

<p>To address increased risk of a maximum allowable operating pressure based on higher stress levels in the following areas:</p>	<p>Take the following additional step:</p>
<p>(10) Conducting periodic assessments of integrity.</p>	<p>(ii) Except as provided in paragraph (d)(9)(iii) of this section, for an existing segment, do a baseline internal assessment using a geometry tool and a high resolution magnetic flux tool before, but within two years prior to, raising pressure as allowed under this section. (iii) If headers, mainline valve by-passes, compressor station piping, meter station piping, or other short portion of a segment cannot accommodate a geometry tool and a high resolution magnetic flux tool, use direct assessment to assess that portion.</p>
<p>(11) Making repairs</p>	<p>(i) Determine a frequency for subsequent periodic inspections as if the segments were covered by subpart O of this part. (ii) Conduct periodic internal inspections using a high resolution magnetic flux tool on the frequency determined under paragraph (d)(10)(i) of this section. (iii) Use direct assessment for periodic assessment of a portion of a segment to the extent permitted for a baseline assessment under paragraph (d)(9)(iii) of this section. (i) Do the following when evaluating an anomaly: (A) Use the most conservative calculation for determining remaining strength or an alternative validated calculation based on pipe diameter, wall thickness, grade, operating pressure, operating stress level, and operating temperature: and (B) Take into account the tolerances of the tools used for the inspection. (ii) Repair a defect immediately if any of the following apply: (A) The defect is a dent discovered during the baseline assessment for integrity under paragraph (d)(9) of this section and the defect meets the criteria for immediate repair in § 192.309(b). (B) The defect meets the criteria for immediate repair in § 192.933(d). (C) The maximum allowable operating pressure was based on a design factor of 0.67 under paragraph (a) of this section and the failure pressure is less than 1.25 times the maximum allowable operating pressure. (D) The maximum allowable operating pressure was based on a design factor of 0.56 under paragraph (a) of this section and the failure pressure is less than or equal to 1.4 times the maximum allowable operating pressure. (iii) If paragraph (d)(11)(ii) of this section does not require immediate repair, repair a defect within one year if any of the following apply: (A) The defect meets the criteria for repair within one year in § 192.933(d). (B) The maximum allowable operating pressure was based on a design factor of 0.80 under paragraph (a) of this section and the failure pressure is less than 1.25 times the maximum allowable operating pressure. (C) The maximum allowable operating pressure was based on a design factor of 0.67 under paragraph (a) of this section and the failure pressure is less than 1.50 times the maximum allowable operating pressure. (D) The maximum allowable operating pressure was based on a design factor of 0.56 under paragraph (a) of this section and the failure pressure is less than or equal to 1.80 times the maximum allowable operating pressure. (iv) Evaluate any defect not required to be repaired under paragraph (d)(11)(ii) or (iii) of this section to determine its growth rate, set the maximum interval for repair or re-inspection, and repair or re-inspect within that interval.</p>

(e) *Is there any change in overpressure protection associated with operating at the alternative maximum allowable operating pressure?* Notwithstanding the required capacity of pressure relieving and limiting stations otherwise required by § 192.201, if an operator establishes a maximum allowable operating pressure for a segment in accordance with paragraph (a) of this section, an operator must:

(1) Provide overpressure protection that limits mainline pressure to a maximum of 104 percent of the maximum allowable operating pressure; and

(2) Develop and follow a procedure for establishing and maintaining accurate set points for the supervisory control and data acquisition system.

Issued in Washington, DC, on March 4, 2008.
Jeffrey D. Wiese,
Associate Administrator for Pipeline Safety.
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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 080229343-8368-01]

RIN 0648-XF87

Listing Endangered and Threatened Species: Notification of Finding on a Petition to List Pacific Eulachon as an Endangered or Threatened Species under the Endangered Species Act

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

ACTION: Notification of finding; request for information, and initiation of status review.

SUMMARY: On November 8, 2007, we, NMFS, received a petition to list populations of Pacific eulachon (*Thaleichthys pacificus*) in Washington, Oregon, and California as a threatened or endangered species under the Endangered Species Act (ESA). We find that the petition presents substantial scientific and commercial information indicating that the petitioned action may be warranted. Accordingly, we will initiate a status review of the species. To ensure that the status review is complete and based upon the best available scientific and commercial information, we solicit information regarding the population structure and status of Pacific eulachon throughout their range in Alaska, British Columbia, Washington, Oregon, and California.

