DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930779–3330; I.D. 051192B]

Endangered and Threatened Species; Status of Sacramento River Winter-run Chinook Salmon

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

ACTION: Final rule.

SUMMARY: NMFS has determined that the Sacramento River winter-run chinook salmon should be reclassified from threatened to endangered under the Endangered Species Act of 1973 (ESA). NMFS has determined that the current biological status of the species is endangered based on the continued decline and increased variability of run sizes since its first listing as a threatened species in 1989, the expectation of weak returns in certain years as the result of two small year classes (1991 and 1993), and continuing threats to the population. Although measures implemented through consultations conducted under section 7 of the ESA and State and Federal regulatory actions are designed to reduce adverse impacts on the species, quantifiable improvements in population levels are not likely to be evident for several years. NMFS will continue to closely monitor the status of this population, and evaluate the protective measures to determine whether there is evidence that these measures have reduced or eliminated threats to the species and whether a change in status may be warranted.

EFFECTIVE DATES: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., suite 4200, Long Beach, CA, 90802–4213, (310) 980–4015, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA and its implementing regulations (50 CFR part 424), an "endangered species" is any species that is in danger of extinction throughout all or a significant portion of its range. A "threatened species" is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Based on a review of the status of the Sacramento River winter-run chinook salmon and the factors affecting the species, NMFS has determined that it is endangered.

The Sacramento River winter-run chinook salmon is a unique population that is distinguishable from other chinook salmon runs in the Sacramento River based on the timing of its upstream migration and spawning period. For the most part, the winter-run chinook salmon population is comprised of three year classes, each of which primarily returns to spawn as 3-year old fish.

The best available data on winter-run chinook salmon abundance are the annual estimates of the spawning run size made by the California Department of Fish and Game (CDFG) based on counts of fish passing the Red Bluff Diversion Dam. The CDFG began estimating the annual run size for winter-run chinook salmon in 1967 after the Dam was placed in operation. This time series of annual run size estimates has documented a precipitous decline in the winter-run chinook salmon to its present low level (Table 1).

TABLE 1.—ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM

Year	Number of Fish
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	53,089
1972	37,133
1973	24,079
1974	21,897
1975	23,430
1976	35,096
1977	17,214
1978	24,862
1979	2,364
1980	1,156
1981	20,041
1982	1,242
1983	1,831
1984	2,663
1985	3,962
1986	2,422
1987	2,236
1988	2,085
1989	547
1990	441
1991	191
1992	1,180
1993	341

In 1989, the CDFG estimated that the winter-run chinook salmon run size was only 547 fish. This unexpectedly small return represented nearly a 75 percent decline from the consistent, but low, run size of 2,000 to 3,000 fish that had occurred since 1982. As a result of this unexpected decline, NMFS issued an emergency interim rule listing the winter-run chinook salmon as threatened under the ESA on August 4, 1989 (54 FR 32085). During the period the emergency interim rule was in effect, NMFS published a proposed rule to list winter-run chinook salmon as threatened under the formal listing procedures of the ESA on March 20, 1990 (55 FR 10260). To avoid a hiatus in protection of the species until the formal listing process was completed, NMFS published a second emergency interim rule listing winter-run chinook salmon as threatened on April 2, 1990 (55 FR 12191). On November 5, 1990, NMFS completed the formal listing process and published a final rule (55 FR 46515) listing the species as threatened under the ESA.

On June 5, 1991, the American Fisheries Society petitioned NMFS to reclassify winter-run chinook salmon as an endangered species. At the time the petition was submitted, the best preliminary data available indicated that the 1991 run would consist of a return of only 88 to 200 adults from the progeny of the 1988 run of 2,085 fish. The final run size estimate made by the CDFG for 1991 was 191 fish (Table 1). NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On November 7, 1991, NMFS announced (56 FR 58986) its intention to review the status of the species to determine whether reclassification was appropriate. After conducting a status review, NMFS published a proposed rule (57 FR 27416) on June 19, 1992, to reclassify winter-run chinook salmon as endangered.

NMFS published a subsequent Federal Register notice (58 FR 31688) on June 4, 1993, delaying the issuance of a final determination on the reclassification for up to six months pursuant to section 4(b)(6)(B) of the ESA. On September 10, 1993, NMFS published another Federal Register notice that provided information on the 1993 run size estimate (341 fish) and reopened the public comment period on the proposed rule.

This determination does not change any of the prohibitions against taking Sacramento River winter-run chinook salmon. Section 9 of the ESA prohibits taking endangered species. The regulations issued when this species was listed as threatened in November 1990 also prohibit taking.

In a separate rulemaking, the U.S. Fish and Wildlife Service (FWS), which

continued to p. 450

designated concurrently with the listing of a species. NMFS published a final rule designating critical habitat for Sacramento River winter-run chinook salmon on June 16, 1993. The designated critical habitat includes: the Sacramento River from Keswick Dam (RM 302) to Chipps Island (RM 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, all waters of San Pablo Bay, and all waters in San Francisco Bay north of the San Francisco/Oakland Bay Bridge. The final rule also identifies those physical and biological features of the habitat that are essential to the conservation of winter-run chinook salmon.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

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

Dated: December 14, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a) is amended by adding the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*);" immediately after the phrase "Snake River sockeye salmon (*Oncorhynchus nerka*)" in the second sentence.

PART 227—THREATENED FISH AND WILDLIFE

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

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

§ 227.4 [Amended]

4. In § 227.4, paragraph (e) is removed and paragraphs (f) through (h) are redesignated paragraphs (e) through (g) respectively.

§ 227.21 [Amended]

5. In § 227.21, paragraphs (a) and (b)(1), the phrase "(e), (g) and (h)" is removed, and the phrase "(f) and (g)" is added in its place; in paragraph (b)(2), the phrase "(g) and (h)" is removed and the phrase "(f) and (g)" is added in its place.

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