Author

The primary author of this notice is Daniel R. Brown (see **ADDRESSES** section).

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

Dated: September 16, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23942 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the California Golden Trout as 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 list the California golden trout (*Oncorhynchus mykiss aguabonita*) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that the listing of the California golden trout may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this subspecies.

DATES: The finding announced in this document was made September 12, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by November 19, 2002.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor (Attn: California golden trout), Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Moore or Jennifer Bain at the Sacramento Fish and Wildlife Office (see **ADDRESSES** above), or at 916/414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated, under our internal candidate assessment process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

On October 23, 2000, we received a petition dated October 13, 2000, to list the California golden trout (*Oncorhynchus mykiss aguabonita*) as endangered. The petition was submitted by Trout Unlimited. The letter clearly identified itself as a petition, and contained the name, signature, and address of the party submitting the petition. The petition requested that we list the California golden trout as an endangered species on an emergency basis, and that critical habitat be designated concurrent with listing. Included in the petition was supporting information relating to the subspecies' taxonomy and ecology, adequacy of existing regulatory mechanisms for the subspecies, historic and current distribution, present status, and potential causes of decline.

On February 8, 2001, Trout Unlimited sent a Notice of Intent to sue the Service for violating the Act by failing to make a 90-day finding as to whether the petition to list the California golden trout presents substantial information indicating that listing may be warranted. On November 29, 2001, Trout Unlimited filed a complaint in Federal District Court alleging we had violated the Act by failing to make a 90-day finding for their petition to list the California golden trout. On June 21, 2002, the court ruled in favor of the plaintiffs and ordered us to complete the 90-day finding by September 19, 2002.

The common name golden trout is due to its brilliant gold color on the lower sides and red orange coloring on the belly, cheeks, and central lateral band. Behnke (1992) describes the California golden trout as a subspecies of the rainbow trout (*Oncorhynchus mykiss*), though it is more closely related to the interior redband subspecies of *O. mykiss* than the coastal rainbow subspecies that now dominates most drainages in the southern Sierra. It is believed that the California golden trout and Little Kern golden trout (*O.m. whitei*) evolved from an invasion of sea-run rainbow trout 20,000 years ago (Stephens 2001). Isolations between drainages resulted in the independent evolution of the subspecies (Behnke 1992).

California golden trout have historically been found in the southern Sierra Nevada in Golden Trout Creek, its tributaries, and the upper reach and tributaries of the South Fork of the Kern River. The Golden Trout Creek watershed is 155 square kilometers (60 square miles). Golden Trout Creek drainage begins around elevation 3,292 meters (m) (10,800 feet (ft)) and extends to 2,134 m (7,000 ft) elevation at the confluence of Golden Trout Creek and the Kern River. Volcano Falls, just upstream of the confluence of Golden Trout Creek and the Kern River, acts as a barrier to upstream migrating fish. The South Fork of the Kern River begins around elevation 3,170 m (10,400 ft) at Mulkey Meadows and continues until it reaches Isabella Reservoir at elevation 794 m (2,605 ft). The petition states that the historic downstream limit of California golden trout was probably the gorge section of the river close to the present day Dome Land Wilderness. Currently, California golden trout on the South Fork of the Kern River are limited to the reach above the lowest artificial fish barrier, the Schaeffer barrier. However, this barrier has proven to be ineffective, and hybrid and non-native brown trout (*Salmo trutta*) have been found upstream of this barrier. California golden trout have been widely transplanted outside of their historic range. However, the petition states that the only area where non-hybridized California golden trout occur is within the Golden Trout Creek and the South Fork of the Kern River.

The petitioners cited four threats to the California golden trout. The three major threats include: (1) Hybridization with stocked rainbow trout (*Oncorhynchus mykiss*); (2) competition with non-native brown trout; and (3) habitat degradation from cattle (*Bos*

taurus) grazing. The fourth threat identified by the petitioners was inadequacy of existing regulatory mechanisms. Although the petitioners acknowledge that Federal and State agencies have made some attempts to address the problem of California golden trout declines, such measures and strategies have yet to improve overall subspecies survival.

