

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Four Plants From Vernal Pools and Mesic Areas in Northern California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed Rule; notice of public hearing and reopening of comment period.

**SUMMARY:** The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice that a public hearing will be held on the proposed endangered status for *Lasthenia conjugens* (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop). In addition, the Service has reopened the comment period. All parties are invited to submit comments on this proposal. **DATES:** The public hearing will be held from 6:00 p.m. to 8:00 p.m. on Thursday, April 6, 1995, in Napa, California. The public comment period now closes April 28, 1995. Any comments received by the closing date will be considered in the final decision on this proposal.

**ADDRESSES:** The public hearing will be held at the Napa Valley Marriott Hotel, 3425 Solano Avenue, Napa, California. Written comments and materials concerning this proposal may be submitted at the hearing or may be sent directly to Field Supervisor, Sacramento Field Office, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Betty Warne (see ADDRESSES section) or at 916/979-2120.

**SUPPLEMENTARY INFORMATION:****Background**

*Lasthenia conjugens* (Contra Costa goldfields), *Navarretia leucocephala* ssp. *pauciflora* (few-flowered navarretia), *Navarretia leucocephala* ssp. *plieantha* (many-flowered navarretia), and *Parvisedum leiocarpum* (Lake County stonecrop) grow in vernal pools and mesic grasslands and are found variously in Lake, Napa, Solano,

and Sonoma Counties. The three remaining populations of Lake County stonecrop occur on private lands in Lake County. The seven remaining populations of Contra Costa goldfields occur in Napa and Solano Counties. The five remaining populations of few-flowered navarretia occur in Napa and Lake Counties. The seven remaining populations of many-flowered navarretia occur in Lake and Sonoma counties.

These four vernal pool plants proposed for listing are imperiled by one or more of the following: commercial, residential, and agricultural development, hydrological changes in vernal pool and swale habitats, trampling by livestock, road widening, inadequate regulatory protection mechanisms, random stochastic events, off-highway vehicle use, feral pigs, and horseback riding. As a result of the immediate threats against these plant populations, the Service is proposing to list these four species as endangered to afford them protection of the Act.

On December 19, 1994, the Service published a proposed rule on proposed endangered status for *Lasthenia conjugens*, *Navarretia leucocephala* ssp. *pauciflora*, *Navarretia leucocephala* ssp. *plieantha*, and *Parvisedum leiocarpum* (59 FR 65311). Section 4(b)(5)(E) of the Act requires that a public hearing be held if one is requested within 45 days of the publication of the proposed rule in the **Federal Register**. Public hearing requests were received within the allotted time period from Michael Delbar, Executive Director, Lake County Farm Bureau, Lakeport, California and from Daniel Macon, Director Industry Affairs, California Cattlemen's Association, Sacramento, California. As a result, the Service has scheduled a public hearing on April 6, 1995, at Napa Valley Marriott Hotel, 3425 Solano Avenue, Napa, California.

Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

The comment period on the proposal was to close on February 17, 1995. To accommodate the hearing, the public comment period is reopened upon

publication of this notice. Written comments may now be submitted until April 28, 1995, to the Service office in the ADDRESSES section.

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 9, 1995.

**William F. Shake,**

*Acting Regional Director, Region 1 U.S. Fish and Wildlife Service.*

[FR Doc. 95-6470 Filed 3-15-95; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

[Docket No. 941084-4284; I.D. 080894C]

## 50 CFR Part 227

**Endangered and Threatened Species; Proposed Threatened Status for Southern Oregon and Northern California Steelhead**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is issuing a proposed rule to list natural steelhead (*Oncorhynchus mykiss*) populations (progeny of naturally-spawning fish) occurring between Cape Blanco, OR, and the Klamath River Basin, in Oregon and California (inclusive; hereinafter referred to as the Klamath Mountains Province) as threatened under the Endangered Species Act of 1973 (ESA). NMFS has determined that Klamath Mountains Province steelhead populations constitute a "species" as interpreted under the ESA. Should the proposed listing be made final, protective regulations under the ESA would be put into effect and a recovery program would be implemented. **DATES:** Comments must be received by May 15, 1995. Requests for a public hearing must be received by May 1, 1995.

**ADDRESSES:** Comments on this proposed rule, requests for public hearings, and requests for supporting documents should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, Suite 620, Portland, OR 97232.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, 503-230-5430; R. Craig Wingert, 310-980-4021; or Marta Nammack, 301/713-2322.

