

(c) If more than one individual should qualify for payment—

(1) Under the Act, at 42 U.S.C. 3796(a)(4)(1), payment shall be made to each of them in equal shares, except that, if the designation itself should manifest a different distribution, payment shall be made to each of them in shares in accordance with such distribution; or

(2) Under the Act, at 42 U.S.C. 3796(a)(4)(2), payment shall be made to each of them in equal shares.

#### § 32.29 [Amended]

12. Amend § 32.29(a)(1)(ii) by removing “The” and adding in its place “Consistent with § 32.42(c), the”.

#### § 32.41 [Amended]

13. Amend § 32.41 by adding “, and of claims remanded (or matters referred) under § 32.54(c)” before the final period.

14. Amend § 32.42 as follows:  
a. In the introductory text of paragraph (a), remove “Unless” and add in its place “Subject to paragraph (c) of this section, and unless”.

b. Add a paragraph (c) to read as follows:

#### § 32.42 Time for filing request for determination.

\* \* \* \* \*

(c) The timely filing of a motion for reconsideration under § 32.28(a) shall be deemed to constitute a timely filing, under paragraph (a) of this section, of a request for determination with respect to any grounds described in § 32.29(a)(1)(ii) that may be applicable.

#### § 32.43 [Amended]

15. Amend § 32.43(b) by adding “(or upon remand or referral)” after “determination”.

#### § 32.45 [Amended]

16. Amend § 32.45(a) by removing “At” and adding in its place “Except with respect to a remand or referral, at”.

17. Amend § 32.54 by adding paragraph (c) to read as follows:

#### § 32.54 Director determination.

\* \* \* \* \*

(c) With respect to any claim before him, the Director, as appropriate, may—

- (1) Remand the same to the PSOB Office, or to a Hearing Officer;
- (2) Vacate any related determination under this part; or
- (3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

#### § 32.55 [Amended]

18. Amend § 32.55(a) by removing “under 28 U.S.C. 1491(a) (claims against

the United States)” and adding in its place “pursuant to the Act, at 42 U.S.C. 3796c–2”.

Dated: July 7, 2008.

**Jeffrey L. Sedgwick,**

*Acting Assistant Attorney General.*

[FR Doc. E8–15730 Filed 7–9–08; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS–R8–ES–2008–0067; 1111–FY08–MO–B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Reclassify the Delta Smelt (*Hypomesus transpacificus*) From Threatened to Endangered

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to reclassify the delta smelt (*Hypomesus transpacificus*) from threatened to endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that reclassification of the delta smelt from threatened to endangered may be warranted. Therefore, we are initiating a status review to determine if reclassifying this species as endangered under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

**DATES:** To allow us adequate time to conduct this review, we request that information be submitted to us on or before September 8, 2008.

**ADDRESSES:** You may submit information by one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0067, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203. We will not accept e-mail or faxes. We will post all information at <http://www.regulations.gov>. This generally

means that we will post any personal information you provide us (see the Information Solicited section below for more details).

#### FOR FURTHER INFORMATION CONTACT:

Susan Moore, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service at 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

##### Information Solicited

When we make a finding that substantial information is presented to indicate that listing, delisting, or reclassifying a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the delta smelt. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning the status of the delta smelt, including but not limited to information on:

(1) The effects of potential threat factors that are the basis for a listing determination under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) Present or threatened destruction, modification, or curtailment of the species’ 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.

(2) Population abundance, distribution, trends, and dynamics; habitat selection and trends; food habits; and effects of disease, competition, and predation on delta smelt.

(3) The effects of climate change, sea level change, and change in water temperatures on the distribution and abundance of delta smelt and their principal prey.

(4) The effects of other potential threat factors, including water diversions in the Sacramento-San Joaquin River Delta (Delta), contaminants, invasive species, and changes of the distribution and abundance of delta smelt and their principal prey.

(5) Management programs for delta smelt conservation, including mitigation

measures related to water diversions and development, habitat conservation programs, invasive species control programs, and any other private, tribal, or governmental conservation programs which benefit delta smelt.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

Section 4(b)(3)(A) of the Act requires that we 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. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our

notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that 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)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

We were originally petitioned to list the delta smelt as endangered on June 26, 1990. We proposed the species as threatened and proposed the designation of critical habitat on October 3, 1991 (56 FR 50075). We listed the species as threatened on March 5, 1993 (58 FR 12854), and we designated critical habitat on December 19, 1994 (59 FR 65256). The delta smelt was one of eight fish species addressed in the November 26, 1996, *Recovery Plan for the Sacramento-San Joaquin Delta Native Fishes* (Service 1996, pp. 1–195). We completed a 5-year status review of the delta smelt on March 31, 2004 (Service 2004, pp. 1–50).