The petition states that hybridization with rainbow trout is the most immediate and destructive threat that the California golden trout faces today. In Golden Trout Creek watershed, fish stocking has occurred in the historically fishless headwater lakes. These lakes were stocked with what has recently been determined as hybrid California golden trout broodstock from Cottonwood Lakes. Historically, the South Fork Kern River, or general vicinity, has been stocked with rainbow trout, hybridized golden trout, brown trout, and brook trout (*Salvelinus fontinalis*). The petition cites that in the Golden Trout Creek watershed, hybridized fish were present in some of the headwater lakes and had moved into Stokes Stringer, a tributary of Golden Trout Creek. The petition assumed that hybridized California golden trout also had moved into some of the other tributaries of Golden Trout Creek. A report by Cordes *et al.* (2001) examined the genetics of California golden trout populations in the headwaters of Golden Trout Creek. Trout with what are presumed to be rainbow trout alleles (genes) were found at low frequencies in two tributaries and five different locations of Golden Trout Creek. Prior to this study, hybridized California golden trout had not been found in Golden Trout Creek. In the South Fork Kern River watershed, the petition states that hybrid California golden trout were present between Schaeffer Barrier and Templeton Barrier and in Movie Stringer. The reach of the South Fork Kern River above Ramshaw Barrier was believed to contain pure California golden trout. However, the Cordes *et al.* (2001) report found that low frequencies of what are assumed to be rainbow trout alleles occurred in fish collected from the South Fork Kern River above the Ramshaw Barrier. Currently, the only known pure California golden trout inhabit a tributary to Golden Trout Creek, headwater streams of the South Fork Kern River (S. Stephens, California Department of Fish and Game (CDFG), pers. comm., 2002). Given this genetic data, it appears that only a small amount of California golden trout are genetically pure. The degree of hybridization in the current range of the California golden trout is not yet fully understood. However, recent data suggest it is more widespread than stated in the petition.

The petition suggests that competition for resources with non-native brown trout and rainbow trout, and predation by brown trout, is a threat to the California golden trout. Brown trout prey on all life stages of the California golden trout and can be found in about 230 kilometers (143 miles) of historic California golden trout habitat including the area between Templeton Barrier and Schaeffer Barrier (Stephens 2001). The CDFG and Inyo National Forest have made repeated efforts to eradicate brown trout from the California golden trout range by using piscicides (pesticide that is specific for fish) and then restocking the areas with California golden trout. They are continuing to investigate the current distribution of brown trout in the watershed (United States Forest Service (USFS) 2002a).

The petition lists habitat degradation due to livestock grazing as a threat to the California golden trout. Grazing along stream channels affects aquatic habitat by reducing vegetation, changing the width/depth ratio, adding sediment to the channel, and lowering the water table (Armour *et al.* 1991). Over time, the USFS has limited the number of cattle and duration of time on allotments in the current range of the California golden trout, but even with fewer cattle, degradation to the riparian zone continues (Knapp and Matthews 1996). In a study done by Knapp and Matthews (1996), livestock grazing was found to have negative effects on California golden trout populations. Livestock grazing can change and reduce vegetation, and widen and collapse banks (Armour *et al.* 1991). California golden trout prefer undercut banks and aquatic vegetation (Knapp and Dudley 1990; Mathews 1996a) and tend to avoid bare and collapsed banks (Matthews 1996b).

Four allotments are present in the range of the California golden trout. Beginning in the summer of 2001, the USFS decided to rest the Templeton and Whitney allotments from grazing for a period of 10 years. At the end of the 10-year period, an analysis will be completed to determine if grazing should be resumed, eliminated from the allotments, or if resting the allotments should continue (USFS 2001). A monitoring strategy is being developed by the Inyo National Forest to determine the rate of recovery of the watershed (USFS 2002b). The area will be allowed to naturally restore itself with some small amount of active restoration by the USFS (D. Hubbs, USFS, pers. comm., 2002). Portions of the other allotments, Monache and Mulkey, are still being actively grazed. These allotments also will be monitored under the monitoring strategy being developed by the USFS and compared to the Templeton and Whitney allotments.

