

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110921597-1591-01]

RIN 0648-XA636

Endangered and Threatened Species; 90-Day Finding on Petitions To Delist Coho Salmon Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding on three petitions to delist coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). We find that the petitions do not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petitions and related materials are available upon request from the Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario, NMFS, Southwest Region Office, (562) 980-4085; or Dwayne Meadows and Kristy Beard, NMFS, Office of Protected Resources, (301) 427-8403.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA (16 U.S.C. 1533) contains provisions allowing interested persons to petition the Secretary of Commerce (Secretary) to add a species to, or remove a species from, the List of Endangered and Threatened Wildlife and to designate critical habitat. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

On May 9, 2011, we received a petition from Dr. Richard Gierak requesting that we delist coho salmon under the ESA. We also received two similar petitions from the Siskiyou County Water Users Association on June 9 and June 28, 2011, requesting that we delist coho salmon. The June 28 petition cites Dr. Gierak as a preparer. Both the June 9th and June 28th petitions include text that is the same as some of the text in the May 9th petition. Because we received three petitions that requested the same action within a short period of time, we are considering all three petitions jointly in making our 90-day finding.

ESA Statutory and Regulatory Provisions and Evaluation Framework

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 a petition presents substantial scientific or commercial information to list or delist a species, we take into account 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, and the finding is to be published promptly in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). In evaluating a petition and making a 90-day finding, our regulations require that we consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) 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; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). 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 to conduct a status review of the species.

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 “any species which 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) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Regulations implementing the ESA instruct us to consider these same factors when determining whether to delist a species, a subspecies, or a distinct population segment (including Evolutionarily Significant Units (ESUs)) (50 CFR 424.11(d)). 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. In addition to considering the factors listed above, the ESA implementing regulations state that a species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons: the species is extinct; the species is recovered; or subsequent investigations show the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

Analysis of the Petitions

The contents of the three petitions are largely similar and our analysis is based on a consideration of the four regulatory criteria for the minimum requirements for determining whether a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (50 CFR 424.14(b)). Our analysis of the petitions with regard to these criteria is as follows:

(1) The petitions do not clearly indicate the administrative measure recommended, and contain

inconsistencies and errors in the administrative measure being recommended (see 50 CFR 424.14(b)(2)(i)). In all three petitions, the title and a section entitled "Statement identifying the taxon" refer to the entire species of coho salmon; the petitions focus much discussion on coho salmon in the Klamath River, yet also variously discuss information about coho salmon in other parts of California and throughout the Western United States. It is unclear whether the petitioners recognize that coho salmon in the Klamath River basin are part of the larger Southern Oregon/Northern California Coast (SONCC) coho salmon ESU, which is listed as threatened (70 FR 37160; June 28, 2005), and that there are three other ESUs of coho salmon on the west coast that are listed as threatened or endangered under the ESA. The SONCC coho salmon ESU includes all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, and coho salmon in three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock #52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs (70 FR 37160; June 28, 2005). It is thus also unclear whether the petitioners are requesting that we delist the portion of the SONCC coho salmon ESU that is in the Klamath River basin, delist the entire SONCC coho salmon ESU, or delist coho salmon from one or more additional ESUs throughout some wider area. In addition, the petitions request removing the listing of coho salmon under the California Endangered Species Act, which we have no authority to do, and removing the proposed Federal ESA listing of coho salmon, even though the listing of the SONCC coho salmon ESU is final and not proposed (nor is there any other proposed listing of coho salmon by NMFS at the current time).

(2) The petitions do not contain detailed narrative justifications for the recommended measure of delisting, except as specifically discussed below regarding the claim that coho salmon are not native to the Klamath River basin or to various other parts of California. This is true regardless of what ESU or ESUs the petitioners might have intended to request we delist. The petitions generally argue the extinction of coho is unavoidable due to a variety of threats, the decline of "coho can be directly attributed to Nature's whim," the Marine Mammal Protection Act is one of the major human activities destroying the coho population through allowing increased predation, and

NMFS did not properly consider hatchery origin coho salmon in listing the SONCC coho salmon ESU. However, the information is not presented or synthesized in a manner to indicate the petitioned action may be warranted because of any of the criteria described in 50 CFR 424.11(c) and (d) (see 50 CFR 424.14(b)(2)(ii)). In fact, the petitioners describe a number of current threats to coho salmon that negatively affect the status of the species. The petitioners' argument that extinction is unavoidable is not a consideration in delisting decisions under the ESA or our implementing regulations. The petitioners' arguments that we did not properly consider hatchery origin coho salmon in listing the SONCC coho salmon ESU are incorrect as we addressed these issues in a final rule issued on June 28, 2005 (70 FR 37160). In that final rule, we concluded that the SONCC coho salmon ESU includes the three above mentioned artificial propagation programs because the available information indicated they were no more than slightly divergent from natural populations in their respective watersheds. In making these determinations, we applied our "Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead" (70 FR 37204; June 28, 2005).

One particular claim of the petitions deserves additional consideration here. The petitions all make the claim that coho salmon are not native to the Klamath River basin or to various other parts of California. For the Klamath River Basin, they cite the Karuk Tribal Council meeting from 2001 and California Fish and Game documents from 1913 and 2002. For other parts of California, specifically south of San Francisco, they cite a variety of references. They have a narrative justification for this claim that discusses the status of coho salmon in the relevant areas and include the references described above. Although the petitioners do not specifically cite the portion of our regulations dealing with an error at the original time of listing, which would be a factor for consideration of delisting (see 50 CFR 424.11(d)), we nevertheless consider the information they present on this claim. Here we evaluate whether the information provided by the petitioners presents substantial scientific or commercial information that this claim may be warranted. The petitioners cite a Web site as the source of the quotes provided from the Karuk Tribal Council meeting. The Web site does not contain

the minutes of said meeting for us to evaluate and the quotes themselves do not provide scientific or anecdotal information on presence of coho salmon in the Klamath River Basin. The quotes that the petitioners provided from the 2002 California Department of Fish and Game report, taken from the 1913 California Fish and Game Commission report, are taken out of context. The 2002 report actually concludes the opposite of the petitioners: that coho salmon are native to the upper Klamath River system, and historically occurred there prior to hatchery stocking. The petitioners' arguments regarding coho salmon not being native to other parts of California, specifically south of San Francisco, were addressed in our 12-month finding and associated status review regarding the endangered Central California Coast ESU of coho salmon (76 FR 6383; February 4, 2011). Based on this analysis, these petitions fail to provide substantial scientific or commercial information that even this limited claim may be warranted under the ESA.

(3) The presentation of information does not provide information regarding the status of listed coho salmon over all or a significant portion of their range, except as specifically discussed above regarding the claim that coho salmon are not native to the Klamath River basin or to various other parts of California (see 50 CFR 424.14(b)(2)(iii)). Again this is true no matter what ESU or ESUs the petitioners intended to request we delist.

(4) Although the petitioners cite some published reports and provide links to some supporting documentation, some of the citations to referenced materials are incomplete (see 50 CFR 424.14(b)(2)(iv)).

Petition Finding

After reviewing all three petitions, as well as information readily available in our files, we have determined that the petitions do not present substantial scientific or commercial information indicating the petitioned action may be warranted.

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

Dated: October 3, 2011.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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