On March 9, 2006, we received a petition, dated March 8, 2006, from the Center for Biological Diversity, the Bay Institute, and Natural Resources Defense Council (CBD *et al.* 2006, pp. 1–33) to reclassify the listing status of the delta smelt, a threatened species, to endangered status on an emergency basis. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required at 50 CFR 424.14(a). The Service has the authority to promulgate an emergency listing rule for a species when an emergency exists that poses a significant risk to the well-being of that species (50 CFR 424.20). The petition contained information on changes in the status and distribution of the species, and on increased threats to the species.

In response to the petition, we sent a letter to the petitioners dated June 20, 2006, stating that we would not be able to address their petition at that time because further action on the petition was precluded by court orders and settlement agreements for other listing actions that required us to use nearly all of our listing funds for fiscal year 2006. We also stated in our June 20, 2006, letter that we had evaluated the immediacy of possible threats to the delta smelt, and had determined that an emergency reclassification was not warranted at that time.

This notice constitutes our 90-day finding on the March 8, 2006, petition

to reclassify the delta smelt from threatened to endangered.

### Species Information

The petitioners presented a summary of the known information on the description, taxonomy, distribution, habitat requirements, life history, and natural mortality of the delta smelt. They also described recent changes in the fish's distribution and abundance, and summarized recent delta smelt population trend and extinction risk analyses.

#### *Description and Taxonomy*

Delta smelt are slender-bodied fish, generally about 60 to 70 millimeters (mm) (2 to 3 inches (in)) long, although they may reach lengths of up to 120 mm (4.7 in) (Moyle 2002, p. 227). Delta smelt are in the Osmeridae family (smelts) (Stanley *et al.* 1995, p. 390). Live fish are nearly translucent and have a steely blue sheen to their sides (Moyle 2002, p. 227). Delta smelt feed primarily on small planktonic (free floating) crustaceans, and occasionally on insect larva (Moyle 2002, p. 228). Delta smelt usually aggregate but do not appear to be strongly shoaling, and their swimming behavior likely makes schooling difficult (Moyle 2002, p. 228).

The delta smelt is one of six species currently recognized in the Hypomesus genus (Bennett 2005, p. 8), and genetic analyses have confirmed that it is a well-defined species with a single intermixing population (Stanley *et al.* 1995, p. 391; Trenham *et al.* 1998, p. 418). Within the genus, delta smelt is most closely related to surf smelt (*H. pretiosus*), a species common along the western coast of North America. In contrast, delta smelt is a comparatively distant relation to the wakasagi (*H. nipponensis*), which was introduced into Central Valley reservoirs in 1959 and is now sympatric with delta smelt in the estuary (Trenham *et al.* 1998, p. 417).

#### *Distribution and Abundance*

Delta smelt are endemic to (native and restricted to) the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Delta) in California, found only from the San Pablo Bay upstream through the Delta in Contra Costa, Sacramento, San Joaquin, Solano, and Yolo counties (Moyle 2002, p. 227). Their historical range is thought to have extended from San Pablo Bay upstream to at least the city of Sacramento on the Sacramento River and Mossdale on the San Joaquin River. They were once one of the most common pelagic (living in open water away from the bottom) fish in the upper

Sacramento-San Joaquin Estuary (Moyle 2002, p. 230).

Although exact population estimates are not possible to obtain for this species (Moyle 2002, p. 230), relative population levels have been monitored for several decades using various net surveys and counts of adults entrained by Federal and State water export facilities (Bennett 2005, p. 5). Based on those surveys, delta smelt population levels declined precipitously in 1982, leading to very low numbers from 1982 to 1991, and to their listing as a threatened species in 1993 (58 FR 12854; Moyle 2002, p. 230; CBD *et al.* 2006, p. 9). From 1992 to 2001, abundance levels stabilized, remaining generally low but within the bounds of pre-1980 levels. Recent surveys have shown another substantial drop, however, with record low abundance figures from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1). Bennett (2005, pp. 53, 54) conducted a population viability analysis based on known population trends, and found a 55 percent chance that the smelt population would reach a "point of no return" (quasi-extinction, estimated at 8,000 fish) within 20 years.