**SUPPLEMENTARY INFORMATION:****Petition Background**

On May 5, 1992, NMFS received a petition from the Oregon Natural Resources Council, the Siskiyou Regional Education Project, Federation of Fly Fishers, Kalmiopsis Audubon Society, Siskiyou Audubon Society, Klamath/Siskiyou Coalition, Headwaters, The Wilderness Society, North Coast Environmental Center, The Sierra Club - Oregon Chapter, and the National Wildlife Federation, to list indigenous, naturally-spawning Illinois River winter steelhead (*Oncorhynchus mykiss*) and to designate critical habitat under the ESA. After publishing a document that a listing may be warranted (57 FR 33939, July 31, 1992), and soliciting information about the status of this population, the NMFS Northwest Fisheries Science Center Biological Review Team (BRT) completed a status review (Busby et al. 1993) that was summarized in a May 20, 1993, publication (58 FR 29390). The BRT concluded that the Illinois River winter steelhead did not represent a "species" under the ESA (see 56 FR 58612, November 20, 1991), and therefore, a proposal to list Illinois River winter steelhead under the ESA was not warranted. However, NMFS recognized that this population was part of a larger Evolutionarily Significant Unit (ESU); see Consideration as a "Species" Under the ESA, below), whose extent had not yet been determined, but whose status may warrant listing because of declining trends in steelhead abundance in several southern Oregon streams. An expanded status review was initiated (58 FR 29390, May 20, 1993) to identify ESU(s) within California, Oregon, and Washington, and to determine whether any identified ESU(s) warrant listing under the ESA. NMFS received an additional petition to list Deer Creek summer steelhead, and found that listing of this population may be warranted (58 FR 68108, December 23, 1993). In response to a petition from the Oregon Natural Resources Council and 15 co-petitioners, February 16, 1994, NMFS later announced that the status review of steelhead was further expanded to include Idaho populations (59 FR 27527, May 27, 1994).

**Biological Background**

The BRT has completed biological evaluations associated with the determination of the geographic boundaries of the ESU that includes the Illinois River winter steelhead and whether the ESU warrants listing as endangered or threatened under the ESA. The BRT has prepared an

administrative report detailing the conclusions of their status review (Northwest Fisheries Science Center BRT 1994). A summary of this report follows. A more complete discussion of the subject, including additional references, will be available upon request in the near future (see **ADDRESSES**).

The name steelhead refers to the anadromous form of the rainbow trout. Recently, the scientific name for the biological species that includes both steelhead and rainbow trout was changed from *Salmo gairdneri* to *Oncorhynchus mykiss*. This change reflects a belief that all trouts from western North America share a common lineage with Pacific salmon. The present endemic distribution of steelhead extends from the Kamchatka Peninsula, Asia, east and south, along the Pacific coast of North America, to Malibu Creek in southern California.

Steelhead exhibit a wide variety of life history strategies. In general, steelhead migrate to the sea after spending 2 years in fresh water and then spend 2 years in the ocean prior to returning to fresh water to spawn. Variations of this pattern are common. Some spawners survive and return to the ocean for 1 or more years between spawning migrations. Some steelhead return to fresh water after only a few months at sea and are termed "half-pounders," having attained the approximate size that inspired this term. Half-pounders generally spend the winter in fresh water and then return to sea for several months before returning to fresh water to spawn.

Steelhead exhibit several spawning migration strategies. "Summer-run steelhead" enter fresh water between May and October, and begin their spawning migration in a sexually immature state. After several months in fresh water, summer steelhead mature and spawn. "Winter-run steelhead" enter fresh water between November and April with well-developed gonads. In drainages with populations of both summer- and winter-run steelhead, there may or may not be temporal or spatial separation of spawning.

**Consideration as a "Species" Under the ESA**

To qualify for listing as a threatened or endangered species, the identified populations of steelhead must be a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate . . . which interbreeds when mature." NMFS published a policy (56 FR 58612, November 20, 1991) describing how the

agency will apply the ESA definition of "species" to Pacific salmonid species, including steelhead. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an ESU of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to develop in different population units. The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. Guidance on the application of this policy is contained in "Pacific Salmon (*Oncorhynchus* spp.) and the Definition of Species under the Endangered Species Act," which is available upon request (see **ADDRESSES**).

**Reproductive Isolation**

For this criterion, NMFS considered available information on the geographic extent and reproductive strategies (e.g., run timing) of the ESU containing the Illinois River winter steelhead. In general, steelhead are believed to have strong tendencies to home to their natal streams, but there are few studies directly relevant to the area under consideration. There is evidence that some adult steelhead move between the Klamath, Rogue, and Smith Rivers. However, it is not clear whether this wandering results in spawning within non-natal streams.

Available genetic information indicates that there is a genetic discontinuity (or at least a transition) between steelhead from coastal streams in southern and northern Oregon. Although the discontinuity/transition appears to be in the vicinity of Cape Blanco, the resolution of genetic sampling does not allow for precise definition of this boundary.

Several genetic samples from northern California steelhead were considered during this status review. Samples from the Klamath River and the Trinity River (a tributary to the Klamath River) do not differ substantially from steelhead populations to the north. However, there are large genetic differences between samples from the Klamath River Basin and those taken from rivers to the south. The differences between steelhead from these two areas are stronger than those between southern

and northern Oregon steelhead populations.

