third and fourth quarters of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first or second quarters of that year.

(iv) *Certifications filed on or before July 1.* Carriers subject to certifications filed on or before July 1 shall receive support pursuant to § 54.309 or § 54.311, whichever is applicable, beginning in the fourth quarter of that year. Such carriers shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in the first, second, or third quarters of that year.

(v) *Certifications filed after July 1.* Carriers subject to certifications filed after July 1 shall not receive support pursuant to § 54.309 or § 54.311, whichever is applicable, in that year.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–6370 Filed 3–20–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

Hazardous Materials Regulations: General Information, Regulations, and Definitions

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 100 to 185, revised as of October 1, 2001, on page 83, in § 171.8, the definitions of *Psi*, *Psia*, and *Psig* are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Psi means pounds per square inch.

Psia means pounds per square inch absolute.

Psig means pounds per square inch gauge.

* * * * *

[FR Doc. 02–55505 Filed 3–20–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; re-opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

DATES: We will accept public comments until October 15, 2002.

ADDRESSES: *Comment Submission:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825.

2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, Susan Moore, at the above address (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (hereafter splittail) represents the only extant species in its genus in North America. For a detailed description of the species, see the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes (Service 1996), references within that plan, and Moyle *et al.* (2001 in prep.).

Splittail are endemic to certain waterways in California's Central Valley, where they were once widely distributed (Moyle 1976). Splittail presently occur in Suisun Bay, Suisun Marsh, the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary), the Estuary's tributaries (primarily the Sacramento and San Joaquin rivers), the Cosumnes River, the Napa River and Marsh, and the Petaluma River and Marsh. The splittail no longer occurs throughout a significant portion of its former range.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the splittail was listed as a threatened species on February 8, 1999 (64 FR 5963). In this previous listing determination, we found that changes in water flows and water quality resulting from export of water from the Sacramento and San Joaquin rivers, periodic prolonged drought, loss of shallow water habitat, and the effects of agricultural and industrial pollutants were significant factors in the splittail's decline.

Subsequent to the publication of the final rule, plaintiffs in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* commenced action in Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). We, as directed by the court, and pursuant to the Act, provided notice of the opening of a comment period regarding the threatened status for the splittail, from January 12, 2001, to February 12, 2001 (66 FR 2828). In addition, we re-opened the comment period on two additional occasions; from May 8, 2001, to June 7, 2001 (66 FR 23181), and from August 17, 2001, to October 1, 2001 (66 FR 43145). We are now re-opening the comment period for a fourth time to obtain peer-review and public comment on the statistical analysis used to analyze the abundant data available for splittail, and to seek public comment on the status of the species (as first solicited in 66 FR 2828). Upon the close of this comment period, we will make our determination whether the splittail warrants the continued protection of the Act.

The approach currently used by us to analyze the best scientifically and commercially available splittail abundance data differs from methods employed previously. In the February 8, 1999, final rule and the January 12, 2001, and May 8, 2001, re-openings of the comment periods, we relied primarily on the unstratified Mann-Whitney U-test approach utilized by Meng and Moyle (1995), first published in the *Transactions of the American Fisheries Society.* See 66 FR 2828 for a complete description of the Meng and Moyle (1995) method. In the August 17, 2001, re-opening of the comment period, we employed permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests to analyze data derived from the Meng and Moyle (1995), Sommer *et al.* (1997), and California Department of Fish and Game (CDFG) methodologies. We also employed a polynomial regression model and a crude exponential decay analysis in the August 17, 2001, comment period. See 66 FR 43145 for a complete description of the revised methods.

Statistical Analysis of Multiple Linear Regression Model

We have carefully considered all comments and responses. In regard to the analysis of splittail population trends, we now employ a statistical analysis of an abundance index and Multiple Linear Regression (MLR) model jointly developed and submitted by the CDFG (Rempel 2001) and the United States Bureau of Reclamation (USBR) (Michny 2001). The model is hereafter referred to as the CDFG/USBR MLR model and provides the most sound basis, to date, for statistically evaluating temporal trends of splittail abundance data.

