

NPL. Documents supporting this action are available from the docket.

State Concurrence

The Washington Department of Ecology concurs with the proposed deletion of the Silver Mountain Mine Superfund site from the NPL.

Dated: July 17, 1997.

Charles Findley,

Acting Regional Administrator, U.S. EPA Region 10.

[FR Doc. 97-19940 Filed 7-29-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 970715175-7175-01; I.D. No. 042997B]

RIN 0648-AG58

Designated Critical Habitat; Umpqua River Cutthroat Trout

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

ACTION: Proposed rule; request for comments; and notice of public hearings.

SUMMARY: NMFS proposes to designate critical habitat for the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) pursuant to the Endangered Species Act of 1973 (ESA) to include: The Umpqua River from a straight line connecting the west end of the South jetty and the west end of the North jetty and including all Umpqua River estuarine areas (including the Smith River) and tributaries proceeding upstream from the Pacific Ocean to the confluence of the North and South Umpqua Rivers; the North Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to Toketee Falls; the South Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to its headwaters (including Cow Creek, tributary to the South Umpqua River). Critical habitat includes all waterways below longstanding, natural impassable barriers (i.e., natural water falls in existence for over several hundred years). Such areas represent the current freshwater and estuarine range of the listed species. The economic and other impacts resulting from this proposed

critical habitat designation are expected to be minimal.

DATES: Comments must be received on or before September 29, 1997. Public hearings on this proposed action are scheduled for the month of August. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Comments should be sent to NMFS, Environmental and Technical Services Division, 525 NE Oregon St. Suite 500, Portland, OR 97232-2737. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT:

Garth Griffin, NMFS, Environmental and Technical Services Division, 525 NE Oregon St. Suite 500, Portland, OR 97232-2737, telephone (503/231-2005) or Joe Blum, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1996, NMFS published its determination to list Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) as endangered under the ESA (61 FR 41514). In its final listing determination, NMFS concluded that all cutthroat trout life history forms (i.e., anadromous, potamodromous, and resident) should be included in the listed Umpqua River cutthroat trout Evolutionarily Significant Unit. This conclusion was based on studies conducted by Oregon Department of Fish and Wildlife (ODFW) and others which indicate that these life history forms are not completely reproductively isolated and, therefore, should be considered a single "distinct population segment," under the ESA and NMFS' ESA species policy (See 61 FR 41516).

Historically, anadromous, potamodromous, and resident cutthroat trout likely occurred throughout the Umpqua River basin. The current freshwater distribution of anadromous and potamodromous life forms is thought to be limited primarily to the mainstem, Smith, and North Umpqua Rivers. Resident cutthroat trout appear to remain broadly distributed throughout the Umpqua River basin, including areas of the South Umpqua River not thought to support significant anadromous cutthroat trout populations.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. On July 19, 1993, NMFS published a **Federal Register** document (58 FR 38544) soliciting information and data

regarding the present and historic status of the Umpqua River cutthroat trout, as well as information on areas that may qualify as critical habitat. At the time of the final listing, critical habitat was not determinable, since information necessary to perform the required analyses was not available. NMFS has determined that sufficient information now exists to designate critical habitat for this species. NMFS has considered all available information and data in making this proposal.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species." (See 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means " * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." (See 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space 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 breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (See 50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (See *Id.*).

Consideration of Economic, Environmental, and Other Factors

The economic, environmental, and other impacts of a critical habitat designation have been considered and evaluated. NMFS identified present and anticipated activities that may adversely modify the area(s) being considered or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (See 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases, the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the "take" prohibitions contained in section 9 of the ESA and associated regulations. "Take," as defined in the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (See 16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, rearing or migration.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying critically important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g.,

authorized, funded, conducted) and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those alternatives that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (see 50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (see 50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat may also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. When actions may affect these areas, Federal agencies are required to consult with NMFS under section 7 (see 50 CFR 402.14(a)), which may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides a clear indication to Federal agencies as to when section 7 consultation is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7 (i.e., activities that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be

identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is published within 1 year of the proposed rule. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the essential habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections for Umpqua River cutthroat trout.

Essential Habitat of Umpqua River Cutthroat Trout

Available biological information for listed Umpqua River cutthroat trout can be found in the species' Status Review (Johnson et al. 1994) and in **Federal Register** notices of proposed and final listing determinations (see 59 FR 35089, July 8, 1994; 61 FR 41514, August 9, 1996). Essential Umpqua River cutthroat trout habitat consists of five components: (1) Spawning and juvenile

rearing areas; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; (4) adult migration corridors; and (5) over-wintering habitat. The Pacific Ocean areas used by listed cutthroat trout for growth and development to adulthood are not well understood, and essential areas and features have not been identified.