Within the area bounded by Cape Blanco and the Klamath River Basin, there is evidence of genetic heterogeneity, suggesting a reasonable degree of reproductive isolation between individual populations. However, the genetic structuring has no clear geographic pattern that would allow identification of major subgroups within this area.

In addition to summer- and winter-run steelhead, there are populations sometimes referred to as fall-run steelhead in the Klamath River Basin. Disagreement exists as to whether these fall-run steelhead should be considered summer-run, winter-run, or a separate entity. During this status review, NMFS considered fall-run steelhead from the Klamath River Basin to be part of the summer run.

Because most summer-run steelhead populations in the Klamath Mountains Province are substantially depressed and difficult to sample, genetic studies during the expanded status review focused on winter-run steelhead. However, other genetic studies that considered both winter and summer steelhead from other areas have failed to find consistent genetic differences between run-types within individual regions (Allendorf 1975; Utter and Allendorf 1977; Chilcote et al. 1980; Schreck et al. 1986; Reisenbichler and Phelps 1989; Reisenbichler et al. 1992). Therefore, NMFS concludes that all runs of steelhead within the Klamath Mountains Province should be considered part of the same ESU.

Patterns of ocean migration of salmon and steelhead may reflect reproductive isolation of spawning populations. Chinook salmon populations from south of Cape Blanco are generally considered south-migrating (e.g., to ocean areas off southern Oregon and California), whereas stocks from north of Cape Blanco are considered north-migrating. Other studies suggest that coho salmon and steelhead from south of Cape Blanco may not be highly migratory, remaining instead in the highly productive oceanic waters off southern Oregon and northern California (Pearcy et al. 1990; Pearcy 1992).

NMFS is not aware of any direct evidence about the relationship between the anadromous and nonanadromous life history forms of *O. mykiss* within the Klamath Mountains Province. Although it has been reported that these two life history forms within a geographic area may be more genetically similar to each other than either is to the same form from outside the area, other studies have found evidence for reproductive isolation between anadromous and nonanadromous *O. mykiss*. NMFS' policy contained in "Pacific Salmon and the Definition of Species under the ESA" states that anadromous and nonanadromous forms should be considered separately if they are reproductively isolated. Reproductive isolation, as previously noted, is a question of degree. NMFS has determined that, until specific information regarding these two life history forms within the Klamath Mountains Province becomes available, nonanadromous fish will not be considered part of the ESU. This determination may be reconsidered if information demonstrating that the two forms share a common gene pool becomes available.

#### Ecological/Genetic Diversity

Several types of physical and biological information were considered during evaluation of the contribution of Klamath Mountains Province steelhead to ecological/genetic diversity, including: (1) Physical environment, (2) zoogeography, and (3) life history characteristics. The Klamath Mountains Geological Province extends from the vicinity of Cape Blanco in the north to the Klamath River Basin (inclusive) in the south. Ecologically, the province includes areas that are warmer and drier than coastal regions to the north and south; interior valleys receive less precipitation than any other Pacific Northwest location west of the Cascade Mountain Range. The nearshore ocean environment in this region is strongly affected by seasonal upwelling, which extends southward from Cape Blanco, with some local variations as far south as 33°N. lat.

Zoogeographic studies of freshwater fishes have consistently identified differences in fish assemblages between

the Rogue River Basin and streams to the north. Also, similarities have been noted between freshwater fish communities in the Klamath and Rogue River basins. For marine fishes, Cape Mendocino in California has been identified as an important southern limit of many northern species.

The occurrence of the half-pounder life history form of steelhead appears to be restricted to southern Oregon and northern California, identified in the Rogue, Klamath, Eel, and Mad rivers. It is likely that expression of this life history strategy is due to a combination of distinctive genetic and environmental factors.

#### ESU Determination

Several lines of evidence suggest that Cape Blanco is the northern boundary and the Klamath River Basin forms the southern boundary of the ESU that contains the Illinois River winter steelhead. Genetic and ocean distribution data suggest that there is substantial reproductive isolation between steelhead populations from north and south of Cape Blanco. Cape Blanco is also an approximate northern boundary for the Klamath Mountains Province, an area of intense upwelling in the ocean, the range of the half-pounder life history, and the Klamath-Rogue freshwater zoogeographic zone. Although Cape Mendocino in California is a natural landmark associated with changes in ocean currents, and also represents the approximate southern limit of the half-pounder life history, the Klamath River Basin forms the southern boundary of the Klamath Mountains Province and the Klamath-Rogue freshwater fish zoogeographic zone. Furthermore, genetic data show a sharp discontinuity between steelhead populations from the Klamath River Basin and those farther south. Based on available information, the BRT concluded that the geographic range of the ESU containing the Illinois River winter steelhead extends from the vicinity of Cape Blanco in southern Oregon to the Klamath River Basin (inclusive) in northern California (see Figure 1).