DATES: Information and comments on the subject action must be received by May 12, 2008.

ADDRESSES: You may submit data, information, comments, identified by the code 0648–XF87, addressed to: Chief, NMFS, Protected Resources Division, by any of the following methods:

- Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal at <http://www.regulations.gov>
- Facsimile (fax): 503–230–5441
- Mail: 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232.
- Hand delivery: You may hand-deliver written comments to our office during normal business hours at the street address given above.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personally identifiable information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word or Excel, Corel WordPerfect, or Adobe pdf file formats only.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Garth Griffin, NMFS, Northwest Region, (503) 231–2005; John Clancy, Southwest Region, (707) 825–5175; or Dwayne Meadows, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On November 08, 2007, NMFS received a petition from the Cowlitz

Indian Tribe to list southern eulachon (populations in Washington, Oregon, and California) as a threatened or endangered species under the ESA. Copies of the petition are available from NMFS via the Internet (<http://www.nwr.noaa.gov/Other-Marine-Species/index.cfm>) or by request (See **ADDRESSES** section, above).

ESA Statutory, Regulatory, and Policy Provisions

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the Endangered Species Act (ESA) (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Joint NOAA-U.S. Fish and Wildlife Service (USFWS) ESA implementing regulations define A substantial information as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In evaluating a petitioned action, the Secretary considers whether the petition contains a detailed narrative justification for the recommended measure, including: past and present numbers and distribution of the species involved, and any threats faced by the species (50 CFR 424.14(b)(2)(ii)); and information regarding the status of the species throughout all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)). In addition to the information presented in a petition, we review other data and publications readily available to our scientists (i.e., currently within agency files). When it is found that substantial information is presented in the petition, we are required to promptly commence a review of the status of the species concerned. Within 1 year of receipt of the petition, we shall issue one of the following findings: (1) the petitioned action is not warranted; (2) the petitioned action is warranted, in which case we must promptly publish a proposed listing determination; or (3) the petitioned action is warranted but that a proposed listing is precluded by pending rulemaking for other species.

Under the ESA, a listing determination may address a species, subspecies, or a distinct population segment (DPS) of any vertebrate species which interbreeds when mature (16

U.S.C. 1532(16)). A joint NOAA-USFWS policy clarifies the agencies' interpretation of the phrase "distinct population segment" of any species of vertebrate fish or wildlife (ESA section 3(16)) for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722, February 7, 1996) (joint DPS policy). The joint DPS policy established two criteria that must be met for a population or group of populations to be considered a DPS: (1) the population segment must be discrete in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the population segment must be significant to the remainder of the species (or subspecies) to which it belongs. A population segment may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which differences exist in exploitation control, habitat management, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, or "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA Sections 3(6) and 3(20), respectively). Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered based on any of the following factors: (1) the present or threatened destruction, modification, or curtailment of a species' habitat or

range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting the species' continuing existence. Listing determinations are based solely on the best available scientific and commercial data after taking into account any efforts being made by any state or foreign nation to protect the species (16 U.S.C. 1533(b)(1)(A)).

Distribution and Life History of Eulachon

Eulachon (commonly called smelt, candlefish, or hooligan) are endemic to the eastern Pacific Ocean ranging from northern California to southwest Alaska and into the southeastern Bering Sea. Eulachon typically spend 3–5 years in saltwater before returning to freshwater to spawn from late winter through mid spring. Spawning grounds are typically in the lower reaches of larger snowmelt-fed rivers (Hay and McCarter, 2000). In the portion of the species' range that lies south of the U.S. Canada border, most eulachon production originates in the Columbia River Basin. Other river basins in the U.S. where eulachon have been documented include: the Sacramento River, Russian River, Humboldt Bay and several nearby smaller coastal rivers (e.g., Mad River), and the Klamath River in California; the Rogue River and Umpqua Rivers in Oregon; and infrequently in coastal rivers and tributaries to Puget Sound in Washington (Emmett *et al.*, 1991; Musick *et al.*, 2000). Within the Columbia River Basin, the major and most consistent spawning runs occur in the mainstem of the Columbia River (from just upstream of the estuary, river mile (RM) 25, to immediately downstream of Bonneville Dam, RM 146) and in the Cowlitz River. Periodic spawning also occurs in the Grays, Skamokawa, Elochoman, Kalama, Lewis, and Sandy rivers (tributaries to the Columbia River) (Emmett *et al.*, 1991; Musick *et al.*, 2000). Throughout the species' range, spawning occurs consistently in the Klamath River, Columbia and Cowlitz Rivers, and the Fraser and Nass rivers (British Columbia), and may occur rarely or intermittently in other coastal river systems from California to Alaska (Wilson *et al.*, 2004).