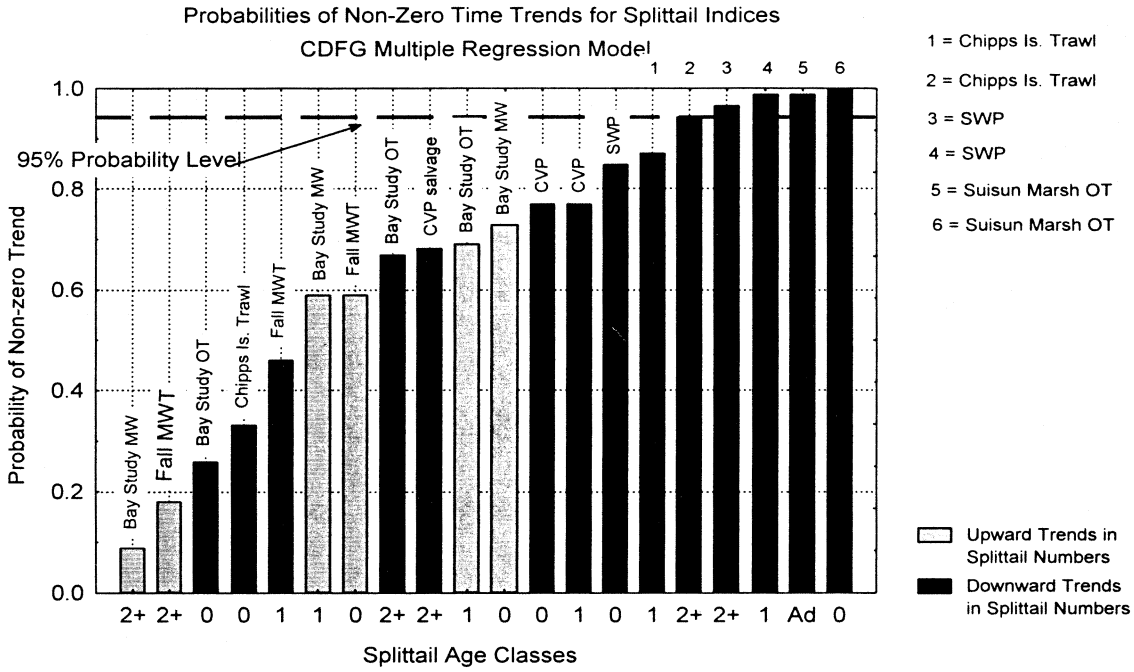
The CDFG/USBR MLR model includes HYDROLOGY and TIME (year) as independent variables and ABUNDANCE INDICES as the dependent variable. It also incorporates corrected splittail abundance data (Rempel 2001). We consider this statistical approach superior to the previous practice of using unstratified Mann-Whitney U-tests (Meng and Moyle 1995; Sommer *et al.* 1997) because it does not require arbitrarily dividing an inherently continuous data set into ''before'' and ''after'' categories (see previous discussion of this issue in 66 FR 43145). We also consider the CDFG/USBR MLR model superior to the permutation-based, exact calculations of p-values for stratified Mann-Whitney U-tests discussed in 66 FR 43145 because of substantive scientific issues raised by Rempel (2001), Michny (2001) and others, specifically, that such an analysis inappropriately combines results from differing survey methods (i.e. midwater trawl, otter trawl, beach seine, salvage) and considers primarily adult age class splittail. We further consider the CDFG/USBR MLR model superior to the polynomial regression model presented in 66 FR 43145 because existing abundance index monitoring programs have not been conducted for a sufficient duration to provide for reasonably conclusive application of the polynomial model (as concluded in 66 FR 43145). We also support use of the CDFG/USBR MLR model because of the facility with which it can be applied to all sets of splittail age class data from all seven abundance monitoring data sets (a total of 20 discrete sets of age-specific abundance monitoring data). Lastly, we have omitted the exponential decay model found in 66 FR 43145 because: (1) It was found by respondents to be insufficient to describe interactions in a complex aquatic ecosystem; and (2) the CDFG Mann-Whitney U-test results upon which the exponential decay calculation was based have since been superceded by the CDFG/BOR MLR model.

The CDFG/USBR MLR model explicitly controls for potential confounding effects of hydrological year type, the factor that is nearly unanimously viewed as the single strongest predictor of splittail year class strengths (e.g., Moyle *et al.* 2001 in prep.), by utilizing the number of days total delta inflow (DAYFLOW, California Department of Water Resources) exceeds 1,558 cubic meters per second (cms) (55,000 cubic feet per second (cfs)) during the February through May spawning/rearing period as a predictor (independent variable). This is conceptually comparable, yet superior, to the stratified Mann-Whitney U-tests presented in 66 FR 43145, which also controlled for hydrological year type. There is, however, one potentially important assumption associated with the CDFG/USBR MLR model that remains untested: The assumption that there is a lack of interaction between the HYDROLOGY and TIME variables. The CDFG/USBR MLR model assumes that the long term probabilities of high and low Delta inflow years are not systematically changing over time. If in fact those probabilities are systematically changing over time (due to either changing climate or changing water management policy), the coefficients for the TIME variable would be incapable of detecting the influence of the potentially changing HYDROLOGY component of splittail abundance trends. We believe this assumption can and should be tested against existing longitudinal hydrological data bases, with future changes to be determined once: (1) Sufficient splittail abundance data exist to ensure conclusive application of the polynomial model (i.e. multiple peaks and troughs); and (2) the cumulative expected hydrologic effects of potential large-scale water resource projects (i.e. potential projects such as the Folsom Dam reoperation and height increase, Shasta Dam height increase, Sites Reservoir, Colusa Basin off stream storage, increased pumping at export facilities, etc.) are more clearly understood. These potential future actions, and possibly long term climate changes, may appreciably change the timing, duration, magnitude and/or frequency of floodplain inundation within the splittail's range, thus influencing future population trends.