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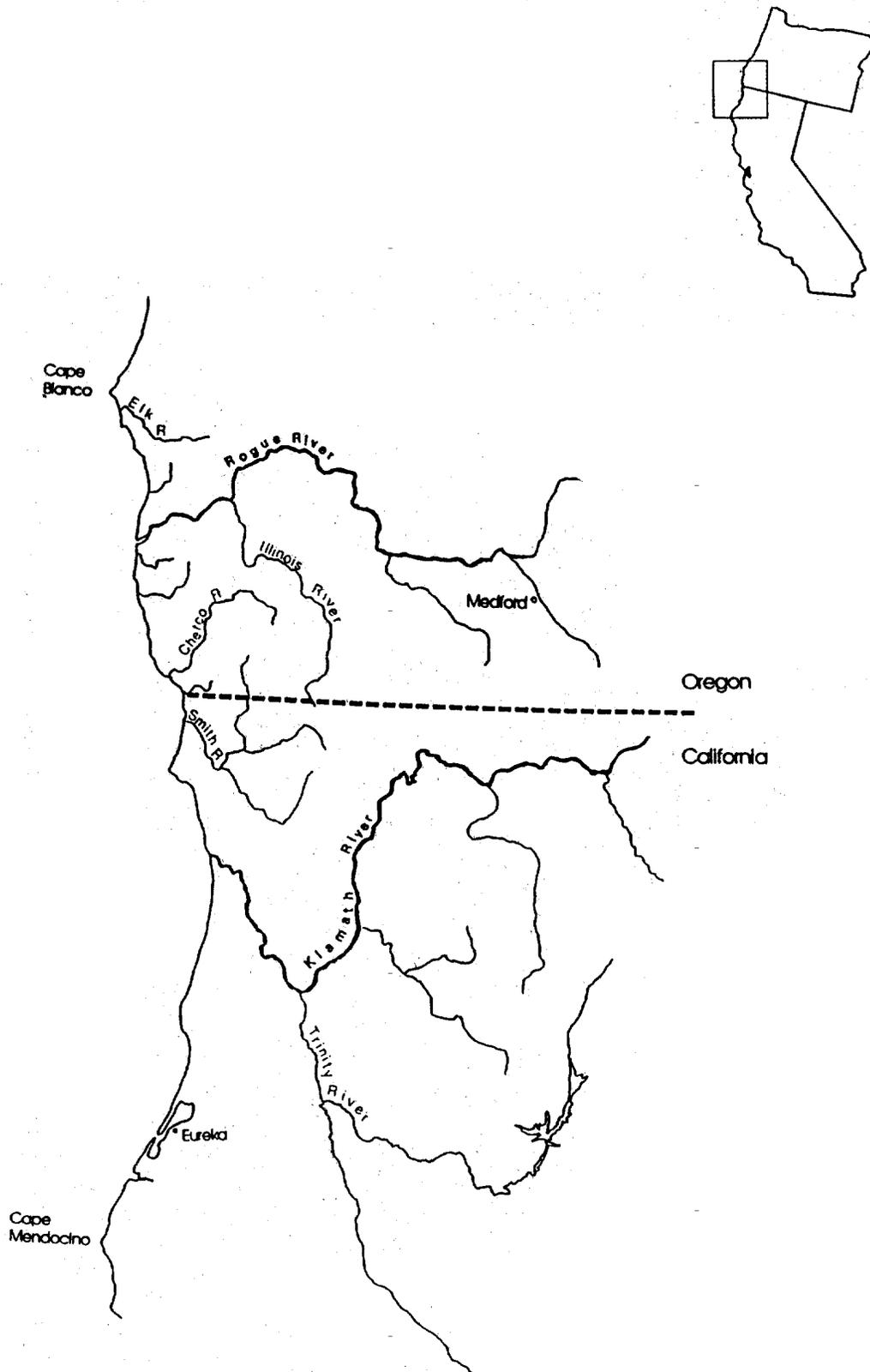


Figure 1. Geographic Range of the Klamath Mountain Province Steelhead ESU.

Although diversity in run-timing is an important life history characteristic of steelhead within this ESU, and this diversity may be in part genetically based, there is little direct information about the degree of reproductive isolation between identified runs within the Klamath Mountains Province. Furthermore, previous genetic studies have failed to find consistent genetic differences between run-types within individual regions, and suggest that summer- and winter-run steelhead are not independent, monophyletic groups over broad geographic regions. Based on available evidence, the BRT concluded that all steelhead runs (those termed summer-, fall-, and winter-run) within the identified geographic boundaries should be considered together as one ESU, and therefore a species, as defined under the ESA.

#### **Status of the Klamath Mountains Province ESU**

NMFS uses a number of factors that should be considered in evaluating the level of risk faced by an ESU, including: (1) Absolute numbers of fish and their spatial and temporal distribution, (2) current abundance in relation to historical abundance and current carrying capacity of the habitat, (3) trends in abundance, (4) natural and human-influenced factors that cause variability in survival and abundance, (5) possible threats to genetic integrity (e.g., from strays or outplants from hatchery programs), and (6) recent events (e.g., a drought or changes in harvest management) that have predictable short-term consequences for abundance of the ESU.

