Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above U.S. Fish and Wildlife Service address.

FOR FURTHER INFORMATION CONTACT: Andy Roberts (see **ADDRESSES** section), 573/876/1911, extension 110; facsimile 573/876/1914.

SUPPLEMENTARY INFORMATION:

Background

The scaleshell mussel (*Leptodea leptodon*) historically occurred in 13 states in the eastern United States. Currently, the species is known from a few scattered populations within the Mississippi River basin in Missouri, Oklahoma, and Arkansas. Scaleshell inhabits medium-sized to large rivers with stable channels and good water quality. The abundance and distribution of scaleshell has decreased from habitat loss and adverse effects associated with water quality degradation, reservoir construction, sedimentation, channelization, and dredging. These habitat changes have resulted in significant extirpations, restricted and fragmented distributions, and poor recruitment.

On August 13, 1999, we published a rule proposing endangered status for the scaleshell mussel in the **Federal Register** (64 FR 44171). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. We received numerous requests for a hearing from the public within the allotted time. Public hearings are designed to gather relevant information that the public may have that we must consider in determining the status of and threats to this species. We invite the public to submit information and comments either at the hearing on December 8, 1999, or in writing on or before the close of business January 7, 2000.

The hearing will be at the Runge Conservation Nature Center, Jefferson City, Missouri on Wednesday, December 8, 1999, from 7:00 PM to 10:00 PM. An informal open forum will be held prior to the public hearing from 5:00 to 6:30 PM at the public hearing location. The purpose of the forum is to answer specific questions regarding the proposed rule. All interested parties are invited to attend. We encourage persons wishing to comment at the formal hearing to provide a written copy of their statement at the start of the hearing. Oral statements given at the formal hearing may be limited in length, if the number of parties who wish to comment necessitates such a limitation. There is no limit on the length of written comments. Persons may also send written comments to our office (see **ADDRESSES** section) at any time during the open comment period. Equal consideration is given to oral and written comments. We are publishing legal notices announcing the date, time, and location of the hearing in newspapers, concurrently with this **Federal Register** notice. The comment period on the proposal initially closed on October 13, 1999. To accommodate the hearing, we are reopening the public comment period upon publication of this notice. The public comment period will close on January 7, 2000.

Author: The primary author of this notice is Andy Roberts (see **ADDRESSES** section).

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

Dated: November 8, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services.

[FR Doc. 99–29821 Filed 11–26–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 991116306–9306–01; I.D. 102099C]

RIN 0648–XA40

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Columbia River Eulachon (*Thaleichthys pacificus*) as Endangered or Threatened

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

ACTION: Notification of petition finding.

SUMMARY: NMFS has received a petition to list Columbia River populations of eulachon (*Thaleichthys pacificus*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act (ESA). NMFS determines that the petition does not present substantial evidence to warrant the listing of eulachon at this time.

ADDRESSES: Requests for copies of the petition and comments regarding Columbia River eulachon should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. The petition and supporting data are available for public inspection, by appointment, Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, 503/231-2005 or Marta Nammack, NMFS, Office of Protected Resources, 301/713-1401.

SUPPLEMENTARY INFORMATION:

Background and Analysis of Petition

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or 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. On July 16, 1999, the Secretary of Commerce (Secretary) received a petition from Mr. Sam Wright of Olympia, Washington, to list and designate critical habitat for Columbia River populations of eulachon (commonly called smelt or candlefish).

Section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1531–1544) requires that the NMFS make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. In determining whether substantial information exists for a petition to list a species, NMFS will take into account information submitted with, and referenced in, the petition and all other information readily available in NMFS' 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*. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(B) of the ESA requires NMFS to make a finding as to whether or not the petitioned action is warranted within 1 year of the receipt of the petition.

In evaluating a petitioned action, the Secretary considers several factors, including whether the petition 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 (50 CFR 424.14(b)(2)(ii)). In addition, the Secretary considers whether the petition provides information regarding the status of the species over all or a significant portion of its range (50 CFR 424.14(b)(2)(iii).

Under the ESA, a listing determination can address a species,

subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). The petitioner requested listing the ''population, stock, or evolutionarily significant unit that is found in the Columbia River system and its tributaries.'' He further identified these entities as ''an important, existing (but severely depressed) indigenous fish resource which is currently at risk (threatened or endangered) and has no reasonable expectation of being able to recover over time by itself and/or from the surplus production of an adjacent or nearby population of the same species.'' Such a definition is not used in the ESA and it is important to note that the term evolutionarily significant unit or ''ESU'' is currently defined only for DPSs of Pacific salmonids (see 56 FR 58612, November 20, 1991). For other species such as the eulachon, NMFS would instead rely on the DPS framework described in a NMFS/U.S. Fish and Wildlife Service policy regarding the identification of distinct vertebrate population segments (61 FR 4722, February 7, 1996). Since the petitioner focused on stocks within the Columbia River basin (rather than the entire species), NMFS considered the petition in the context of defining DPSs in this area that may warrant listing under the ESA.

