Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Parts 1509 and 1552.

Government procurement.

Dated: October 18, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1509 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

PART 1509—[AMENDED]

2. Section 1509.170–3 is amended by revising paragraphs (a), (c), and adding paragraph (d) to read as follows:

1509.170–3 Applicability.

(a) This subpart applies to all EPA acquisitions in excess of $100,000, except for architect-engineer acquisitions, acquisitions awarded under the Federal Acquisition Regulation (FAR) Subpart 8.6, Acquisitions from Federal Prison Industries, Incorporated, FAR Subpart 8.7, Acquisitions from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled, and FAR 13.5, Test Program for Certain Commercial Items. FAR 36.604 provides detailed instructions for architect-engineer contractor performance evaluations.

* * * * *

(c) EPA Form 1900–26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900–27, Project Officer's Evaluation of Contractor Performance, applies to all performance evaluations completed prior to May 26, 1999. Thereafter, EPA Forms 1900–26 and 1900–27 are obsolete, and contracting officers shall complete all contractor performance evaluations by use of the National Institutes of Health's Contractor Performance System in accordance with EPAAR paragraph (a) of this section.

(d) Construction acquisitions shall be completed by use of the NIH construction module. Performance evaluations for construction acquisitions shall be completed in accordance with EPAAR 1509.170–5.

3. Section 1509.170–4 is amended by revising the last sentence in paragraph (f) to read as follows:

1509.170–4 Definitions.

* * * * *

(f) * * * Performance categories include quality, cost control, timeliness of performance, business relations, compliance with labor standards, compliance with safety standards, and meeting Small Disadvantaged Business subcontracting requirements.

4. Section 1509.170–5 is amended by revising paragraph (b) to read as follows:

1509.170–5 Policy.

* * * * *

(b) For service type acquisitions, contracting officers shall use the National Institutes of Health (NIH) Contractor Performance System to record evaluations for all contract performance periods expiring after May 26, 1999. For construction type acquisitions, contracting officers shall use the NIH system to record evaluations for all contract performance periods expiring after December 2, 2002.

* * * * *

5. Section 1509.170–8 is amended by revising paragraph (b) to read as follows:

1509.170–8 Contractor Performance Report.

* * * * *

(b) The performance categories and ratings used in the evaluation of contractor performance are described in the clause at 1552.209–76. The NIH system provides instructions to assist contracting officers and project officers with completing evaluations.

PART 1552—[AMENDED]

6. Section 1552.209–76 is amended by revising the undesignated text between the section heading and paragraph (a), revising paragraphs (a)(2), (b)(2) and (b)(4) to read as follows:

1552.209–76 Contractor Performance Evaluations.

As prescribed in section 1509.170–1, insert the following clause in all applicable solicitations and contracts.

Contractor Performance Evaluations (October 2002)

The contracting officer shall complete a Contractor Performance Report (Report) within ninety (90) business days after the end of each 12 months of contract performance (interim Report) or after the last 12 months (or less) of contract performance (final Report) in accordance with EPAAR 1509.170–5. The contractor shall be evaluated based on the following ratings: 0 = Unsatisfactory, 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent, 5 = Outstanding, N/A = Not Applicable.

The contractor may be evaluated based on the following performance categories: Quality, Cost Control, Timeliness of Performance, Business Relations, Compliance with Labor Standards, Compliance with Safety Standards, and Meeting Small Disadvantaged Business Subcontracting Requirements.

(a) * * *

(2) Evaluate contractor performance and assign a rating for quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories (including a narrative for each rating);

* * * * *

(b) * * *

(2) Assign a rating for the business relations and meeting small disadvantaged business subcontracting requirements performance categories (including a narrative for each rating).

* * * * *

(4) Provide any additional information concerning the quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories if deemed appropriate for the evaluation or future evaluations (if any), and provide any information regarding subcontracts, key personnel, and customer satisfaction; and

* * * * *

[FR Doc. 02–27617 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Listing the Sacramento Splittail as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the

final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period, and will be fully considered in the final rule. We are reopening the comment period to solicit comments on the revised statistical analysis we have done to examine the available splittail abundance data, as described in our March 21, 2002 document, which also reopened the comment period to seek comments on this analysis. The statistical analyses published on January 12, 2001, May 8, 2001, and August 17, 2001 have been superseded by the March 21, 2002 analysis, on which we are now seeking additional comments.

In addition, we invite any additional comments on the status of the species and the factors affecting the species, as described in our prior documents of January 12, 2001, May 8, 2001, August 17, 2001, and March 21, 2002. Lastly, we point out that our March 21, 2002, document stated a comment period extending to October 15, 2002; this was revised to May 20, 2002, in a correction document published April 1, 2002.

DATES: We will accept public comments until December 2, 2002.