During consideration of the ESU status, the BRT evaluated both qualitative and quantitative information. Recent qualitative analyses of the status of steelhead stocks within the Klamath Mountains Province have been conducted by agencies and conservation groups (Nehlsen et al. 1991; Nickelson et al. 1992; U.S. Forest Service 1993a,b; McEwan and Jackson 1994). Most winter steelhead stocks in the region are considered to be depressed and/or declining. Of the exceptions (those from the Rogue, Winchuck, Smith, and subbasins of the Klamath and Trinity Rivers), most are heavily influenced by hatchery production. Only the Smith River appears to have healthy and largely natural production of winter-run steelhead in this region. The best assessment of any summer steelhead stock in this region is depressed, and most were considered to be at moderate to high risk of extinction.

Quantitative evaluations included comparisons of current and historic

abundance of steelhead. Because historical abundance information for the Klamath Mountains Province ESU is largely anecdotal, coastwide abundance trends provide a larger perspective for this review. Rough estimates of total coastwide steelhead abundance made in 1972 and 1987 suggested significant declines (Sheppard 1972, Light 1987). However, by all accounts, there has been significant replacement of natural production with hatchery fish. Over a large region (British Columbia, Washington, and Oregon), steelhead stocks (both natural and hatchery) have exhibited recent decreases in survival that may be due, in part, to climate and ocean production.

Historical abundance information for the Klamath Mountains Province ESU is largely anecdotal. Within this area, time-series data are available for most populations only since 1970. The BRT compiled and analyzed available information to provide summary statistics of spawning abundance. Not all summary statistics were available for all populations.

NMFS policy, as stated in "Pacific Salmon and the Definition of "Species" under the ESA," focuses on viability of natural populations, and notes that an ESU is not healthy unless a viable population exists in the natural habitat. The BRT attempted to distinguish between naturally produced fish and hatchery produced fish. Total abundance (including hatchery populations) varies widely among populations within the proposed ESU, with several populations having run sizes of 10,000 or more fish. The heavily hatchery-influenced summer-run steelhead population from the Klamath River may total 100,000 or more fish. At the other extreme, a number of populations have less than 1,000 spawners per year.

Estimates of percent annual change in run size indicate that most of the steelhead populations in the Klamath Mountains Province are in significant decline, even with hatchery production included. The BRT considered that this assessment may be influenced by the recent coastwide decreases in steelhead survival (due to climate and ocean conditions). However, excluding recent years from the trend analysis did not substantially change overall conclusions for the stocks considered here.

Natural steelhead production was roughly indexed using natural return ratios. This index is an estimate of the ratio of naturally produced spawners in one generation to total spawners (both hatchery and naturally produced) in the previous generation. Natural production of all winter-, summer-, and fall-run

steelhead within the Klamath Mountains Province appears to be below replacement for all populations for which the BRT had sufficient quantitative information. Considering the qualitative assessments, there is little reason to believe that other populations are in better condition (with the exception of the Smith River winter-run steelhead). Based on angler catch data, Illinois River winter steelhead (the natural population in southern Oregon with the least hatchery influence) have declined at an average rate of about 10 percent annually for the last 20 years. With this analysis, the BRT was unable to demonstrate that any steelhead populations in the Klamath Mountains Province are naturally self-sustaining.

#### **Summary of Factors Affecting the Species**

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

##### *A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Logging, mining, agricultural activities (e.g., livestock grazing), and water withdrawals have likely contributed to the decline of steelhead populations within the Klamath Mountains Province ESU. Removal of trees within the riparian zone of streams in the Klamath Mountains Province has resulted in increased summer water temperatures and has eliminated the potential for trees to fall into streams. Large woody material in streams can provide cover, shade, and create pools; these habitat features are required by juvenile steelhead. Logging activities, and the associated road networks, can result in soil erosion and sedimentation of streams. Livestock grazing can eliminate streamside vegetation and

prevent riparian species from growing to maturity, resulting in shallow, warm streams that are not suitable for juvenile and adult steelhead. Water withdrawals reduce stream flow, sometimes during critical periods, and can contribute to high water temperature problems.

In the Klamath and Rogue River Basins, dams without fish passage facilities have decreased the amount of habitat available for steelhead, and may have contributed to the decrease in Klamath Mountains Province steelhead populations. There are also fish passage concerns regarding dams with inadequate fish passage facilities.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes*

Klamath Mountains Province steelhead are not currently targeted for commercial harvest, and scientific and educational programs have had little or no impact on Klamath Mountains Province steelhead populations. However, steelhead are popular gamefish throughout the Pacific Northwest and, in some locations, recreational fishing may contribute to the general decline of steelhead populations. Also, poaching may pose an additional threat to some depressed populations of adult steelhead. Summer-run steelhead are particularly susceptible to poaching activity because of holding/resting behavior in deep pools.