#### *Habitat and Life History*

The species requires specific environmental conditions (freshwater flow, water temperature, salinity) and habitat types (shallow open waters) within the estuary for migration, spawning, egg incubation, rearing, and larval and juvenile transport from spawning to rearing habitats (Moyle 2002, pp. 228–229). Delta smelt are a moderately euryhaline species (tolerant of a wide salinity range), and most individual fish live only one year (Moyle 2002, p. 228). Although they are restricted to a relatively small geographic range, delta smelt use different parts of the estuary at different life history stages. They hatch, typically around May, from eggs laid 9 to 13 days earlier in the slow-moving, freshwater spawning grounds of the upper Delta and lower Sacramento River, and in Montezuma Slough near Suisun Bay (Moyle 2002, pp. 228, 229). After several weeks of development, larvae are swept downstream until they reach a point (typically in Suisun Bay) where the salinity reaches about 2 to 7 parts per thousand (ppt). This is the beginning of the "mixing zone" where fresh and brackish water meet. Juvenile smelt tend to seek out that salinity level, and will rear and grow there for several months, preferring relatively shallow open water (Moyle 2002, p. 228). The mixing zone is typically located in Suisun Bay, but moves farther upstream when

freshwater outflows are reduced (Moyle 2002, p. 230). Federal and State water pumps can affect outflows by exporting large amounts of fresh water from the southern portion of the Delta for agricultural and municipal uses. Thousands of smaller water diversions throughout the Delta also export water for local agriculture. Additionally, two power plants located in Antioch and Pittsburg, California, use Delta water for cooling (Bennett 2005, p. 34; Armor 2005, p. 2).

Around September or October, delta smelt reach adulthood and begin a gradual migration back upstream to the spawning areas. Spawning can occur any time between February and July, but most spawning takes place from early April to mid-May, in water temperatures ranging from 7 to 15 degrees Celsius (45 to 59 degrees Fahrenheit) (Moyle 2002, p. 229). Although spawning has not been observed in the wild, the eggs are thought to attach to substrates such as cattails, tules, tree roots, and submerged branches, and the spawning areas most likely contain gravel, sand, or other submerged material that is washed by gentle currents close to the main river channel (Wang 1991, p. 11; Moyle 2002, p. 229). Most delta smelt die after spawning, but a small contingent of adults survive and can spawn in their second year (Moyle 2002, p. 228).

The petitioners referred to the Service's December 19, 1994, critical habitat determination (59 FR 65256) for descriptions of the specific habitat conditions required for spawning, larval and juvenile transport, rearing, and adult migration.

#### **Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information on threats to the delta smelt presented in the March 2006 petition, and other information available in our files at the time of the petition review, constitute substantial scientific or

commercial information such that reclassification from threatened to endangered under the Act may be warranted. A brief evaluation of this information is presented below.

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

The petition notes that water diversions, particularly from the large Federal and State pumping stations in the southern portion of the Delta, can modify the smelt's habitat in three ways. First, they remove planktonic food organisms out of the water. Second, they diminish freshwater outflows, causing the mixing zone to move upstream and away from Suisun Bay where the best rearing habitat is located. Third, the large Federal and State pumps can actually halt and reverse flows in the southern Delta, potentially interfering with both the transport of plankton and smelt larvae downstream and with the spawning migration of adult smelt upstream (CBD *et al.* 2006, pp. 13, 14).

The petition also notes that the diversions entrain and kill smelt directly. This is not technically a habitat alteration, but we consider it here because the direct effects of freshwater diversions are intertwined with their impacts to habitat. The petition states that the State and Federal pumping stations have shown an increase in recent years in number of delta smelt entrained relative to their abundance (CBD *et al.* 2006, p. 16). The increase is concurrent with recent increases in water pumped from the facilities, particularly during the winter when migrating adult smelt are most likely to be in the vicinity (CBD *et al.* 2006, p. 15). Additionally, because the Federal and State pumps only monitor impacts to smelt longer than 20 mm (0.8 in.), direct impacts to smaller smelt remain unknown. The petition does note, however, that summer trawl net surveys showed a serious drop in juvenile smelt in the south Delta in the mid-1970s, during which time Federal and State exports from the Delta were increased (CBD *et al.* 2006, pp. 15, 16). Monitoring of direct impacts is absent at the 1,800 smaller agricultural diversions throughout the Delta, and at the two power plants that use Delta water for cooling (CBD *et al.* 2006, p. 14).