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

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

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

3. You may send comments by electronic mail (e-mail) to: *fw1splittail@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Splittail are endemic to certain waterways in California's Central Valley, where they were once widely distributed (Moyle 1976, Moyle 2002). Splittail presently occur in Suisun Bay, Suisun Marsh, the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary), the Estuary's tributaries (primarily the Sacramento and San Joaquin rivers), the Cosumnes River, the Napa River and Marsh, and the Petaluma River and Marsh. The splittail no longer occurs throughout a significant portion of its former range.

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

Subsequent to the publication of the final rule, plaintiffs in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* commenced action in Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C 551 *et seq.*). We, as directed by the court, and pursuant to the Act, provided notice of the opening of a comment period regarding the threatened status for the splittail, from January 12, 2001, to February 12, 2001 (66 FR 2828). In addition, we reopened the comment period on three additional occasions; from May 8, 2001, to June 7, 2001 (66 FR 23181); from August 17, 2001, to October 1, 2001 (66 FR 43145); and from March 21, 2002, to October 15, 2002 (67 FR 13095). The October 15, 2002, comment period closing date stated in 67 FR 13095 was corrected to May 20, 2002, via a correction document published on April 1, 2002 (67 FR 15337).

We are now reopening the comment period to solicit comments on the factors affecting the splittail (as first solicited in 66 FR 2828) and on the revised statistical analysis used to analyze the abundance data available for splittail, and to seek public comment on the status of the species (as solicited in 67 FR 13095). Upon the close of this comment period, we will make our determination whether the splittail warrants the continued protection of the Act.

The approach currently used by us to analyze the best scientifically and commercially available splittail abundance data differs from methods employed previously. In the February 8, 1999, final rule and the January 12, 2001, and May 8, 2001, reopenings of the comment periods, we relied primarily on the unstratified Mann-Whitney U-test approach utilized by Meng and Moyle (1995), first published in the *Transactions of the American Fisheries Society*. See 66 FR 2828 for a complete description of the Meng and Moyle (1995) method.

In the August 17, 2001, reopening of the comment period, we employed permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests to analyze data derived from the Meng and Moyle (1995), Sommer *et al.* (1997), and California Department of Fish and Game (CDFG) methodologies. We also employed a polynomial regression model and a crude exponential decay analysis in the August 17, 2001, comment period. See 66 FR 2828 for a complete description of the permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests method.

In the March 21, 2002, reopening, we employed a statistical analysis of an abundance index and Multiple Linear Regression (MLR) model jointly developed and submitted by the CDFG (Rempel 2001) and the United States Bureau of Reclamation (USBR) (Michny 2001). The model, hereafter referred to as the CDFG/USBR MLR model and described in detail in 67 FR 13095, was used to analyze data from: (1) CDFG's Fall Midwater Trawl (Fall MWT) survey; (2) CDFG's San Francisco Bay Midwater Trawl (Bay Study MW); (3) CDFG's San Francisco Bay Otter Trawl (Bay Study OT); (4) the University of California (UC) Davis Suisun Marsh Otter Trawl (Suisun Marsh OT); (5) our Chipps Island Trawl survey (Chipps Is. Trawl); (6) fish salvage operations (which repatriate fish taken from water intake screens) at the CVP Tracy Fish Collection Facility (CVP); and (7) fish salvage at the State Water Project (SWP) Skinner Delta Fish Protective Facility in the south Delta. See Moyle *et al.* 2001 in prep.; Meng and Moyle 1995; and Sommer *et al.* 1997, for descriptions of surveys.

The CDFG/USBR MLR model's four highest, statistically significant (at traditional levels) probabilities of a

nonzero downward splittail population trend are exhibited by the Suisun Marsh survey (Age-0 and adult) and in the data collected via fish salvage operations at the SWP (Age-1, and Age-2 and greater). The decline evident in the Chipps Island Trawl (Age-2 and greater) is nearly-statistically significant at traditional levels (94.3 percent probability). Two additional probabilities of a nonzero downward splittail population trend are evident at the 80 percent probability level; Chipps Island Trawl (Age-1) and SWP salvage (Age-0). *See* 67 FR 13095 for a complete description of the CDFG/USBR MLR model and our statistical analysis of its results.

We believe that all of the abundance monitoring data for splittail have methodological weaknesses of one sort or another; none of the surveys were designed specifically to rigorously estimate splittail population numbers. However, we believe that these existing data sets constitute the best available scientific information for the species.

Public Comments Solicited

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

You may send comments by electronic mail (e-mail) to: fw1splittail@fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN AH73]'' and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

Author

The primary author of this notice is Jason Douglas (*see* **ADDRESSES** section).

Authority

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

Dated: October 21, 2002.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27648 Filed 10–30–02; 8:45 am]

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