#### *C. Disease or Predation*

Disease is not believed to be a major factor contributing to the decline of steelhead populations in the Klamath Mountains Province. Declines in some summer steelhead populations are reportedly due, in part, to predation by marine mammals (Nehlsen et al. 1991).

#### *D. Inadequacy of Existing Regulatory Mechanisms*

Early mechanisms regulating local mining and timber harvest activities in the Klamath Mountains Province clearly were inadequate. Early mining practices were particularly destructive in portions of the Rogue and Trinity River (a tributary of the Klamath River) watersheds. Although most of these particularly destructive mining and timber harvest activities no longer occur, land management activities still contribute to adverse habitat modifications.

The continued decline of Klamath Mountains Province steelhead suggests that management plans and practices followed by the U.S. Forest Service (USFS), Bureau of Land Management (BLM), Oregon Department of Fish and

Wildlife, and California Department of Fish and Game have not provided adequate protection for this species. A Federal interagency cooperative program, the Record of Decision for Amendments to USFS and BLM Planning Documents Within the Range of the Spotted Owl (the Forest Plan, April 1994), has recently been implemented to provide a coordinated land management direction for the lands administered by USFS and BLM within the range of the northern spotted owl, which includes the Klamath Mountains Province. While the extent of protection provided by the Forest Plan is not yet known, its region-wide management direction will amend existing management plans, including Forest Plans, Regional Guides, Timber Sale Plans, and Resource Management Plans for lands within the range of the northern spotted owl. As part of the Forest Plan, implementation of the Aquatic Conservation Strategy (ACS) may help reverse the trend of aquatic ecosystem degradation and contribute toward fish habitat recovery. Coordination between the Federal land management agencies and NMFS, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service should ensure that the ACS objectives are achieved.

Steelhead are popular gamefish throughout the Pacific Northwest and, in some locations, recreational fishing may contribute to the general decline of Klamath Mountains Province steelhead populations. Existing harvest regulations may not be adequate to protect a substantial portion of the Klamath Mountains Province's juvenile and adult steelhead populations from overutilization by recreational anglers.

#### *E. Other Natural or Manmade Factors Affecting its Continued Existence*

Drought conditions may contribute to reduced Klamath Mountains Province steelhead production. In general, drought conditions have existed in southern Oregon since 1977.

Unusually warm ocean surface temperatures and associated changes in coastal currents and upwelling, known as El Niño conditions, have occurred in recent years and resulted in ecosystem alterations such as reductions in primary and secondary productivity and changes in prey and predator species distributions. Based on fish distribution, El Niño conditions may affect individual salmonid populations differently. For example, during El Niño conditions, chinook salmon stocks that rear in ocean areas south of Vancouver Island generally survive at a lower rate than chinook salmon stocks that inhabit

northerly ocean areas (Johnson 1988). As there is some evidence that steelhead originating from south of Cape Blanco rarely migrate north of Cape Blanco, Klamath Mountains Province steelhead populations may be particularly susceptible to the adverse affects of El Niño conditions.

Artificial propagation has, in some cases, impacted Klamath Mountains Province steelhead populations. Potential problems associated with hatchery programs include genetic impacts on indigenous wild populations, difficulty in determination of wild run status due to incomplete marking of hatchery releases, and replacement (rather than supplementation) of wild stocks through continued annual introductions of steelhead.

#### **Proposed Determination**

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Based on its assessment of the best scientific and commercial information available, NMFS determines that all Klamath Mountains Province steelhead populations (i.e., summer-, fall-, and winter-run) constitute an ESU and, therefore, a "species" under the ESA. Estimates of percent annual change in run size indicate that most of the steelhead populations in the Klamath Mountains Province are in significant decline. Although trends in abundance of most steelhead populations within the ESU have been downward, absolute abundance of steelhead in several streams within the proposed ESU remains fairly high; thus the BRT concluded that the ESU as a whole cannot be considered to be endangered at this time. However, available information indicates that Klamath Mountains Province steelhead populations are not self-sustaining. If present trends continue, there is a significant probability that the ESU will become endangered. Therefore, NMFS proposes to list all Klamath Mountains Province natural steelhead (progeny of naturally-spawning fish) as threatened. Prior to development of a final rule, NMFS will continue to consider the

status of steelhead populations within the Klamath Mountains Province and determine which, if any, hatchery populations are essential for recovery of listed steelhead.

### Proposed Protective Regulations and Measures

In addition to the proposed listing, NMFS proposes to adopt protective measures, pursuant to section 4(d) of the ESA, to prohibit, with respect to Klamath Mountains Province natural steelhead, taking, interstate commerce, import and export, and the other prohibitions pursuant to section 9 of the ESA applicable to endangered species, with the exceptions provided by section 10 of the ESA.