Spawning occurs in the lower sections of rivers at temperatures from 4 to 10 degrees C (Washington, 2001). Spawning occurs over sand or coarse gravel substrates. Eggs are fertilized in the water column, sink, and adhere to the river bottom typically in areas of

gravel and coarse sand. Most eulachon adults die after spawning.

Eulachon eggs hatch in 20–40 days. The larvae are carried downstream and are dispersed by estuarine and ocean currents shortly after hatching. Juvenile eulachon move from shallow nearshore areas to mid-depth midshore areas. Typically eulachon spend 3–5 years in saltwater before returning to freshwater to spawn.

1999 Eulachon Petition

In 1999, Mr. Sam Wright petitioned us under the ESA to add Columbia River eulachon to the list of federally threatened and endangered species. Mr. Wright expressed concern regarding marked declines in eulachon populations in the Columbia River system, and concluded that Columbia River eulachon populations were at risk of extinction and had no reasonable expectation of recovering or being replenished by nearby populations. After reviewing the petition, as well as other information readily available to us, we concluded that the petition provided insufficient information regarding the distinctness of eulachon populations in the Columbia River relative to the other populations in the species' range. In November 1999 we issued our finding that the petition did not present substantial scientific information indicating the petitioned action may be warranted (64 FR 66601; November 29, 1999), and, therefore, no status review was conducted. We acknowledged there was cause for concern over decline in the eulachon catch in the Columbia River to an historical low. We noted, however, that the species' high fecundity and short life span contribute to highly variable and possibly cyclic run size, and it was therefore unclear whether the low catch levels at the time of the petition reflected natural variability in response to variable ocean conditions or an actual decline in stock status. Although we decided that a status review was not warranted, we encouraged state and tribal co-managers to improve their eulachon management and research efforts. In particular, we underscored the need to evaluate whether current harvest strategies adequately protect the species and to initiate more accurate eulachon abundance and life-history surveys.

Analysis of the Cowlitz Indian Tribe's Petition

We reviewed the petition from the Cowlitz Indian Tribe, as well as other information readily available to our scientists (i.e., currently within our files), to determine if the petition

presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Specifically, we evaluated whether: (1) the species may warrant delineation into one or more DPSs; and (2) the species, or a putative DPS, may be in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range.

Information Regarding the DPS Structure of Eulachon

The Cowlitz Indian Tribe's petition seeks delineation of a southern eulachon DPS extending from the U.S.-Canada border south to include populations in Washington, Oregon, and California. The petitioner concludes that the available genetic, meristic, and life-history information is inconclusive regarding the discreteness of eulachon populations. However, the petitioner argues that under the DPS policy eulachon populations in Washington, Oregon, and California are collectively "discrete" from more northerly populations because they are delimited by an international governmental boundary (i.e., the U.S.-Canada border between Washington and British Columbia) across which there is a significant difference in exploitation control, habitat management, or conservation status. The petitioner notes that the U.S. and Canada differ in their regulatory control of commercial, recreational and tribal eulachon harvest, and also differ in their management of eulachon habitat. The petitioner concluded that there is no assurance that the U.S. and Canada will coordinate management and regulatory efforts sufficiently to conserve eulachon and their habitat, and thus the DPS should be delineated at the border between Washington and British Columbia. The petitioner argues that the southern eulachon population segment is also "significant" under the DPS policy because the loss of the discrete population segment would cause a significant gap in the taxon's range. The petitioner notes that eulachon have largely disappeared in rivers throughout the southern portion of their range, and that eulachon in the Columbia River probably represent the southernmost extant population for the species. The loss of the Columbia River eulachon population and any dependent coastal spawning populations could represent the loss of the species throughout its range in the U.S., as well as the loss of a substantial proportion of its historical range.