The combined habitat destruction or modification (Factor A) and direct impacts from water diversions are difficult to quantify, but potentially serious. The petition cites a 2005 analysis showing a significant inverse correlation between smelt population, winter water export rates, and numbers of adult and juvenile smelt sampled

later in the year (CBD *et al.* 2006, p. 17). Armor (*et al.* 2005, p. 39) supports this, noting that the data on wintertime entrainment “reveal a consistent pattern across species that corresponds with the period of fish declines.”

In summary, habitat destruction and modification (Factor A), as well as direct impacts from water diversions, threaten the continued existence of delta smelt, as they did at the time of the original listing of the species. Record or near record low delta smelt abundance indices from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, pp. 1–2), indicate that these existing threats may now be more imminent than at the time of listing. The delta smelt abundance indices for 2002 and 2003 are at or slightly above the 1994 low, and indices for 2004 to 2007 are less than half to near a quarter of the 1994 low (CDFG 2008, p. 2). As a consequence, we conclude that substantial information is provided to indicate that reclassification of delta smelt from threatened to endangered due to destruction, modification, or curtailment of its habitat may be warranted.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition provides no information documenting current or future threats under this factor, and we do not have any information in our files to indicate that overutilization for commercial, recreational, scientific, or educational purposes threaten delta smelt. Therefore we conclude that there is no substantial scientific or commercial information to indicate that reclassifying delta smelt from threatened to endangered may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes. However, all factors, including threats from commercial, recreational, scientific, or educational activities, will be evaluated when we conduct our status review.

#### C. Disease or Predation

The petition acknowledges a lack of evidence to indicate that delta smelt populations have declined due to disease or predation (CBD *et al.* 2006, p. 20). It does note, however, that striped bass (*Morone saxatilis*, a nonnative predatory species) may have been maintained at artificially high levels relative to potential prey species, such as the delta smelt, under a stocking program carried out until 2004 by the California Department of Fish and Game (Service 2004, p. 6; CBD *et al.* 2006, p. 20). The petition also notes that inland silverside (*Menidia beryllina*, a

nonnative species feeding primarily on plankton) may prey on delta smelt eggs and larvae, as well as compete with delta smelt for planktonic food. Other introduced species that may be preying on eggs or larvae of delta smelt include the chameleon goby (*Tridentiger trigonocephalus*) and the yellowfin goby (*Acanthogobius flavimanus*).

The petitioner cites a lack of evidence that disease and predation threaten delta smelt, and we do not have substantial information in our files to suggest that disease and predation threaten delta smelt. Therefore, we conclude that there is no substantial scientific or commercial information to indicate that threats from disease or predation may warrant reclassification of delta smelt from threatened to endangered. However, all factors, including threats from disease or predation, will be evaluated when we conduct our status review.

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

The petition presents information regarding existing and planned regulatory mechanisms and their perceived inadequacy, stating that the current export criteria in the water rights permits issued under the State Water Resources Control Board regulations allow export operations at levels that exceed those necessary to maintain healthy delta smelt populations. The petitioners state that dedications of water for the environment and of money for supplemental acquisitions of environmental water mandated in the 1992 Central Valley Project Improvement Act intended to reduce the negative impacts of the Federal water project on fish and wildlife have not been fully or aggressively implemented. The petition claims that the CALFED (joint California State and Federal government) Bay-Delta Program has been largely ineffective in addressing environmental problems in the Delta, and that its future status is uncertain. The petition states that the Service’s most recent biological opinion for protection of the species relied heavily on the CALFED Environmental Water Account, which has failed to provide detectable benefits for delta smelt. The petition also states that the South Delta Improvements Program, in the process of being approved by Federal and State agencies at the time of the petition, would increase Delta water exports and install permanent tidal barriers that further modify Delta flow patterns and habitat.

In summary, the petition points out that numerous changes have occurred

since the time of the species’ listing, and suggests that the regulatory mechanisms governing such changes have not provided adequate conservation for delta smelt. Given that delta smelt abundance indices from 2002 through 2007 have been at record lows (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), we conclude that substantial information is presented in the petition to indicate that reclassification of delta smelt from threatened to endangered due to the inadequacy of existing regulatory mechanisms may be warranted.

#### E. Other Natural or Manmade Factors Affecting the Species’ Continued Existence

The petition presents information asserting that threats from low population size, nonnative species, and lethal and sublethal effects of toxic chemicals may have changed since we listed the delta smelt as threatened. The petition presents information concerning the delta smelt’s population size and extinction probability, stating this information indicates that the delta smelt is at risk of falling below an effective population size and losing genetic integrity, and is therefore in danger of becoming extinct. The petition also states that increased competition by nonnative species, such as the clam *Corbula amurensis*, has reduced the availability of the delta smelt’s planktonic food supply. Additionally, the petition cites the threat of lethal and sublethal effects of toxic chemicals, such as pesticides discharged and transported from upstream into the Delta.

