

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 224**

[Docket No. 110328226–1228–02]

RIN 0648–XA272

Listing Endangered and Threatened Species; 90-Day Finding on a Petition To List Chinook Salmon

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

ACTION: Notice of 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding for a petition to list the Chinook salmon (*Oncorhynchus tshawytscha*) in the Upper Klamath and Trinity Rivers Basin as threatened or endangered and designate critical habitat under the Endangered Species Act (ESA). We find that the petition presents substantial scientific information indicating the petitioned actions may be warranted. We will conduct a status review of the Chinook salmon in the Upper Klamath and Trinity Rivers Basin to determine if the petitioned actions are warranted. To ensure that the review is comprehensive, we solicit information pertaining to this species and its habitat from all interested parties.

DATES: Information related to this petition finding must be received by June 13, 2011.

ADDRESSES: You may submit comments, identified by RIN 0648–XA272, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand-delivery:* Assistant Regional Administrator, Protected Resources Division, Attn: Rosalie del Rosario, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> shortly after receipt. All personal identifying information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit confidential business information or otherwise sensitive or protected information. We will accept anonymous comments (if you wish to

remain anonymous enter N/A in the required fields). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review to the extent consistent with applicable law. However, we cannot guarantee that we will be able to do so. The petition and other pertinent information are also available electronically at the NMFS Southwest Region Web site at <http://swr.nmfs.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario, NMFS, Southwest Region Office, (562) 980–4085; or Lisa Manning, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:**Background**

On January 28, 2011, the Secretary of Commerce received a petition from the Center for Biological Diversity, Oregon Wild, Environmental Protection Information Center, and The Larch Company (hereafter, the Petitioners), requesting that we list Chinook salmon (*Oncorhynchus tshawytscha*) in the Upper Klamath Basin under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). In their petition, the Petitioners used various phrases as well as “Upper Klamath Basin” to describe the area in which they are requesting that we list Chinook salmon. Because their request is generally made in reference to the Upper Klamath and Trinity Rivers evolutionarily significant unit (ESU) of Chinook salmon, we will use the description of the currently defined ESU to describe the area in which they are requesting that we list Chinook salmon, and we will hereinafter refer to that area as the Upper Klamath and Trinity Rivers Basin. NMFS described all Klamath River Basin populations of Chinook salmon from the Trinity River and Klamath River upstream from the confluence of the Trinity River as the Upper Klamath and Trinity Rivers ESU, which includes both spring-run and fall-run fish (63 FR 11487; March 9, 1998).

The Petitioners recommend three alternatives for listing Chinook salmon: (1) List spring-run only as a separate ESU; (2) list spring-run as a distinct population segment (DPS) within the Upper Klamath and Trinity Rivers ESU; or (3) list the currently defined Upper Klamath and Trinity Rivers ESU, which includes both spring-run and fall-run. The petitioners also request designation

of critical habitat for the Chinook salmon populations that are found to warrant listing.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4(b)(3)(B) (16 U.S.C. 1533(b)(3)(B)) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of receipt of the petition (12-month finding). The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). In 1991, we issued the Policy on Applying the Definition of Species Under the Endangered Species Act to Pacific Salmon (ESU Policy; 56 FR 58612; November 20, 1991), which explains that Pacific salmon populations will be considered a DPS, and hence a “species” under the ESA, if it represents an “evolutionarily significant unit” of the biological species. The two criteria for delineating an ESU are: It is substantially reproductively isolated from other conspecific populations, and it represents an important component in the evolutionary legacy of the species. The ESU Policy was used to define the Upper Klamath and Trinity Rivers Chinook salmon ESU in 1998 (63 FR

11482, 11493; March 9, 1998), and we use it exclusively for defining distinct population segments of Pacific salmon. In 1996, the U.S. Fish and Wildlife Service (USFWS) and NMFS published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy; 61 FR 4722; February 7, 1996) to clarify the interpretation of the phrase "distinct population segment." This policy provides two criteria for identifying DPSs: Discreteness from other populations and significance to its taxon. In announcing this policy, USFWS and NMFS indicated that the ESU Policy for Pacific salmon was consistent with the DPS Policy and that NMFS would continue to use the ESU Policy for Pacific salmon.