NMFS evaluated whether the information provided or cited in the petition met the ESA's standard for ''substantial information.'' The agency also reviewed other information readily available to NMFS scientists (i.e., currently within agency files) and consulted with fisheries experts from Washington and Oregon about this species to determine if there was general agreement on issues related to the uniqueness, distribution, abundance, and threats to the petitioned species/populations. With respect to uniqueness, NMFS assessed whether the petitioner's and otherwise available information might support the identification of DPSs that may warrant listing under the ESA.

The petitioner accurately identified the major Columbia River tributaries known to have spawning runs of eulachon. However, the species' distribution ranges from northern California to Alaska and the petitioner did not describe why Columbia River eulachon are distinct from other coastal populations. In fact, the petitioner acknowledged that eulachon originating from the Columbia River appear to make spawning runs into other coastal streams, including the Chehalis, Quinault, Quillayute, and Queets Rivers. Washington state and tribal sources substantiate the species' occurrence in these rivers as well as Willapa Bay (J. DeVore, Washington Department of Fisheries, pers. comm.) and the Moclips River (S. Ellis, Northwest Indian Fisheries Commission, pers. comm.). Such behavior may not support the contention that the Columbia River basin is a DPS for this species. Additionally, NMFS reviewed recent genetic data from McLean *et al.* (in press) indicating that there is little genetic differentiation between eulachon stocks from Alaska, Oregon, Washington, and British Columbia. These authors contrast this lack of population structure to the more distinct subdivisions seen in other anadromous fish, notably Pacific salmon. McLean *et al.* (in press) also cite reports of significant recent declines in British Columbia eulachon populations, but assert that genetic data suggest that the long term adaptive potential of this species has likely remained unharmed. The petitioner similarly noted some of the genetic findings in McLean *et al.* (in press), but failed to refute them or provide evidence that the Columbia River populations may be an entity (DPS) suitable for listing under the ESA.

Environmental conditions also appear to play a major role in the choice of spawning areas, as reflected in the opportunistic selection of spawning sites and in the lack of genetic differences between areas. The petitioner cited information indicating a correlation between water temperature and migration timing, noting that ''eulachon strayed to a number of Washington coastal areas in 1993 due to the cold water temperature in the Columbia River system.'' Hence there is evidence indicating that eulachon originating from the Columbia River basin are not necessarily distinct from other coastal populations.

NMFS also assessed whether the petitioner accurately reflected any known trends in abundance or threats to the species, and moreover, whether these trends/threats would lead a reasonable person to believe that the species was threatened or endangered under the ESA. Section 3 of the ESA defines the term ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' The term ''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.''

The petitioner provided data summarizing the commercial catch of eulachon in the Columbia River and five tributaries from 1938–1999. These data suggest that eulachon catches are currently at a historic low. However, a closer examination underscores that caution is needed before interpreting these data as a good estimator of actual population abundance. For example, the data clearly show that catches of zero fish are not necessarily indicative of a population that, as asserted by the petitioner, has ''no reasonable expectation of being able to recover over time by itself and/or from the surplus production of an adjacent or nearby population of the same species.'' All of the tributary catch records presented in the petition contain at least 2 consecutive years when eulachon landings were nonexistent (and as many as 16 consecutive years). Of significance is that several of these ''disappearances'' have occurred over a period longer than the species' reported life span. Also, zero catch years are not a recent phenomenon; the petition contains data indicating that zero landings were reported in at least one of the major tributaries as early as 1938 and possibly decades earlier.

Eulachon have been a commercially important species for more than 100 years. As noted by the petitioner, variable market demand for the species resulted in annual run sizes that ''were often much larger and varied much more from year to year than the catches indicated.'' Still, these data do allow for a qualitative approximation of run strength which has evidently been much weaker in recent years. Aside from market effects, there have been considerable changes in harvest management for this species during the past 40 years. These changes have generally resulted in more restrictive fisheries (e.g., prompted by suspected population declines), hence catch data in more recent years are not directly comparable to historic data and, moreover, may not accurately reflect recent run strength. While this species' population dynamics are not well understood, even the low harvests seen during 1993–1998 (1999 estimates are probably four times higher than those cited in the petition; J. DeVore, Washington Department of Fisheries, pers. comm.) equate to an average of well over one million eulachon returning to the Columbia River basin in recent years. This figure could be a considerable underestimate as it does not account for additional fish that are harvested by sport fishers as well as fish that escape the fisheries but are unsurveyed.