Although the petitioner felt that the available information is inconclusive, it

was noted that eulachon may be composed of several smaller DPSs differentiable on the basis of differences in run timing, meristic, and genetic characteristics. Initial mitochondrial DNA genetic information (McLean *et al.*, 1999) and elemental analysis of eulachon otoliths (Carolsfeld and Hay, 1998) suggested that eulachon did not exhibit genetic discreteness and represented a panmictic population throughout the species' range. Other biological data including the number of vertebrae, size at maturity, fecundity, river-specific spawning times, and population dynamics indicate that there is substantial local stock structure (Hart and McHugh, 1944; Hay and McCarter, 2000). These latter observations are consistent with the hypothesis that there is local adaptation and genetic differentiation among populations. Recent microsatellite genetic work (Beacham *et al.*, 2005) appears to confirm the existence of significant differentiation among populations. Although the Fraser River, Columbia River mainstem, and the Cowlitz River spawning populations are genetically distinct from each other, they are more closely related to one another than to the more northerly British Columbia populations (Beacham *et al.*, 2005).

After reviewing the information presented in the petition as well as other information readily available to us (i.e., currently within NMFS files), we conclude that the Cowlitz Indian Tribe's petition presents substantial scientific information indicating that eulachon may warrant delineation into one or more DPSs.

Information Regarding Eulachon Status and Threats

Although eulachon abundance exhibits considerable year-to-year variability, nearly all spawning runs from California to southeastern Alaska have declined in the past 20 years, especially since the mid 1990s (Hay and McCarter, 2000). Historically, the Columbia River has exhibited the largest returns of any spawning population throughout the species' range. The petitioner notes that from 1938 to 1992, the median commercial catch of eulachon in the Columbia River was approximately 1.9 million pounds (861,826 kg). From 1993 to 2006, the median catch had declined to approximately 43,000 pounds, representing a 97.7 percent reduction in catch from the prior period. Although there was an increasing trend in Columbia River eulachon catch from 2000–2003, recent catches are extremely low. The preliminary catch data for the 2008 Columbia River eulachon run

suggest it may be the second lowest on record (i.e., since 1938) (WDFW, 2008). The petitioner also presents catch per unit effort and larval survey data (WDFW and ODFW, 2006) for the Columbia River and tributaries in Oregon and Washington that similarly reflect the depressed status of Columbia River eulachon during the 1990s, a relative increase during 2000 to 2004, and a decline back to low levels in recent years.

The petitioner also notes that eulachon returns in the Fraser River and other British Columbia rivers similarly suffered severe declines in the mid–1990s and, despite increased returns during 2001 to 2003, presently remain at very low levels (DFO, 2006). Egg and larval surveys conducted in the Fraser River since 1995 also demonstrate that, despite the implementation of fishing restrictions in British Columbia, the stock has not recovered from its mid–1990s collapse and remains at a very low level. An offshore index of Fraser and Columbia River eulachon biomass, calculated from eulachon bycatch in the shrimp trawl fishery off the west coast of Vancouver Island, illustrates highly variable biomass over the time series since 1973, but also reflects stock declines in the mid–1990s and in recent years (DFO, 2006). With respect to eulachon populations further south in the species' range, the petitioner notes that populations in the Klamath River, Mad River, Redwood Creek, and Sacramento River are likely extirpated or nearly so.

The petitioner describes a number of threats facing eulachon range-wide, and facing populations in U.S. rivers in particular. The petitioner organizes this information according to the five factors described in section 4(a)(1) of the ESA: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The following paragraph provides a brief summary of the information on threats presented in the petition.