The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" (16 U.S.C. 1532(6)). A threatened species is defined as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (16 U.S.C. 1532(20)). Under section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)), a species may be determined to be threatened or endangered as a result of any of the following factors: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization 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 its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Upper Klamath and Trinity Rivers Chinook Salmon ESU

In 1998, we completed a status review of west coast Chinook salmon populations that defined the Upper Klamath and Trinity Rivers Chinook salmon ESU as including all spring-run and fall-run populations from the Trinity River and the Klamath River upstream from the confluence of the Trinity River (NMFS, 1998). Based on the health of the fall-run populations within the ESU, we concluded the ESU was not at significant risk of extinction nor likely to become endangered in the foreseeable future, and therefore, did not warrant listing under the ESA (63 FR 11482, 11493; March 9, 1998). The Petitioners essentially request NMFS to

revisit our previous conclusion based on more recent information and the current status of this ESU.

Analysis of Petition

The Petition contains information and arguments in support of listing Chinook salmon under the three alternatives recommended by the Petitioners. The Petitioners also include information on spring-run and fall-run Chinook salmon, including life history and physiology, diet, associated fish species, habitat requirements, historic and current distribution, and population status and trends.

Under the first recommended alternative, the Petitioners present new genetic evidence to suggest the spring-run Chinook salmon populations in the Upper Klamath and Trinity Rivers ESU may qualify as a separate ESU from the fall-run populations. They also present information indicating the spring-run Chinook salmon may meet the ESU criteria: (1) They are substantially reproductively isolated, and (2) represent an important component in the evolutionary legacy of the species. The Petitioners also argue that the genetic differentiation in the Upper Klamath and Trinity Rivers ESU runs is scaled similarly to the Central Valley Chinook salmon runs, and that the designation of Central Valley spring and fall runs as separate ESUs sets a precedent for the Upper Klamath and Trinity Rivers ESU Chinook salmon runs to be managed separately.

Under the second recommended listing alternative, the Petitioners present arguments that spring-run Chinook salmon in the Upper Klamath and Trinity Rivers ESU meet the two criteria to be considered a DPS: Discreteness and significance. As we described above, NMFS' policy is to list Pacific salmon stocks, such as Chinook salmon, as an ESU under the criteria described in the ESU Policy (56 FR 58612; November 20, 1991) rather than a DPS under the criteria described in the DPS Policy (61 FR 4722; February 7, 1996).

Under the third recommended listing alternative, the Petitioners argue spring-run populations are important to the overall viability of the Upper Klamath and Trinity Rivers Chinook salmon ESU and their status justifies listing the entire ESU.

The Petitioners also present substantial information on the status of spring-run and fall-run Chinook salmon populations in the Upper Klamath and Trinity Rivers Basin. They cite numerous reports describing the significant decline and low numbers in the populations of the two runs of fish

that additionally are increasingly dominated by hatchery fall-run Chinook salmon (e.g., Moyle *et al.* 2008; National Research Council 2004). The Petitioners also provide a detailed description and an analysis of the five listing factors in support of their contention that spring-run or the entire Upper Klamath and Trinity Rivers Chinook salmon ESU warrants listing. According to the petition, a history of dams, mining, water diversions, habitat degradation, disease, and fisheries, among other factors, have played a key role in the decline of the populations.

