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**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or are available for viewing and copying at the Site information repositories located at: U.S. EPA Montana Office, Federal Building, Suite 3200, 10 West 15th Street, Helena, MT 59626, (406) 457-5000.

Viewing Hours: Mon.–Fri. 8 a.m. to 5 p.m., excluding holidays. Stillwater County Library, 27 North 4th Street; PO Box 266, Columbus, MT 59019-0266, 406-322-5009. Hours: (Library hours vary)

**FOR FURTHER INFORMATION CONTACT:**

Roger Hoogerheide, Remedial Project Manager, 8MO, [hoogerheide.roger@epa.gov](mailto:hoogerheide.roger@epa.gov), U.S. EPA, Region 8—Montana Office, 10 W. 15th St., Suite 3200, Helena, Montana 59626, (406) 457-5031 or 1-866-457-2690, extension 5031.

**SUPPLEMENTARY INFORMATION:** In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for the surface and subsurface soils component of the Mout Industries Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We

have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: March 10, 2009.

**Carol Rushin,**

*Acting Regional Administrator, Region 8.*

[FR Doc. E9-6143 Filed 3-23-09; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[FWS-R1-ES-2008-0128; MO 922105 0083-B2]

**RIN 1018-AW72**

**Endangered and Threatened Wildlife and Plants; Determination of Significant Portion of the Range of Marine and Estuarine Areas of the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*)**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** On July 5, 2002, we, the U.S. Fish and Wildlife Service (Service), published a withdrawal of the proposed rule to list the Southwestern Washington/Columbia River distinct population segment (DPS) of the coastal cutthroat trout (*Oncorhynchus clarki clarki*) as threatened under the Endangered Species Act of 1973, as amended (Act). As a result of litigation, we are now reconsidering our withdrawal of the proposed rule with specific regard to the question of whether the marine and estuarine areas may constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout, and if so, whether that portion is threatened or endangered. We hereby notify the public, other concerned governmental agencies, the scientific community, industry, and any other interested party of our request for information, data, or comments on the marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout, with particular regard to whether these areas constitute a significant portion of the range of the DPS under the Act, and if so, whether the subspecies is threatened or endangered in those areas.

**DATES:** We will accept information received on or before April 23, 2009.

**ADDRESSES:** You may submit comments 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-R1-ES-2008-0128; 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 comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the "Public Comments" section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Ph.D, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone 503-231-6179; facsimile 503-231-6195. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

To ensure that any action resulting from this request for information will be

based on the best scientific and commercial data available and will be as accurate as possible, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties. We particularly seek comments concerning:

(1) Information on those marine and estuarine areas that could potentially constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout, and the suggested boundaries of those areas;

(2) Information on whether and why those marine and estuarine areas constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout as defined by sections 3(6) or 3(20) of the Act; and

(3) Other information on the status, distribution, population trends, abundance, habitat conditions, or threats specific to those marine and estuarine areas that could constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout.

(4) Information on the effects of potential threat factors that are the basis for a species' listing determination under section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*; the "five listing factors") specifically with respect to those marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout. The five listing factors considered under the Act are:

(a) The 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) Inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

We define "estuary" to mean a semi-enclosed coastal body of water that has a free connection with the open sea and within which sea water is measurably diluted with fresh water derived from land drainage (Lauff 1967, as cited in ISAB 2000, p. 2). For example, although the Columbia River is tidally influenced up to Bonneville Dam at river mile 146 (235 river kilometers), saltwater intrusion is generally limited to the lower 23 river miles (37 river kilometers) (near Harrington Point) at the minimum regulated monthly flow (Neal 1972, as cited in ISAB 2000, p. 2),

although when lower daily flows occur salt intrusion can extend past Pillar Rock at river mile 28 (45 river kilometers).

Please note that comments 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, because section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

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

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment 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 comments on <http://www.regulations.gov>.

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

### Background

The coastal cutthroat trout is one of 10 formally described subspecies of cutthroat trout (Behnke 1992, p. 53). Coastal cutthroat trout are distributed along the Pacific Coast of North America from Prince William Sound in Alaska to the Eel River in California (Behnke 1992, p. 65; Trotter 1997, p. 7), and inland from the Coast Range of Alaska to roughly the crest of the Cascades of Washington and Oregon (Trotter 1997, p. 7). In January 1999, the National Marine Fisheries Service (NMFS) completed a status review of coastal cutthroat trout from Washington, Oregon, and California. The status review identified six Evolutionarily Significant Units (ESUs) across this range based on biogeographic, life history, and genetic information. The six ESUs identified were Puget Sound, Olympic Peninsula, Southwestern

Washington/Columbia River, Upper Willamette River, Oregon Coast, and Southern Oregon/California Coasts (Johnson *et al.* 1999, p. 125).