NMFS recognizes that protective regulations and recovery programs for Klamath Mountains Province steelhead will need to be developed in the context of conserving aquatic ecosystem health, and intends that Federal lands and Federal activities bear as much of the burden as possible for conserving listed populations. However, steelhead habitat within this ESU occurs and can be affected by activities on state, tribal and private land. Non-Federal landowners are encouraged to assess the impacts of their actions on potentially threatened steelhead and to participate in the formulation of watershed partnerships that promote conservation in accordance with ecosystem principles. NMFS will seek the advice and assistance of Federal and non-Federal jurisdictions, including tribal and county governments, private organizations and affected individuals in recovery plan development and implementation.

NMFS will identify, to the extent known at the time of a final rule, specific activities that will not be considered likely to result in adverse impacts to listed Klamath Mountains Province steelhead. NMFS is soliciting recommendations as to what activities should be so identified, as well as terms and conditions for specific types of land or water use activities that would avoid adverse impacts to listed steelhead. The activities, as modified by the recommended terms and conditions, should promote the conservation of Klamath Mountains Province steelhead.

Conservation measures provided to species listed as threatened or endangered under the ESA included prohibitions on taking, recovery actions, and Federal agency consultation requirements. Recognition through listing promotes conservation actions by Federal and state agencies and private groups and individuals.

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions resulting in destruction or adverse modification of proposed critical habitat. "Conference" is defined at 50 CFR 402.02 to mean "a process which involves informal discussions between a Federal agency and the Service . . . regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects." For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with NMFS. Non-Federal entities requesting the incidental take of listed species must develop a conservation plan associated with their proposed action. Prior to issuance of an incidental take permit, NMFS must review the conservation plan and determine that the proposed action will not appreciably reduce the likelihood of the survival and recovery of the species in the wild (see 50 CFR 222.22).

Examples of Federal actions that may be affected by this proposal include, but are not limited to, various Federal land management agency activities (e.g., actions associated with timber harvest, mining, and grazing), U.S. Army Corps of Engineers (COE) Clean Water Act section 404 permitting activities, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, commercial fishery management under a regional fishery management council, and hatchery operations authorized, carried out, or funded by a Federal agency.

Measures that could be implemented to help protect and conserve the species include, but are not limited to:

1. All water diversions could have adequate headgate and staff gauge structures installed to control and monitor water usage accurately. Water rights should be enforced to prevent irrigators from exceeding the amount of water to which they are legally entitled.

2. All irrigation diversions affecting downstream migrating Klamath Mountains Province steelhead could be screened. A thorough review of the impact of irrigation diversions on steelhead could be conducted.

3. Artificial propagation could be conducted in a manner minimizing impacts upon native populations of steelhead.

4. Efforts could be made to ensure that adult passage facilities at dams effectively pass migrating salmon upstream.

5. Evaluation of existing recreational harvest regulations could identify any changes necessary in light of the Klamath Mountains Province steelhead status.

Some or all of these measures, as well as other measures not enumerated here, may be required to be undertaken through the section 7 consultation or section 10 permitting processes. NMFS will also consider these and additional measures in developing a recovery plan pursuant to section 4(f).

NMFS encourages non-Federal landowners to assess the impacts of their actions on potentially threatened or endangered salmonids. In particular, NMFS encourages the formulation of watershed partnerships to promote conservation in accordance with ecosystem principles. These partnerships will be successful only if all watershed stakeholders (i.e., state, tribal, and local governments, landowner representatives, and Federal and non-Federal biologists) participate and share the goal of restoring steelhead to the watersheds. To assist with such efforts, NMFS, the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency, with technical assistance from the Natural Resources Conservation Service, have contracted a study to provide technical guidance and training to agency staff. This guidance is intended to produce a technical foundation and informational support base for fostering development of conservation plans pursuant to section 10 of the ESA and cooperative agreements with the states of Washington, Oregon, and California, pursuant to section 6 of the ESA. Furthermore, NMFS intends to enlist non-Federal jurisdictions, including tribal and county governments, private organizations and affected individuals, in recovery plan development and implementation.

### Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. While NMFS has completed its analysis of the biological status of Klamath Mountains Province steelhead, it has not completed the analysis necessary for designating critical habitat. Therefore, to avoid

delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking.

#### Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties (see **DATES** and **ADDRESSES**) regarding the stock composition and abundance of all steelhead stocks within the Klamath Mountains Province. NMFS is also requesting information identifying specific areas that qualify as critical habitat for Klamath Mountains Province steelhead and the economic costs and benefits of additional requirements of management measures likely to result from designating critical habitat. Information about the relationship between existing hatchery populations and natural populations within the ESU, and the relationship between anadromous and nonanadromous populations of *O. mykiss* within the ESU, is also of great interest.

NMFS is also requesting suggestions for specific regulations under section 4(d) of the ESA that could apply to Klamath Mountains Province steelhead. Suggested regulations should address activities, plans, or guidelines that, despite their potential to result in the incidental take of listed fish, will ultimately promote the conservation of this ESU.

