



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 226**

**[Docket No. 250707-0119; RTID 0648-XE896]**

### **Endangered and Threatened Wildlife; 90-Day Finding on a Petition to Revise the Critical Habitat Designation for Southern California Steelhead.**

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

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

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition to revise the critical habitat designation for the Southern California steelhead (*Oncorhynchus mykiss*) distinct population segment (DPS) under the Endangered Species Act (ESA). The petition requests that we revise the designated critical habitat to remove an approximately 9-mile (15-kilometer) stream reach from the confluence of the Santa Clara River and Hopper Creek upstream to the face of Santa Felicia Dam on Piru Creek. We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted. We are hereby initiating a review of the currently designated critical habitat to determine whether the requested revision is warranted. To ensure a comprehensive review, we are soliciting scientific and commercial information pertaining to this action.

**DATES:** Scientific and commercial data pertinent to the petitioned action must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, information, or data on this document identified by docket number, NOAA-NMFS-2025-0050, using any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NMFS-2025-0050 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail or Hand-delivery:* NMFS, West Coast Region, Protected Resource Division, Re: NOAA-NMFS-2025-0050, 1201 NE Lloyd Blvd., Suite #1100, Portland, OR 97232.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing at <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the petition and related materials are available from the NMFS website at <https://www.fisheries.noaa.gov/endangered-species-conservation/candidate-species-under-endangered-species-act>.

**FOR FURTHER INFORMATION CONTACT:** Robert Markle, NMFS West Coast Region, *robert.markle@noaa.gov* or 503-230-5419.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Southern California steelhead was listed as an endangered species under the ESA in 1997 (62 FR 43937, August 18, 1997), and the listing was reaffirmed in 2006 (71 FR 834, January 5, 2006). The geographic range of this listed distinct population segment (DPS) of steelhead was extended in 2002 (67 FR 21586, May 1, 2002). The listed DPS is comprised of naturally spawned anadromous *O. mykiss* (steelhead) originating below natural and manmade impassable barriers from the Santa Maria River to the United States-Mexico border (50 CFR 224.101). Critical habitat for the Southern California DPS of steelhead was designated in 2005 (70 FR 52488, September 2, 2005).

On March 21, 2025, the Secretary of Commerce and the Under Secretary/NOAA Administrator received a petition from the United Water Conservation District (hereafter, the Petitioner) to remove an approximately 9-mile (15-kilometer) stream reach currently designated as critical habitat for Southern California steelhead. This reach includes all currently designated critical habitat in the Santa Clara River basin upstream of the confluence of Hopper Creek.

The ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*) defines critical habitat as: (i) The specific areas within the geographical area currently occupied by the species, at the time it is listed . . . , 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 at the time it is listed . . . , upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Joint NMFS-Fish and Wildlife Service (FWS) regulations for designating

critical habitat state that the agencies will identify physical and biological features essential to the conservation of the species at an appropriate level of specificity using the best available scientific data (50 CFR 424.12(b)(1)(ii)), and that prior to finalizing a designation of critical habitat we will take into consideration the probable economic, national security, and other relevant impacts of the designation upon proposed or ongoing activities (50 CFR 424.19). An essential physical and biological feature may be a single habitat characteristic or a more complex combination of characteristics, may include characteristics that support ephemeral or dynamic habitat conditions, and may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02). “Special management considerations or protection” means any method or procedure useful in protecting physical and biological features essential to the conservation of the species (50 CFR 424.02).

Section 4(b)(2) of the ESA requires NMFS to designate, and make revisions to, critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2); see also 50 CFR 424.19). The Secretary of Commerce may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Section 4(b)(3)(D)(i) of the ESA requires, to the maximum extent practicable, that within 90 days of receipt of a petition to revise a critical habitat designation, the Secretary of Commerce make a finding on whether that petition presents substantial scientific