Petition Finding

Based on the information contained in the petition, which is summarized above, and the criteria specified in 50 CFR 424.14(b)(2), we find that the petition presents substantial scientific and commercial information indicating that the petitioned actions concerning listing spring-run Chinook salmon in the Upper Klamath and Trinity Rivers Basin as a separate ESU or listing the entire Upper Klamath and Trinity Rivers Chinook salmon ESU may be warranted. Accordingly, we will convene a biological review team (BRT) to assess the status of Upper Klamath and Trinity Rivers Chinook salmon and evaluate the petitioned actions. The BRT will: (1) Compile and evaluate biological and ecological information necessary to assess whether the spring-run component of the currently defined ESU should be a separate ESU, and if so, compile and evaluate biological information necessary to assess its status; and (2) if the spring-run component does not warrant delineation as a separate ESU, it will compile and evaluate biological and ecological information necessary to assess the status of the currently defined ESU. In addition, the BRT will evaluate Chinook salmon hatchery stocks and programs in the Upper Klamath and Trinity Rivers Basin to assess the level of divergence between hatchery and naturally spawning stocks. We will use the results of this status review in making a determination as to whether or not the petitioned actions are warranted.

Under section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)), this finding requires NMFS to commence a status review of the species. We are now initiating this review, and thus, the Upper Klamath and Trinity Rivers Chinook salmon ESU is considered a candidate species (50 CFR 424.02(b)). Within 12 months of the receipt of the petition (by January 28, 2012), we will make a finding as to whether the petitioned actions are warranted as required by section 4(b)(3)(B) of the ESA

(16 U.S.C. 1533(b)(3)(B)). If any of the petitioned actions are warranted, we will publish a proposed rule and solicit public comments before preparing a final rule.

Information Solicited for Status Review

To ensure the status review is based on the best available scientific and commercial data, we are soliciting information on Chinook salmon in the Upper Klamath and Trinity Rivers Basin. We request information from the public, concerned governmental agencies, Native American Tribes, the scientific community, agricultural and forestry groups, conservation groups, fishing groups, industry, and any other interested parties concerning the current and/or historical status of Chinook salmon in the Upper Klamath and Trinity Rivers Basin. Specifically, we request information on: (1) Historic and current distribution, presence, and abundance of this species throughout its range; (2) historic and current life history traits of spring-run and fall-run populations; (3) historic and current Chinook salmon habitat conditions; (4) population status and trends; (5) genetic population structure of spring-run and fall-run; (6) reproductive isolation of spring-run and fall-run; (7) information on any current or planned activities that may adversely impact the species, including but not limited to commercial, recreational, and Tribal harvest, especially as related to the five factors specified in section 4(a)(1) of the ESA (16 U.S.C. 1533(a)(1)) and listed above; and (8) ongoing efforts to protect and restore the species and its habitat.

We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents. Please note that submissions merely stating support for

or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination based on the best available scientific and commercial data.

Critical Habitat

Section 3(5) of the ESA (16 U.S.C. 1532(5)) defines critical habitat as: (1) Specific areas within the geographical area occupied by the species at the time of listing, on which are found those physical or biological features that are essential to the conservation of the listed species and that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of a listed species. Critical habitat shall be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. If designation of critical habitat is not prudent or determinable, the reasons will be stated in the 12-month finding.

We also request information on areas that may qualify as critical habitat for Chinook salmon in the Upper Klamath and Trinity Rivers Basin. Areas that include the physical and biological features essential to the conservation of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the conservation of the species. Essential features may include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional and physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological

distributions of the species (50 CFR 424.12(b)).

For areas having physical and biological features that may be essential to conservation, We request information describing: (1) The activities that affect the essential features or that could be affected by the designation; and (2) the economic costs and benefits of management measures likely to result from the designation. NMFS is required to consider the probable economic and other impacts on proposed or ongoing activities in making a final critical habitat designation (50 CFR 424.19).

Peer Review

On July 1, 1994, NMFS and USFWS (the Services) jointly published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). In addition, on January 14, 2005, the Office of Management and Budget (OMB) published its Final Information Quality Bulletin for Peer Review (70 FR 2664). The purpose of the Services' peer review policy is to ensure listings are based on the best scientific and commercial data available. The purpose of the OMB Bulletin is to enhance the quality and credibility of the government's scientific information. We are soliciting the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers can be selected from the 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: April 6, 2011.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

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