The current geographic range of Umpqua River cutthroat trout includes nearshore ocean areas, the mainstem Umpqua River and its tributaries, and the North and South Umpqua Rivers and their tributaries. NMFS has determined that the current freshwater and estuarine range (referred to as the in-river range) of the species is adequate to ensure the species' conservation. The species' current in-river range encompasses all essential habitat features (e.g., riverine conditions, estuaries, headwater areas) in sufficient quantity to ensure conservation of the species. Therefore, designation of habitat areas outside the species' current in-river range is not necessary.

NMFS recognizes that the Umpqua River estuary is an essential migration corridor for listed Umpqua River cutthroat trout and, accordingly, has included estuary areas as critical habitat in this designation. However, the importance of marine habitats (i.e., oceanic or near shore areas seaward of the mouth of the Umpqua River) is not well understood (Pauley, 1989; Behnke, 1992). In addition to a lack of biological information concerning the marine life history phase of cutthroat trout, there does not appear to be a need for special management consideration or protection of this habitat. Based on present information, degradation of this portion of the species' habitat does not appear to have been a significant factor in the decline of the species. Specifically, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. Therefore, NMFS does not propose to designate critical habitat in marine areas at this time. If additional information becomes available that supports the inclusion of such areas, NMFS may revise this designation.

Essential features of the designated in-river areas include adequate: (1) Substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) food; (6) riparian vegetation; and (7) access. Juvenile migration corridors include the North and South Umpqua Rivers and the mainstem Umpqua River to the Pacific Ocean. Essential features of the juvenile migration corridors include adequate: (1) Substrate; (2) water quality; (3) water quantity; (4) water

temperature; (5) water velocity; (6) cover/shelter; (7) food; (8) riparian vegetation; (9) space; and (10) safe passage conditions. Adult migration corridors and their essential features are the same as those identified for juvenile migration corridors.

Need for Special Management Considerations or Protection

In order to assure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for listed Umpqua River cutthroat trout spawning and juvenile rearing areas include, but are not limited to: (1) Land management; (2) timber harvest; (3) water pollution; (4) livestock grazing; (5) habitat restoration; (6) irrigation water withdrawal; (7) mining; (8) road construction; and (9) dam operation and maintenance. For juvenile and adult migration corridors, special management considerations also include: (10) Dredge and fill activities; and (11) dam operations. Not all of these activities are necessarily of current concern; however, they indicate the potential types of activities that will require consultation in the future. No special management considerations have been identified for listed Umpqua River cutthroat trout while they are residing in the ocean environment.

Activities That May Affect the Essential Habitat

A wide range of activities may affect the essential habitat requirements of listed Umpqua River cutthroat trout. These activities include water and land management actions of Federal agencies (i.e., U.S. Forest Service, U.S. Bureau of Land Management, the Federal Highway Administration, and the Federal Energy Regulatory Commission) and related or similar actions of other Federally-regulated projects and lands including livestock grazing allocations in the Umpqua River Basin by the U.S. Forest Service and U.S. Bureau of Land Management; hydropower operators (i.e., PacifiCorp) in the Umpqua River system licensed by the Federal Energy Regulatory Commission; timber sales in the Umpqua River Basin conducted by the U.S. Forest Service and U.S. Bureau of Land Management; road building activities authorized by the Federal Highway Administration, U.S. Forest Service, and U.S. Bureau of Land Management; and mining and road building activities authorized by the state of Oregon. Other actions of concern include dredge and fill, mining, and bank stabilization activities authorized and/or conducted by the

U.S. Army Corps of Engineers throughout the Umpqua River Basin.

The Federal agencies that will most likely be affected by this critical habitat designation include the U.S. Forest Service, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, the Federal Highway Administration, and the Federal Energy Regulatory Commission. This designation will provide clear notification to these agencies, private entities, and the public of critical habitat designated for listed Umpqua River cutthroat trout and the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed Umpqua River cutthroat trout and their critical habitat and in determining when consultation with NMFS would be appropriate.

Proposed Critical Habitat; Geographic Extent

Proposed critical habitat for listed Umpqua River cutthroat trout includes: The Umpqua River from a straight line connecting the west end of the South jetty and the west end of the North jetty and including all Umpqua River estuarine areas (including the Smith River) and tributaries proceeding upstream from the Pacific Ocean to the confluence of the North and South Umpqua Rivers; the North Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to Toketee Falls; the South Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to its headwaters (including Cow Creek, tributary to the South Umpqua River). Critical habitat includes all waterways below longstanding, natural impassable barriers (i.e., natural water falls in existence for over several hundred years). Critical habitat includes the bottom and water of the waterways and adjacent riparian zone. The riparian zone includes those areas within 300 ft (91.4 m) of the normal line of the high water mark of the stream channel or from the shoreline of a standing body of water.