We have substantial information in our files to indicate that the delta smelt abundance indices from 2002 through 2007 have been at record lows (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1). According to recent fish survey information collected by the California Department of Fish and Game (CDFG) (Fall Midwater Trawl (FMWT)), the average catch of delta smelt declined to the lowest level since the surveys began in 1967 (CDFG 2008, p. 1). We do not have substantial information in our files to indicate that competition from nonnative species has changed since the time we listed the delta smelt as threatened. We also do not have substantial information in our files to indicate that lethal and sublethal effects of toxic chemicals have changed since the time we listed the delta smelt as threatened. Toxic chemicals are present in the San Francisco Bay-Delta; however, it is uncertain what effect these chemicals have on delta smelt (Bennett 2005, p. 44). For example, in

2008, the Pelagic Organism Decline (POD) Working Group summarized and provided a progress report of the studies and information collected in 2007 by the Interagency Ecological Program (IEP) (Baxter *et al.* 2008, pp. 1–52). The summary report did identify contaminants as having possible effects during flow pulses in the winter, but there is no evidence currently available that these pulse events cause toxicity to delta smelt (Baxter *et al.* 2008, p. 29).

We conclude that the petition presents substantial information to indicate a significant reduction in the population size of delta smelt since the time of listing and that reclassification of delta smelt from threatened to endangered may be warranted.

### Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to information available in our files. Based on this review, we find the petition presents substantial information that reclassification of the delta smelt from threatened to endangered may be warranted.

When we listed the delta smelt as threatened in 1993, the factors identified that threatened the species' continued existence included threats such as: water diversions, inadequacy of existing regulatory mechanisms, introduced species, and contaminants. For the most part, these factors continue to threaten the species, although the degree to which they each affect delta smelt populations likely has changed. Recent surveys have shown a substantial decline in delta smelt abundance from 2002 through 2007 (Armor *et al.* 2005, p. 3; Bennett 2005, p. 2; CDFG 2008, p. 1), indicating that the threats may be of higher magnitude or imminence than was thought at the time of listing.

As discussed above, we believe the petition provides substantial information indicating that a reclassification from threatened to endangered may be warranted. Specifically, substantial information was provided under Factor A (habitat loss, and water diversions), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (low population size). Therefore, we are initiating a status review to determine if reclassifying the species from threatened to endangered is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

### Significant Portion of the Species' Range

The petitioners seek to reclassify the delta smelt as endangered, indicating the species is in danger of extinction throughout all or a significant portion of its range. During our status review we will evaluate whether the best scientific and commercial information available supports reclassification and whether there may be a portion of the delta smelt's range that may be significant. As a result we will provide our analysis of significant portion of range in the 12-month finding.

### References Cited

A complete list of all references cited in this document is available, upon request, from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authors

The primary authors of this notice are staff of the California and Nevada Regional Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825.

### Authority

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

Dated: July 2, 2008.

### Kenneth Stansell,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. E8–15747 Filed 7–9–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080627793–8795–01]

RIN 0648–AW81

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery

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

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

**SUMMARY:** NMFS is proposing to implement a new management measure for the monkfish fishery recommended in Framework Adjustment 6

(Framework 6) to the Monkfish Fishery Management Plan (FMP), which has been submitted jointly by the New England and Mid-Atlantic Fishery Management Councils (Councils). This action would eliminate the backstop provision adopted in Framework Adjustment 4 (Framework 4) to the FMP, which was implemented in October 2007. This provision would have adjusted, and possibly closed, the directed monkfish fishery in fishing year (FY) 2009 if the landings in FY 2007 exceeded the target total allowable catch (TTAC). Given the most recent information on the status of monkfish stocks, the backstop provision is no longer deemed necessary.

**DATES:** Written comments must be received no later than 5 p.m. eastern standard time, on August 11, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number 0648–AW81, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov>.
- Fax: (978) 281–9135, Attn: Emily Bryant.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Monkfish Framework 6.”

**Instructions:** All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying 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 via Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only. Copies of the Environmental Assessment (EA), including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), prepared for Framework 6 are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA, 01950. The document is also available online at [www.nefmc.org](http://www.nefmc.org).

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, phone (978) 281–9244, fax (978) 281–9135.