information indicating that the petitioned revision may be warranted, and to promptly publish such finding in the *Federal Register* (16 U.S.C. 1533(b)(3)(D)(i)). The ESA implementing regulations issued jointly by NMFS and FWS state that “substantial scientific information” refers to credible scientific information that would lead a reasonable person conducting an impartial scientific review to conclude that the revision proposed in the petition may be warranted (50 CFR 424.14(i)(1)(i)). The Secretary’s determination as to whether the petition provides substantial scientific information indicating that the petitioned action may be warranted will depend in part on the degree to which a petition for removal of an area from currently designated critical habitat includes the following types of information: (1) a description and map(s) of the areas that the current designation includes that should no longer be included, and a description of the benefits of designating or not designating these specific areas of critical habitat; (2) a description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protections; (3) information indicating that the specific areas do not contain the physical or biological features (including characteristics that support ephemeral or dynamic habitat conditions) that are essential to the conservation of the species, or that these features do not require special management considerations or protection, for any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed; (4) information indicating why the petitioned areas are not essential for the conservation of the species for areas petitioned to be removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. (50 CFR 424.14(e)(1)-(2), and (4)-(6)).

At the 90-day stage, we evaluate the Petitioner's request based upon the information in the petition, including its references, and information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us evaluate the petition. We will accept the Petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the Petitioner's assertions. If we find that a petition presents substantial information indicating that the revision may be warranted (*i.e.*, a “positive 90-day finding”), within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested critical habitat revision and promptly publish notice of such intention in the *Federal Register* (16 U.S.C. 1533(b)(3)(D)(ii)). Because the determination at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope at the 90-day stage, a “positive 90-day finding” does not prejudge the outcome of our review.

### **Current Critical Habitat Designation**

In 2005, a total of 708 stream miles (1,139 kilometers) of critical habitat were designated for Southern California steelhead, including the stream reach at issue in the petition (70 FR 52488, September 2, 2005). The physical and biological features essential to the conservation of this DPS, grouped by specific areas of use, included: (1) freshwater spawning sites with sufficient water quantity and quality and adequate substrate to support spawning, incubation, and larval development; (2) freshwater rearing sites with sufficient water quantity and floodplain connectivity to form and maintain physical

habitat conditions and allow salmonid development and mobility; sufficient water quality to support growth and development; food and nutrient resources such as terrestrial and aquatic invertebrates and forage fish; and natural cover (*e.g.*, shade, submerged, and overhanging large wood, log jams, beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks); (3) freshwater migration corridors free of obstruction and excessive predation with adequate water quantity to allow for juvenile and adult mobility; cover, shelter, and holding areas for juveniles and adults; and adequate water quality to allow for survival; (4) estuarine areas that provide uncontaminated water and substrates; food and nutrient sources to support growth and development; and connected shallow water areas and wetlands to cover and shelter juveniles; and (5) marine areas with sufficient water quality to support salmonid growth, development, and mobility; food and nutrient resources such as marine invertebrates and forage fish; and nearshore marine habitats with adequate depth, cover, and marine vegetation to provide cover and shelter (NMFS 2005a).

To evaluate the conservation value of habitat areas, each California Water Service (CALWATER) Hydrologic Subarea (HSA) within the occupied range of the DPS was assessed. The subject stream reach occurs in HSA 440341. The 2005 Critical Habitat Analytical Review Team (CHART), comprised of NMFS fishery biologists and habitat specialists, rated HSA 440341 as having a “high” conservation value and identified 16 miles (26 kilometers) of occupied spawning, rearing, and migration habitat (NMFS 2005a). Large water storage dams were identified as the primary management activity affecting the essential physical and biological features of Southern California steelhead habitat.

### **Analysis of Petition**

The Petitioner states that the best available scientific information demonstrates that lower Piru Creek was not occupied at the time of listing and is not currently occupied

by the listed steelhead, that NMFS erred in its evaluation of the physical and biological features of HSA 440341, and that NMFS' assessment of the economic impacts associated with the designation was flawed.