On April 5, 1999, the NMFS and the Service issued a joint proposal to list the Southwestern Washington/Columbia River population of the coastal cutthroat trout as a threatened species under the Act (64 FR 16397). Although the NMFS uses the term ESU for such a population, when the Service assumed sole regulatory jurisdiction of the coastal cutthroat trout under the Act in April 2000 (65 FR 21376; April 21, 2000), we began using the term Distinct Population Segment (DPS), which is the terminology normally utilized for such analogous entities by the Service.

The Southwestern Washington/Columbia River DPS that is the subject of this request for information includes the Columbia River and its tributaries from the mouth to the Klickitat River on the Washington side of the river and Fifteenmile Creek on the Oregon side; the Willamette River and its tributaries from its confluence with the Columbia upstream to Willamette Falls; Willapa Bay and its tributaries; and Grays Harbor and its tributaries. The DPS inhabits portions of five ecoregions: the Coast Range, Puget Lowland, Cascades, Willamette Valley, and Eastern Cascades. Most of the DPS occurs in the Coast Range, Puget Lowland, and Cascades. A more detailed description of the DPS can be found in the April 5, 1999, proposed rule (64 FR 16397).

Relatively little is known about the specific life history and habitat requirements of coastal cutthroat trout. Coastal cutthroat trout spend more time in the freshwater environment and make more extensive use of this habitat, particularly small streams, than do most other Pacific salmonids (Johnson *et al.* 1999, p. 44). The life history of coastal cutthroat trout may be one of the most complex of any Pacific salmonid. Coastal cutthroat trout exhibit a variety of life history strategies across their range that includes three basic variations: resident or primarily nonmigratory, freshwater migrants, and marine migrants (Northcote 1997, p.20; Johnson *et al.* 1999, pp. 11, 44-45). Residents may stay within the same stream segment their entire life. Freshwater migrants may make migrations from small tributaries to larger tributaries or rivers, or may migrate from tributary streams to lakes or reservoirs. Marine migrations (anadromy) are generally thought to be limited to near-shore marine areas; individuals may not venture out of the estuary in some cases (Trotter 1997, p.10).

There are numerous exceptions to these generalized behaviors. We also lack observations of definitive genetic relationships between individual or population-wide migratory strategies (Behnke 1997, p. 5). In areas above long-standing barriers, coastal cutthroat trout are limited to resident or freshwater migratory life history strategies. In areas accessible to the ocean, all three life history strategies (resident, freshwater migratory, and anadromous) are likely to be expressed in the same area. Coastal cutthroat trout appear to exhibit very flexible life history strategies. The extent to which individuals expressing these various strategies are isolated from other life history forms is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors in their life time (Johnson *et al.* 1999, pp. 40-43). The diverse life history strategies shown by coastal cutthroat trout are not well understood, but are thought to represent unique adaptations to local environments and the subspecies' response to environmental variability and unpredictability.

For additional information on the biology, habitat, and range of coastal cutthroat trout, please refer to the proposed rule (64 FR 16397; April 5, 1999) and withdrawal of the proposed rule (67 FR 44934; July 5, 2002).

#### Previous Federal Actions

The NMFS and the Service jointly published a proposed rule to list the Southwestern Washington/Columbia River ESU (later DPS) of coastal cutthroat trout as a threatened population under the distinct vertebrate population segment provision of the Act on April 5, 1999 (64 FR 16397). In that proposed rule, we noted the uncertainty regarding which agency, the NMFS or the Service, had jurisdiction over the coastal cutthroat trout, and we committed to notify the public once the issue had been resolved. Subsequently, the time to make a final determination on the proposed rule was extended for an additional 6 months, from April 5, 2000 to October 5, 2000, due to substantial scientific disagreement about the status of the population; this action further opened an additional 30-day comment period (65 FR 20123; April 14, 2000). On April 21, 2000, the NMFS and the Service published a notice of the Service's assumption of sole jurisdiction for coastal cutthroat trout under the Act (65 FR 21376). On June 2, 2000, we again reopened the comment period on the proposed rule and announced a public hearing to be held in Ilwaco, Washington, on June 20, 2000, to allow all interested parties to

submit oral or written comments on the proposal (65 FR 35315).

On July 14, 2000, we published a notice to clarify the take prohibitions for the Southwestern Washington/Columbia River DPS of coastal cutthroat trout that would apply if the proposed listing were to be finalized and provided a 30-day public comment period on the list of activities that would, and would not, likely constitute a violation of section 9 of the Act (65 FR 43730). The comment period on the clarification of take prohibitions was reopened on September 6, 2000 (65 FR 53974), and a hearing was held September 21, 2000, in Aberdeen, Washington, based on a request during the initial public comment period. In addition, the comment period on the proposed rule to list the Southwestern Washington/Columbia River DPS of coastal cutthroat trout was again reopened for an additional 30 days on November 23, 2001 (66 FR 58706).

