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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 111205722-1793-01]

RIN 0648-XA851

Endangered and Threatened Species; 90-Day Finding on Petition to Delist the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of 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 a petition to delist the Southern Oregon/Northern California Coast (SONCC) Evolutionarily Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition are available at: <http://www.nmfs.noaa.gov/pr/> or 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 Margaret H. Miller, 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 October 31, 2011, we received a petition from the Siskiyou County Water Users Association and Dr. Richard Gierak requesting that we delist the SONCC ESU of coho salmon under the ESA. The petitioners previously submitted three petitions requesting we delist coho salmon. We analyzed those petitions and found the petitions did not present substantial scientific or commercial information indicating the petitioned action may be warranted. The negative 90-day finding notice for the three petitions was published in the Federal Register on October 7, 2011 (76 FR 62375). The current petition largely reiterates the petitioners' previous arguments, including that the species is not native to the Klamath River watershed, the species is in good condition overall, and extinction is inevitable. These arguments were rejected in our response to the previous petitions, and need not be repeated here.

In the current petition, the petitioners have specified their request to delist the SONCC ESU, presented some additional information regarding the status of coho stocks before and after construction of dams, and have added citations to articles on ocean temperature, heat content and volcanic activity in the Pacific Ocean. However, the data and citations are either offered without context or relationship to the petitioned action, or relate to the entire taxonomic species of coho salmon and not specifically to the SONCC ESU. In addition, petitioners have added a discussion

of threats to the species, and included the full minutes of a Karuk Tribal Council meeting that were mentioned, but not provided, in their earlier petitions, to support their argument. However, petitioners' discussion of threats to the species supports maintaining the listing, and the Karuk Tribal Council minutes provide no additional evidence indicating whether the species is or is not, as petitioners claim, native to the Klamath River basin. Accordingly, none of this additional information modifies the underlying scientific basis for our original determination or causes us to re-evaluate our earlier position.

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 that 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)). ESA implementing regulations state that a species may be delisted only if the best scientific and commercial data available 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)).

Petition Finding

As discussed above, this subject petition does not present any new or substantial scientific or commercial information related to whether the SONCC ESU of coho salmon is recovered, extinct, or that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error. Therefore, we determine that the petition does not present substantial scientific or commercial information to indicate that the petitioned action may be warranted.

References Cited

A complete list of the references used in this finding is available upon request (see ADDRESSES).

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

Dated: January 5, 2012

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

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