The petition states there are inadequate regulatory mechanisms to protect the California golden trout. It also notes that there is an interagency Conservation Strategy for the Volcano Creek Golden Trout signed by CDFG, the Service, and USFS (USFS 1999). However, the Conservation Strategy does not meet the requirements set forth in our Draft Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE Policy) (65 FR 37102). Since we received the petition, a draft Implementation Plan for the California Golden Trout Conservation Strategy (Implementation Plan) dated May 15, 2002, has been prepared by USFS, CDFG, Trout Unlimited, and California Trout. The Implementation Plan has addressed many of the concerns with the Conservation Strategy identified in the petition, but still does not address all of the criteria identified in our PECE Policy. It is unclear from the Implementation Plan how many of the tasks have a high level of certainty that necessary funding is provided. Also, while monitoring is a part of all tasks, the Implementation Plan does not have quantifiable, scientifically valid parameters to demonstrate achievement of objectives and effectiveness of the conservation tasks.

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of best scientific and commercial information, we find the petition presents substantial information that listing this subspecies may be warranted. The main threat to the California golden trout is hybridization. Competition with non-native brown trout and habitat degradation due to cattle grazing, in combination with the threat of hybridization, place the California golden trout at risk. The current draft Implementation Plan is lacking the criteria necessary to improve the subspecies's status enough to make listing unnecessary.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We determined that an emergency listing is not warranted at this time. However, if at any time we determine that emergency listing of the California golden trout is warranted, we will seek to initiate an emergency listing. The petitioners also requested

that critical habitat be designated for this subspecies. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the California golden trout is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing 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 on the California golden trout. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the California golden trout. We are seeking information regarding historic and current distribution, the subspecies' biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

Armour, C.L., D.A. Duff, W. Elmore. 1991. The effects of livestock grazing on riparian and stream ecosystems. Fisheries 16(1):7–11.

Behnke, R.J. 1992. Native trout of the western North America. American Fisheries Society Monograph 6. Pages 162–174, 187–192.

Cordes, J.F., M.A. Blumberg, G.A.E. Gall, B. May. 2001. Genetic status of California golden trout populations in the headwaters of Golden Trout Creek. Report to the Threatened Trout Committee, California Department of Fish and Game. 40 pp.

Knapp, R.A. and T.L. Dudley. 1990. Growth and longevity of golden trout, *Oncorhynchus aguabonita,* in their native streams. California Fish and Game 76(3):161–173.

Knapp, R.A. and K. Matthews. 1996. Livestock grazing, golden trout, and streams in the Golden Trout Wilderness, California: Impacts and management implications. North American Journal of Fisheries Management 16:805–820.

Mathews, K.R. 1996a. Diel movement and habitat use of California golden trout in the Golden Trout Wilderness, California. Transactions of the American Fisheries Society 125:78–86.

Mathews, K.R. 1996b. Habitat selection movement patterns of California golden trout in degraded and recovering stream sections in the Golden Trout Wilderness, California. North American Journal of Fisheries Management 16:579–590.

Stephens, S.J. 2001. Draft-Biology, management and threats to the California golden trout. California Department of Fish and Game. 71 pp.

United States Forest Service (USFS). 1999. Conservation strategy for the Volcano Creek golden trout. Inyo National Forest, California Department of Fish and Game, and U.S. Fish and Wildlife Service. 18 pp.

United States Forest Service (USFS). 2001. Decision notice and finding of no significant impact, Templeton and Whitney grazing allotments. Inyo National Forest, Bishop, California. 10 pp. + appendices.

United States Forest Service (USFS). 2002a. Draft implementation plan for the California golden trout conservation strategy. Inyo National Forest, California Department of Fish and Game, and U.S. Fish and Wildlife Service. 23 pp. + appendices.

United States Forest Service (USFS). 2002b. Draft monitoring strategy Whitney and Templeton grazing allotments. Inyo National Forest, Bishop, California. 10 pp.

Author

The primary author of this document is Jennifer Bain, Sacramento Fish and Wildlife Office (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: September 12, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–23941 Filed 9–19–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–2160–01; I.D. 061902C]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.)and west to the 120°W. long., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. NMFS has determined that the incidental take of loggerhead sea turtles by this fishery is dependent on the area and season being fished during these oceanographic conditions. Time and area closures will result in a reduction in the amount of take of loggerheads by the fishery and are necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead population.

DATES: Comments on this proposed rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Daylight Time, on October 21, 2002. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send comments on this proposed rule to Tim Price, National Marine Fisheries Service, Protected Resources Division, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or by fax (562) 980–4027. Copies of the Environmental Assessment (EA) or biological opinion (BO) may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or are available on the internet at *http://swr.ucsd.edu/*.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.