from Oregon Trout and several co-petitioners requesting ESA protection for lower Columbia River coho salmon. NMFS accepted the petition but later determined that listing was not warranted because available information was inconclusive and did not allow the agency to identify a distinct population segment (hence a "species") under the ESA (56 FR 29553, June 27, 1991). In 1993, NMFS received additional petitions which prompted a more comprehensive status review of coho salmon in California, Oregon, Idaho, Washington, and southern British Columbia (60 FR 38011, July 25, 1995). This status review identified six distinct population segments (referred to as Evolutionarily Significant Units or "ESUs") of coho salmon, three of which were subsequently listed as threatened species—the central California coast ESU (61 FR 56138, October 31, 1996); southern Oregon/northern California coasts ESU (62 FR 24588, May 6, 1997), and Oregon coast ESU (63 FR 42587, August 10, 1998). NMFS determined that listing was not warranted for three other ESUs - the Olympic Peninsula ESU, Puget Sound/Strait of Georgia ESU, and southwest Washington/lower Columbia River ESU - but that the latter two ESUs should be classified as candidate species due to specific risk factors and concerns about the overall health of the ESUs. The agency committed to re-assessing these candidate ESUs to determine if listing proposals were warranted (60 FR 38011, 38022, July 25, 1995).

In 1996, NMFS' West Coast Coho Salmon Biological Review Team (BRT) updated the 1995 status review and produced a draft document that was distributed to co-managers for review and comment in December 1996 (NMFS, 1996). In this draft update, the BRT reached preliminary conclusions regarding the stock structure of coho populations in the candidate ESUs. With respect to Columbia River coho salmon populations, the BRT concluded that the southwest Washington/lower Columbia River ESU may warrant splitting into separate southwest Washington and lower Columbia River ESUs, but the level of risk faced by these separate ESUs was still in question. Since the time of these preliminary conclusions, NMFS has continued to update and compile data via meetings with comanagers and coho salmon experts in the Pacific Northwest but has not proposed any changes to the ESA status of the candidate ESUs.

Analysis of Petition

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary must make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. This includes determining whether there is evidence that the subject populations may qualify as a "species" under the ESA, in accordance with NMFS' Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon (56 FR 58612, November 20, 1991).

NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers several factors, including whether the petition contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species (50 CFR 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)).

NMFS evaluated whether the petition met the ESA's standard for "substantial information" and applied this standard in determining whether to accept the petition as well as whether to invoke an emergency listing under the ESA. NMFS believes it is appropriate to accept the petition to list the species but to reject the petitioner's request for an emergency listing as "endangered." On this latter issue the petition failed to present new and substantial information to resolve longstanding uncertainties about ESU configuration and level of risk to these populations. However, the petition does highlight key issues warranting consideration by NMFS, including: (1) recent genetic evidence bearing on the issue of whether to split the southwest Washington/lower Columbia River ESU; (2) viability analyses indicating that Clackamas and Sandy River coho salmon populations are at high risk of extinction; and (3) evidence that populations may persist in other lower Columbia River tributaries. NMFS believes that an emergency listing should occur only after the ESU structure has been determined. NMFS will not presuppose the outcome of a more rigorous status review and BRT assessment.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available to NMFS scientists, the Secretary determines that the petition presents substantial scientific information indicating the petitioned action may be warranted. However, NMFS does not believe that available information supports the petitioner's request for an emergency listing. In accordance with section 4(b)(3)(B) of the ESA, the Secretary will make his determination whether the petitioned action is warranted for this species within 12 months from the date the petition was received (i.e., by July 24, 2001).

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) The present or threatened destruction, modification, or curtailment of a species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species continuing existence. Listing determinations are based solely on the best available scientific and commercial

data after taking into account any efforts being made by any state or foreign nation to protect the species.

Information Sought

To ensure that the status review is complete and based on the best available scientific and commercial data, NMFS solicits information and comments concerning the status of Columbia River basin coho salmon populations (see **DATES** and **ADDRESSES**). Specifically, the agency is seeking updated information since 1994 on: (1) abundance estimates and measures of population productivity, including spawner-recruit or spawner-spawner survival data, smolt production estimates, size and fecundity data, and ocean survival rates; (2) impacts associated with hatchery production including estimates of hatchery fish releases, straying rates, and proportions of hatchery fish in spawner escapements to lower Columbia River tributaries; (3) estimates of hatchery fish survival and their reproductive success in the wild; (4) genetic, life history, habitat, and other evidence distinguishing Columbia River coho salmon populations from coastal populations; (5) current or planned activities and their possible impact on this species (e.g., harvest measures and habitat actions); and (6) efforts being made to protect coho salmon in Washington and Oregon.

NMFS also requests information describing the quality and extent of freshwater, estuarine and marine habitats for Columbia River coho salmon, as well as information on areas that may qualify as critical habitat. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to, the following: (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS is also seeking information and maps describing natural and manmade barriers within the species' current and historical range in the Columbia River basin.

For areas potentially qualifying as critical habitat, NMFS also requests information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional

requirements of management measures likely to result from the designation. The economic cost to be considered in a critical habitat designation under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS now solicits the names of recognized experts in the field who could take part in the peer review process for the agency's status review of Columbia River coho salmon. Peer reviewers may be selected from academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 30, 2000.

William T. Hogarth,

Deputy Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 091800K]

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Cancellation of public hearings.