The petitioner expresses concern that habitat loss and degradation threaten eulachon, particularly in the Columbia River basin. Hydroelectric dams block access to historical eulachon spawning grounds, and affect the quality of spawning substrates through flow management, altered delivery of coarse sediments, and siltation. The petitioner expressed strong concern regarding the

siltation of spawning substrates in the Cowlitz River due to altered flow management and the accumulation of fine sediments from the Toutle River. The petitioner believes that efforts to retain and stabilize fine sediments generated by the 1980 eruption of Mount St. Helens are inadequate. The petitioner notes that the release of fine sediments from behind a U.S. Army Corps of Engineers sediment retention structure on the Toutle River has been negatively correlated with Cowlitz River eulachon returns 3 to 4 years later. The petitioner also expressed concern that dredging activities in the Cowlitz and Columbia rivers during the eulachon spawning run may entrain and kill fish, or otherwise result in decreased spawning success. The petitioner also noted that eulachon have been shown to carry high levels of chemical pollutants (US EPA, 2002), and although it has not been demonstrated that high contaminant loads in eulachon result in increased mortality or reduced reproductive success, such effects have been shown in other fish species (Kime, 1995).

The petitioner expressed concern that depressed eulachon populations are particularly susceptible to overharvest in fisheries where they are targeted or taken as bycatch. The petitioner concluded that no evidence suggests that disease currently poses a threat to eulachon, but noted information presented in the 1999 petition to list eulachon that suggested that predation by pinnipeds may be substantial. The petitioner acknowledges that eulachon harvest has been curtailed significantly in response to population declines, and that were it not for continued low levels of harvest there would be little or no status information available for some populations. However, the petitioner concludes that existing regulatory mechanisms have proven inadequate in recovering eulachon stocks, and that directed harvest and bycatch may be important factors limiting the recovery of impacted stocks. The petitioner underscores the need for further fishery-independent monitoring and research. Finally, the petitioner concludes that global climate change is one of the greatest threats facing eulachon, particularly in the southern portion of its range where ocean warming trends may be the most pronounced. The petitioner felt that the risks facing southerly eulachon populations in Washington, Oregon, and California will be exacerbated by such a deterioration of marine conditions. These southerly populations, already exhibiting dramatic declines and impacted by

other threats (e.g., habitat loss and degradation), might be at risk of extirpation if unfavorable marine conditions predominated in the future. The petitioner noted that the Columbia River served as the single refuge for the species during the Wisconsinan glacial period (between 10,000 and 15,000 years before present), and that the loss of the Columbia River and other southerly eulachon populations would imperil the persistence of the taxon as a whole.

Petition Finding

After reviewing the information contained in the petition and other information readily available in our files, we determine that the petition presents substantial scientific and commercial information indicating the petitioned action may be warranted. In accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(2)), we will commence a review of the status of the species concerned and make a determination within 12 months of receiving the petition (i.e., by November 8, 2008) whether the petitioned action is warranted.

Information Solicited

DPS Structure and Extinction Risk

To ensure that the updated status review is complete and based on the best available and most recent scientific and commercial data, we solicit

information, and comments (see **DATES** and **ADDRESSES**) concerning the status of eulachon. We solicit pertinent information such as: (1) biological or other relevant data pertinent to determining the DPS structure of eulachon (e.g., age structure, genetics, migratory patterns, morphology, physiology); (2) the abundance and biomass, as well as the spatial and temporal distribution of eulachon; (3) trends in abundance and distribution; (4) natural and human-influenced factors that cause variability in survival, distribution, and abundance; and (5) current or planned activities and their possible impact on eulachon (e.g., harvest measures and habitat actions).

Efforts Being Made to Protect Eulachon

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of a species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, we first assess the status of the species and identify factors that have led to the decline. We then assesses conservation measures to determine whether they ameliorate a species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, NMFS considers the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that

such efforts will reliably be implemented and the degree of certainty that such efforts will be effective in furthering the conservation of the species (68 FR 15100, March 28, 2003); and the presence of monitoring provisions that track the effectiveness of recovery efforts, and that inform iterative refinements to management as information is accrued. In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provisions of adequate monitoring and funding for conservation efforts are essential to ensure that the intended conservation benefits are realized. We also encourage all parties to submit information on ongoing efforts to protect and conserve eulachon, as well as information on recently implemented or planned activities and their likely impact(s).

References

Copies of the petition and related materials are available on the Internet at <http://www.nwr.noaa.gov/Other-Marine-Species/index.cfm>, or upon request (see **ADDRESSES** section above).

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

Dated: March 6, 2008.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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