NMFS will review all public comments and any additional information regarding the status of the proposed ESU, and, as required under the ESA, intends to complete a final rule within one year of this proposed rule. The availability of new information may cause NMFS to re-assess the status of this ESU. The final decision on this proposal will take into consideration the comments and any additional information received by NMFS, and may differ from this proposed rule.

#### Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of National Environmental Policy Act (48 FR 4413, February 6, 1984).

This proposed rule is exempt from review under E.O. 12866.

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#### List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 10, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

**PART 227—THREATENED FISH AND WILDLIFE**

1. The authority citation for part 227 continues to read as follows:

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

2. In § 227.4, a new paragraph (g) is added to read as follows:

**§ 227.4 Enumeration of threatened species.**

\* \* \* \* \*

(g) Klamath Mountains Province steelhead (*Oncorhynchus mykiss*).

[FR Doc. 95-6459 Filed 3-10-95; 4:47 pm]

BILLING CODE 3510-22-P

**50 CFR Part 649**

[Docket No. 950224059-5059-01; I.D. 011195C]

RIN 0648-AH36

**American Lobster Fishery; Framework Adjustment 2**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes measures contained in Framework Adjustment 2 to the American Lobster Fishery Management Plan (FMP). This framework adjustment would change the eligibility requirements for lobster limited access permits to address potentially unequal standards for lobster fishers who reside in different states.

**DATES:** Comments on the proposed rule must be received on or before March 30, 1995.

**ADDRESSES:** Comments on the proposed rule, Framework Adjustment 2, or supporting documents should be sent to Jon Rittgers, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Lobster Framework 2."

Copies of Amendment 5 to the FMP, including the regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and final supplemental environmental impact statement (FSEIS)

are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

**SUPPLEMENTARY INFORMATION:**

**Background**

Currently, eligibility for a Federal lobster limited access permit can be established with a vessel's or a person's state permit history (59 FR 31938, June 21, 1994). Because the various states have not had uniform permitting systems, potentially unequal eligibility criteria were inadvertently created for lobster fishers who reside in different states.

To qualify for a limited access American lobster permit, which may be issued only to a vessel, the vessel or vessel owner must have been issued a Federal American lobster permit, or a federally endorsed state lobster permit, and must have landed American lobster prior to March 25, 1991. Because this rule would change the qualification criteria for obtaining a limited access American lobster permit for 1995, it would also change the dates by which vessel owners are required to obtain permits. In states with Federal endorsement programs, such as Maine, fishers who did not own a lobster vessel could use their state permit to qualify for a Federal limited access permit; however, in other states lacking a Federal lobster permit endorsement program, such as Rhode Island, fishers who did not own a lobster vessel and thus had no state permit could not qualify for a Federal limited access permit. For example, a person serving as a crew member in Maine could potentially qualify for a Federal limited access permit, whereas a person employed in the same job on a lobster boat licensed by Rhode Island could not be eligible. Such a result could violate the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, which prohibits, among other things, discrimination between residents of different states.

This proposed action would eliminate the potentially unequal eligibility criteria for lobster fishers residing or fishing in different states. In order to obtain a Federal limited access lobster permit, all permit applicants who base their eligibility on a federally endorsed state license would be required to demonstrate that they owned a boat and used it to land lobsters during the qualification period. These applicants would be required to show proof of

ownership of a fishing vessel and of having landed lobsters from that vessel prior to March 25, 1991.

Sections of the current regulations dealing with transferability of permit eligibility are written from the perspective of Federal permits issued to vessels. As a result, the regulations are not directly applicable to the transfer of eligibility based on federally endorsed state lobster permits that are issued to individuals. To be consistent with the transferability of eligibility associated with federally permitted vessels, this rule proposes regulatory language at § 649.4(b)(1)(i)(B)(2) and (b)(3)(ii) to clarify that eligibility based on a federally endorsed state lobster permit can be transferred with the sale of a vessel after March 25, 1991, if the intent to transfer such rights is verified by credible written evidence.

This adjustment is proposed through the framework process (§ 649.43) and is within the scope of analyses contained in Amendment 5 and the FSEIS. Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustment 2 (**see ADDRESSES**).

The New England Fishery Management Council (Council) followed the framework procedure codified in 50 CFR part 649, subpart C, when making adjustments to the FMP, by developing and analyzing the actions at two Council meetings, on September 21-22 and October 28-29, 1994. However, because this action was initiated at the first of these meetings without adequate notice to the public, the Council recommended that NMFS publish the measures contained in Framework Adjustment 2 as a proposed rule to ensure that the public is afforded sufficient prior notice and an opportunity for comment.

In accordance with the regulations, public comments on the framework adjustment were solicited by the Council during its September 21-22 and October 28-29, 1994, meetings. No comments were received on the proposed adjustment.

This rule also proposes several minor modifications to §§ 649.4(p) and (q) to ease the public's administrative burden and to conform the requirement to the Council's recommendation.

**Classification**

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce has certified to the Chief