Discussion of CDFG/USBR MLR Model Results

The TIME variable captures temporal trends in the population index data. Its regression coefficient will be negative if splittail abundance is trending downward over time and positive if splittail abundance is trending upward over time. The probabilities of any given coefficient reflecting a true nonzero time trend are 1-p, where p is the standard statistical probability for the null hypothesis (of a zero trend). Thus, a ''p-value'' of 0.05 would be the same as a 95 percent probability that the corresponding TIME coefficient reflects a true nonzero downward or upward trend in splittail abundance. Results of the CDFG/USBR MLR model as presented by Rempel (2001: Table 3) for CDFG and Michny (2001: Table 1) for USBR reveal that 14 of 20 abundance monitoring data sets for splittail show downward trends (i.e., have negative coefficients for the TIME variable). In addition to a high frequency of negative coefficients that would be highly unlikely by chance alone (exact one tailed p = 0.0577; binomial test, H_0=0.50, N_1=6, N_2=14)(StatXact 4: CYTEL Software Corp. 2000), the median (middle value) probability of nonzero negative trends (0.81 or 81 percent) is also clearly greater than the median probability of nonzero positive trends (0.59 or 59 percent) (Figure 1 below), to an extent that would be highly unlikely by chance alone (exact one tailed p= 0.0303, Wilcoxon-Mann-Whitney test).

Figure 1.



All four coefficients for the TIME variable that exceed a 95 percent probability (classic 0.05 alpha level statistical significance criterion) for a true nonzero trend are negative. A fifth negative TIME variable coefficient is nearly statistically significant (p=0.057). Due to the very limited statistical power associated with the abundance monitoring data sets for splittail (see discussion of this topic in 66 FR 43145) there is substantive bias in favor of type II statistical error, i.e., failing to correctly reject the null hypothesis (of no time trends). Low statistical power is not unique to the splittail data sets. Due to the inherent high variability in fisheries and wildlife abundance data, for applied purposes (such as detecting oil spill impacts on marine bird populations) it has become ''customary'' to use an alpha level of 0.20 (i.e., an 80 percent probability of true nonzero trends) for statistical tests of population trends over time (Day *et al.* 1997; Murphy *et al.* 1997; Irons *et al.* 2000; Wiens *et al.* 2001). Wiens *et al.* (2001:890) further state that even using an alpha level of 0.20, ''* * * there remains the question of how blindly one should follow the results of statistical (significance) testing.'' Furthermore, Taylor and Gerrodette (1993) persuasively argue that because of the low statistical power that is so often characteristic of abundance monitoring data sets for rare species, ''* * * detection of a [statistically significant] decline should not be a necessary criterion for enacting conservation measures * * *.'' Referring to the management of a rare species of porpoise, the vaquita, Taylor and Gerrodette (1993) caution that due to the low statistical power of abundance monitoring data, ''* * * if we were to wait for a statistically significant decline before instituting stronger protective measures, the vaquita would probably go extinct first.'' Although splittail are not as rare as vaquita, the ''boom-or-bust'' reproductive biology of splittail results in such high-variance abundance monitoring data that the limitations on statistical power are as severe as Taylor and Gerrodette (1993) encountered with the vaquita. We must therefore take into consideration the issue of statistical power when interpreting the splittail abundance data. We accomplish this by evaluating all trends, not just the trends that meet traditional (p=0.05) criteria for statistical significance. Those traditional criteria assume a much higher standard of statistical power than the splittail data are able to meet. The inherent difficulty in effectively surveying splittail is likely to result in considerable scientific uncertainty and low statistical power to detect actions' effects. Recent studies indicate that these constituents, and the uncertainty and risk associated with them, favor a precautionary approach (Thompson *et al.* 2000, Slooten *et al.* 2000). Under such circumstances, and given the intrinsically precautionary nature of section 4 of the Act, we must consider the preponderance of the data, including both statistically significant and insignificant trends. Of 14 negative coefficients, 7 have a probability of 80 percent or greater (p=0.20) to reflect true nonzero downward trends in splittail abundance. Of 6 positive coefficients, 0 (none) have a probability of 80 percent or greater to reflect true nonzero upward trends in splittail abundance. This asymmetry in the results is highly significant (exact one tailed p=0.022, Fisher's exact test, ''mid p'' corrected) (StatXact 4: CYTEL Software Corp. 2000) and clearly indicates a preponderance of data consistent with an ''apparent'' declining trend in splittail abundance.