The expert opinion of the CHART was that the stream reaches that were ultimately designated were occupied by naturally spawned steelhead (anadromous *O. mykiss*) at the time of listing. The CHART identified 16 miles (26 kilometers) of occupied habitat within HSA 440341, including the subject stream reach. The Petitioner's perspective is that no reliable information exists to definitively establish that the subject stream reach was ever occupied by a native steelhead population, let alone at the time of listing or since that time. Historically, any steelhead noted in the system are attributed to hatchery releases of fish from outside of the DPS. Regarding presence since dam construction in 1955, the petition states "no anadromous Steelhead have been documented in Lower Piru creek below the dam." In 2004, surveys conducted in lower Piru Creek during dam relicensing observed no steelhead. The Petitioner attributes observations of juvenile trout in lower Piru Creek between 2005 and 2016 as consisting of resident (non-anadromous) *O. mykiss* (*i.e.*, rainbow trout) that were washed downstream from Lake Piru. Surveys of lower Piru Creek from 2017-2024 observed no trout, anadromous or resident.

As stated above, the CHART identified the habitat in HSA 440341 as having a "high" conservation value and indicated all 16 miles (26 kilometers) of occupied habitat provided the physical or biological features required for steelhead spawning, rearing, and migration. The Petitioner states that the habitat value of the subject reach is poor and should not have been assessed as having "high" conservation value. The Petitioner indicates that habitat in the subject reach is unsuitable for spawning and rearing, and does not serve as a viable migration route. The Petitioner supports this perspective by noting that the substrate in the subject stream reach is of poor quality for successful spawning,

that flows and other habitat elements (*e.g.*, water temperature, instream cover, pools) are inadequate to support rearing, and that access by adult steelhead to more suitable habitat is precluded by Santa Felicia Dam, which is currently a complete upstream passage barrier.

NMFS' assessment of economic impacts under ESA section 4(b)(2) indicated that the annualized cost of designating HSA 440341 was \$322,647. Under step one of the assessment process articulated in the final economic impact report supporting the 2005 critical habitat designation (NMFS 2005b), that estimate exceeded the identified threshold value for eligibility for exclusion. This outcome meant that the area was eligible for exclusion because doing so would offer a meaningful cost savings. However, under step two, the CHART concluded that exclusion would impede the overall conservation of the species thus the area was included in the final critical habitat designation. The Petitioner criticizes NMFS for not providing further explanation of that conclusion. Furthermore, the Petitioner asserts that NMFS underestimated the economic impacts associated with designation. The Petitioner states that the true economic impact of the designation to the United Water Conservation District alone since 2005 was nearly \$74.6 million, which it attributes to associated operational changes and compliance costs (or approximately \$3.7 million annually, a value that is greater than what the CHART estimated).

Consequently, the Petitioner's opinion is that due to the absence of steelhead presence, the lack of suitable spawning, rearing, and migration habitat, and the extent of actual economic impact, NMFS should have not designated the subject stream reach as critical habitat for Southern California steelhead.

### **Petition Finding**

Based on the information presented and referenced in the petition, as well as all other information readily available in our files, and pursuant to the criteria specific in 50

CFR 424.14(c) and (e), we find the information presented by the Petitioner regarding steelhead presence and the quantity and quality of existing habitat in the subject stream reach, as well as regarding the economic impact of designation, indicate that revision of critical habitat may be warranted.

### **Information Solicited**

To ensure that our review of Southern California steelhead critical habitat is complete and based on the best available scientific information, and allows us to take into consideration the economic impact, any impact to national security, and any other relevant impact, we are soliciting relevant information with respect to the subject stream reach (*i.e.*, Santa Clara River upstream of the Hopper Creek confluence to the face of Santa Felicia Dam on Piru Creek) from the public, government agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning: (1) steelhead presence (or absence), both historically and from the time of listing in 1997 to the present; (2) the existing physical and biological features present (or absent) that are essential to the conservation of Southern California steelhead; (3) information regarding potential benefits or impacts associated with the petitioned revision to the current critical habitat designation, including information on the types of Federal actions that may affect the area's physical and biological features; and (4) current or planned activities and costs of potential modifications of those activities due to the existing critical habitat designation.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. All relevant comments will be made publicly available at <https://www.regulations.gov>.

## **References Cited**

The complete citations for the references used in this document can be obtained by contacting NMFS (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

## **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). This finding is issued in accordance with 16 U.S.C. 1533(b)(3)(D)(i).

Dated: July 7, 2025.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

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