On July 5, 2002, we published a notice of withdrawal of the proposed rule to list the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout as threatened (67 FR 44934). The notice set forth the following bases for our determination that the DPS did not meet the listing criteria as a threatened species: (1) new data indicating that coastal cutthroat trout are more abundant in southwest Washington than was previously thought and that population sizes were comparable to those of healthy populations in other areas; (2) new information and analyses calling into question prior interpretation of the size of the anadromous portion of the population in the Columbia River and indicating higher numbers than previously described; (3) new data and analyses no longer showing declining adult populations in the Grays Harbor tributaries; (4) new analyses calling into question the past interpretation of trend data, and therefore the magnitude of the trend in the anadromous portion of the population in the Columbia River; (5) new information describing the production of anadromous progeny by non-anadromous and above-barrier cutthroat trout; and, (6) two large-scale Habitat Conservation Plans (HCPs) and significant changes in Washington Forest Practices Regulations substantially reducing threats to aquatic and riparian habitat on forest lands in Washington. The withdrawal notice concluded that, based on reduced threats and new information and understanding regarding the status of the DPS, the Southwestern Washington/Columbia River DPS of coastal cutthroat trout was not in danger of becoming

endangered in the foreseeable future, and therefore did not meet the definition of a threatened species.

On February 3, 2005, the Center for Biological Diversity, Oregon Natural Resources Council, Pacific Rivers Council, and WaterWatch filed a legal challenge to the Service's withdrawal of the proposed listing in the U.S. District Court for the District of Oregon (*Center for Biological Diversity, et al. v. U.S. Fish and Wildlife Service*, Case No. 05-165-KI). The Court ruled that the Service's decision to withdraw the proposed rule complied with the Act and was not arbitrary and capricious, and dismissed the action on November 16, 2005. Plaintiffs appealed. On April 18, 2008, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision in part and reversed the decision in part. The Ninth Circuit found no error in the Service's determination that the DPS as a whole did not merit listing, but held that the Service had failed to consider whether the marine and estuarine portions of the DPS constitute a significant portion of the range of the coastal cutthroat trout within that DPS under the Act (*Center for Biological Diversity, et al. v. U.S. Fish and Wildlife Service*, 2008 U.S. App. LEXIS 8701 (9th Cir. 2008)). The Ninth Circuit reversed the district court's decision and remanded the matter to the district court.

On July 1, 2008, the U.S. District Court for the District of Oregon issued an amended order remanding the listing decision to the Service for further consideration consistent with the opinion of the Ninth Circuit. Specifically, the court directed the Service to consider whether the estuary and other marine areas constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout. The Service will complete its review of the best available information, including data, information, and comments submitted during this comment period, to comply with that order.

At this time, we are soliciting new information on the coastal cutthroat trout in the marine and estuarine areas of the Southwestern Washington/Columbia River DPS, and specifically in regard to whether these areas represent a significant portion of the range of this DPS. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources. We request information regarding data from any systematic surveys, as well as any studies or

analysis of data regarding population size or trends; biology or ecology of the subspecies; effects of current land management on population distribution and abundance; current condition of habitat; and conservation measures that have been implemented to benefit the subspecies specific to the marine and estuarine areas of the Southwestern Washington/Columbia River DPS. Additionally, we request information on threats to the coastal cutthroat trout in the marine and estuarine areas of the Southwestern Washington/Columbia River DPS in relation to the five listing factors (as defined in section 4(a)(1) of the Act).

At the conclusion of our review, we will issue a new determination on the April 5, 1999 proposed rule concerning whether the marine and estuarine areas of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout constitute a significant portion of the range of the DPS, and if so, whether such significant portion of the range warrants listing. We will base our determination on a review of the best scientific and commercial information available, including all information received as a result of this notice.

#### References Cited

A complete list of all references we cited in this document is available on the Internet at <http://www.regulations.gov> or by contacting the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this notice are the staff of the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

#### Authority

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

Dated: March 11, 2009

#### Paul R. Schmidt

Acting Director, Fish and Wildlife Service  
[FR Doc. E9-5890 Filed 3-23-09; 8:45 am]

**BILLING CODE 4310-55-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-AX42

#### Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85

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

**ACTION:** Notification of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council submitted Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) to NMFS for review. If approved, Amendment 85 would modify the GOA FMP and the Central Gulf of Alaska Rockfish Program to remove a restriction that prohibits certain catcher/processors from participating in directed groundfish fisheries in the Bering Sea and Aleutian Islands Management Area in July. This action is necessary to improve flexibility and reduce operating costs for catcher/processors that participate in the Central Gulf of Alaska Rockfish Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the GOA FMP, and other applicable laws.

**DATES:** Comments on the amendment must be received on or before May 26, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AX42," by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- **Mail:** P. O. Box 21668, Juneau, AK 99802.
- **Fax:** 907-586-7557.
- **Hand delivery to the Federal Building:** 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address)

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 (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the categorical exclusion prepared for this action, and the Environmental Assessment (EA), RIR, and Final Regulatory Flexibility Analysis (FRFA) prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228, or Rachel Baker, 907-586-7425.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of Alaska are managed under the GOA FMP and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act. Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108-199) granted NMFS specific authority to manage Central Gulf of Alaska (GOA) rockfish fisheries, and directed the Secretary, in consultation with the Council, to