The four highest, statistically significant (at traditional levels) probabilities of a nonzero downward splittail population trend are exhibited by the Suisun Marsh survey (Age-0 and adult) and in the data collected via fish salvage operations at the State Water Project (SWP) Skinner Delta Fish Protective Facility (Age-1, and Age-2 and greater). The decline evident in the Chipps Island Trawl (Age-2 and greater) is nearly statistically significant at traditional levels (94.3 percent probability). Two additional probabilities of a nonzero downward splittail population trend are evident at the 80 percent probability level; Chipps Island Trawl (Age-1) and SWP (Age-0).

We fully concur with the statements of various respondents that abundance monitoring data for splittail have

methodological weaknesses of one sort or another; none of the surveys were designed specifically to rigorously estimate splittail population numbers (see Moyle et al. 2001 in prep.; Meng and Moyle 1995; and Sommer et al. 1997 for descriptions of surveys). However, existing data sets do constitute best available scientific information for the species.

Public Comments Solicited

We will accept written comments during this re-opened comment period, and comments should be submitted to the Sacramento Fish and Wildlife Office as found in the **ADDRESSES** section.

Author(s)

The primary authors of this notice are Jason Douglas and Joseph Skorupa (see **ADDRESSES** section).

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

Dated: March 14, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–6803 Filed 3–20–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket 020313057–2057–01; I.D. 031102E]

RIN 0648–AP91

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is enacting a seasonally-adjusted gear restriction by closing the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8 inch (20.3 cm) stretched mesh, starting on March 15, 2002. The purpose of this action is to reduce the impact of the large-mesh gillnet fisheries on endangered and threatened species of sea turtles primarily from the monkfish fishery which has previously demonstrated a high sea turtle bycatch and mortality rate. The areas restricted to fishing with gillnets larger than 8 inch stretched mesh and the times are as follows: Waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet)—at all times; waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC)—from March 16 through January 14; waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA)—from April 1 through January 14; waters north of 37° 34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA)—from April 16 through January 14. Waters north of 37°56.0′ N (Chincoteague, VA) will not be affected by this rule. NMFS also intends to publish a permanent rule establishing these seasonal restrictions and is seeking comments on this interim final rule.

DATES: This interim final rule is effective on March 15, 2002 through 240 days after March 15, 2002. Comments on this interim final rule are requested and must be postmarked or transmitted by facsimile by 5 p.m., Eastern Standard Time, on June 19, 2002. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send written comments on this interim final rule to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376, Attn: Chief, Endangered Species Division, Office of Protected Resources. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Assessment (EA) prepared for this interim final rule may also be requested at the same address.

FOR FURTHER INFORMATION CONTACT: David M. Bernhart (ph. 727–570–5312, fax 727–570–5517, e-mail *David.Bernhart@noaa.gov*), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions for threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided or an incidental take permit issued pursuant to section 7 or 10 of the ESA.

Background

Beginning in 1995, sea turtle strandings off North Carolina dramatically increased during April and May, particularly near the area between Hatteras Inlet and Oregon Inlet. This new stranding pattern continued and intensified throughout the rest of the 1990's, and North Carolina sea turtle strandings grew to record levels. Increasing strandings coincided with increasing effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In April and May 2000, the largest-ever fisheries-related stranding event occurred: 280 sea turtles, 275 of them threatened loggerhead sea turtles, stranded in two short periods. Four of the carcasses were still entangled in gillnet gear with a larger than 8 inch stretched mesh size. Three fisheries were active in offshore waters the week prior to the strandings: Hook-and-line fishing for mackerel, bluefish gillnetting, and monkfish gillnetting. The mesh sizes of the gear recovered with the stranded turtles were only consistent with gillnets for monkfish. There was no evidence that the turtles had been hooked, and the nature of the strandings were not consistent with other possible causes. Satellite sea surface temperature information allowed NMFS to reconstruct the likely times and locations of the sea turtle mortality. Gillnetting for dogfish and monkfish was occurring in those times and places.

These fisheries deploy thousands of yards/meters of gillnets with larger than 8 inch stretched mesh and have very long soak times, ranging from overnight to several days. In order to prevent further sea turtle deaths, on May 12, 2000, NMFS restricted an area along eastern North Carolina and Virginia to fishing with large-mesh gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater for a 30-day period through a temporary rule (65 FR 31500, May 18, 2000). After the large mesh closure was in effect, no additional mass stranding events occurred in North Carolina. However, the monkfish fishery in North Carolina was over by the time the closure went into effect.

The closure also reduced the monkfish gillnetting effort off the coast of Virginia, and there was a large reduction in strandings in 2000 (Mansfield et al., 2001). Due to the large-mesh gillnet closure, as well as the new