Expected Economic Impacts of Designating Critical Habitat

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of

Economic, Environmental and Other Factors section of this preamble). Incremental impacts result from special management activities in areas outside the present distribution of the listed species that have been determined to be essential to the conservation of the species. However, NMFS has determined that the present in-river species range contains sufficient habitat for conservation of the species. Therefore, NMFS finds that there are no incremental impacts associated with this critical habitat designation.

Public Comments Solicited; Public Hearings

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposal from all concerned parties (see ADDRESSES). NMFS will consider all information, comments, and recommendations received before reaching a final decision.

Department of Commerce ESA implementing regulations state that the Secretary "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to designate critical habitat." (See 50 CFR 424.16(c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters.

The public hearings on this action are scheduled as follows:

1. Wednesday, August 20, 6:30 p.m. to 9:30 p.m., Douglas County Court House, Hearing Room 216, 1036 SE Douglas, Roseburg, OR 97470.

2. Thursday, August 21, 6:30 p.m. to 9:30 p.m., Reedsport Community Building, Council Chambers, 451 Winchester Avenue, Reedsport, OR 97467.

Interested parties will have an opportunity to provide oral and written testimony at the public hearings. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jim Lynch at (503) 230-5422.

National Environmental Policy Act

NMFS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for critical habitat designations made pursuant to the ESA. See *Douglas County v. Babbitt*,

48 F.3D 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. NMFS completed an assessment of the economic impacts of designating critical habitat. NMFS found that since listing species under the ESA provides significant protection to the species habitat, the economic and other impacts resulting from critical habitat designation are minimal. Therefore, a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The AA has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of Oregon. This determination has been submitted for review by the responsible state agencies under section 3.7 of the Coastal Zone Management Act.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 226

Endangered and Threatened Species.

Dated: July 24, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. § 226.22, introductory paragraph, is amended by revising the sixth sentence to read as follows:

§ 226.22 Snake River Sockeye Salmon (*Oncorhynchus nerka*), Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*), Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*).

* * * Hydrologic units (Table 3) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1986", and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon (1974) and State of California (1978), which are incorporated by reference. * * *

3. Section 226.23 is added to subpart C to read as follows:

§ 226.23 Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*).

The following areas consisting of the water, waterway bottom, and adjacent riparian zone of specified lakes and river reaches in hydrologic units presently accessible to listed Umpqua River cutthroat trout: The Umpqua River from a straight line connecting the west end of the South jetty and the west end of the North jetty and including all Umpqua River estuarine areas (including the Smith River) and tributaries proceeding upstream from the Pacific Ocean to the confluence of the North and South Umpqua Rivers; the North Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to Toketee Falls; the South Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to its headwaters (including Cow Creek, tributary to the South Umpqua River). Critical habitat includes all river reaches below longstanding, natural impassable barriers (i.e., waterfalls in existence for several hundred years) in the following hydrologic units: North Umpqua, South Umpqua, and Umpqua. Critical habitat borders on or passes through the following counties in Oregon: Douglas, Lane, Coos, Jackson, and Klamath counties. Perennial rivers and creeks within the defined areas are also included in the critical habitat designation (but are not specifically named), unless otherwise noted. Adjacent riparian zones are defined as those areas within a horizontal distance of 300 ft (91.4 m) from the normal line

of high water of a stream channel (600 ft or 182.8 m, when both sides of the stream channel are included) or from the shoreline of a standing body of water. Figure 1 identifies the general geographic extent of larger rivers, lakes, and streams within hydrologic units designated as critical habitat for Umpqua River cutthroat trout. Note that Figure 1 does not constitute the definition of critical habitat but, instead, is provided as a general reference to guide Federal agencies and interested parties in locating the general boundaries of critical habitat for listed Umpqua River cutthroat trout. The complete text delineating the critical habitat for the species follows.

Hydrologic units (Table 1) are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1986, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of

Oregon, 1974, which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Species Program, Environmental and Technical Services Division, 525 NE Oregon St.—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Critical habitat maps are available upon request from Garth Griffin, NMFS, Protected Species Branch, Environmental and Technical Services Division, 525 NE Oregon St. Suite 500, Portland, OR 97232–2737, telephone (503/230–5430).

3. Table 4 and Figure 9 are added to part 226 to read as follows:

Table 4 to part 226—Hydrologic Units² Containing Critical Habitat for Endangered Umpqua River cutthroat trout and counties contained in each Hydrologic Unit.

Hydro-logic unit name	Hydro-logic unit number	Counties contained in hydrologic unit
North Umpqua.	17100301	Douglas, Lane, Klamath.
South Umpqua.	17100302	Douglas, Jackson, Coos.
Umpqua	17100303	Douglas, Lane, Coos.

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² Hydrologic units and names taken from DOI, USGS 1:500,000 scale State of Oregon (1974) hydrologic unit map (available from USGS).

Figure 9 to part 226 - Proposed Critical Habitat for Umpqua River
Cutthroat Trout