It is generally believed that this species has a highly variable or possibly cyclical run size. In fact, the petitioner cites a 1959 report by the Washington

Department of Fisheries noting ''the erratic behavior of these tiny fish and the difficulty of predicting whether or not a tributary run will appear.'' Such a contention is also supported by the petition's catch data. A case in point is the Cowlitz River which has produced the highest overall landings and, on average, produced over 56 percent of the commercial catch of eulachon since 1938. However, this fishery has undergone major swings in catch, ranging from zero to nearly 100 percent of the reported landings for the entire Columbia River basin. Of note is a period of historically low catches in 1949 (800 lbs.; 363.20 kg), 1950 (zero), and 1951 (zero). This 3-year low was followed by 3 years when landings totaled approximately 381,000 lbs. (172,974 kg), 795,000 lbs. (360,930 kg), and 793,000 lbs (360,022 kg). Other data provided by the petitioner clearly demonstrate the tremendous variability in this species' catch record. For example, the Sandy River experienced 16 consecutive years of zero catches, followed by a 5-year period which yielded the second (1977) and fourth (1979) highest landings on record. Similar evidence can be seen in the catch records for the Grays, Kalama, and Lewis Rivers where eulachon seemed to disappear from the catch data for 5 or more years (i.e., greater than the species' reported life span) only to return to these rivers, sometimes in near record abundance.

There were few data provided in the petition (or readily available to NMFS) on eulachon run sizes in coastal streams, aside from mention that some Washington coastal streams have had occasional spawning runs. Emmett *et al.* (1991) characterized adult eulachon as abundant in the Columbia and Klamath Rivers, common in Grays Harbor, Willapa Bay, and the Umpqua River, and rare in Puget Sound, the Siuslaw River, Coos Bay, Rogue River, and Humboldt Bay. While these characterizations may not reflect more recent eulachon abundances (which were of primary concern to the petitioner), they do indicate that there are potentially numerous streams - within and outside the Columbia basin - that are unsurveyed but still used by spawning eulachon.

Recent sampling for larval eulachon also demonstrates that the commercial catch record does not represent a complete picture of the species' distribution and abundance. For example, zero eulachon were reported in the 1998 landings for the Grays, Kalama, Lewis, and Sandy Rivers. However, information supplied in the petition indicated that 1998 surveys yielded larval eulachon in all of these tributaries. As noted previously, several large coastal streams in Washington have also had recent spawning runs of eulachon, and other Columbia River tributaries are also believed to attract spawning eulachon, but these populations are of unknown size and largely unsurveyed (P. Frazier, Oregon Department of Fish and Wildlife, pers. comm.). In summary, these catch data are not a reliable measure of population abundance or even eulachon presence/absence.

Finally, the petitioner noted several potential factors for decline, including harvest (recreational, commercial, and bycatch), pinniped and avian predation, competition/predation from American shad (*Alosa sapidissima*), adverse environmental conditions, habitat loss, and productivity concerns potentially attributable to skewed sex ratios in the eulachon population. While much of this is speculation or based on correlations with little or no solid research basis, the NMFS concurs with information presented in the petition indicating that ocean conditions are probably the most important factor controlling eulachon abundance, and even riverine conditions (e.g., water temperature) play a major role in determining the species' spawning distribution and abundance.

Petition Finding

After reviewing the petition, as well as information readily available to NMFS scientists, the NMFS determines that the petition does not present substantial scientific information indicating the petitioned action may be warranted. While the petition does indicate that eulachon catches have recently declined in the Columbia River basin, NMFS does not believe that the information is substantial enough to warrant a status review at this time. This finding is supported by observations that the species is likely more abundant than commercial landings indicate and, based on life history attributes (e.g., the species' high fecundity and short life span) and assumptions from catch data and anecdotal reports, has a demonstrated ability to rebound from periods of low abundance.

The data provided by the petitioner and available to NMFS are far from robust, hence the decision to not initiate a status review relies heavily on the professional judgement of agency scientists. However, there is some cause for concern over the species' apparent decline in the Columbia River basin and NMFS will admonish state and tribal co-managers to redouble efforts focusing on eulachon management and research. In particular, the agency will underscore the need to evaluate whether current harvest strategies are adequately protective of the species and to move apace with additional, more accurate eulachon abundance and life history surveys. The Washington Department of Fish and Wildlife has recently identified the eulachon as a candidate for state listing as threatened or endangered, and the resultant studies and status reports should yield information critical for determining the health of Washington eulachon stocks, including stocks outside the Columbia River basin but potentially related to the petitioned populations. If new information becomes available to suggest that the eulachon may in fact warrant listing under the ESA, NMFS will reconsider conducting a species status review.

References

Emmett, R.L., S.A. Hinton, S.L. Stone, and M.E .Monaco. 1991. Distribution and abundance of fishes and invertebrates in West Coast estuaries, Volume II: species life history summaries. Estuarine Living Marine Resources Program Report No. 8. NOAA/NOS Strategic Environmental Assessments Division, Rockville, MD. 329 p. (Available from Protected Resources Division, NMFS., 525 NE. Oregon Street, Portland, OR 97232.)

McLean, J.E., D.E. Hay, and E.B. Taylor. In Press. Marine population structure in an anadromous fish: life history influences patterns of mitochondrial DNA variation in the eulachon, *Thaleichthys pacificus*. Department of Zoology, University of British Columbia, Vancouver, B.C.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701; 16 U.S.C. 1361 *et seq.*

Dated: November 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–30915 Filed 11–26–99; 8:45 am]

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