

We invite comment on all aspects of this proposal. Any person that wishes to participate as a party of record in this matter must notify us of this intent by May 28, 1998. In order to be designated a party of record, a person must satisfy the filing requirements outlined in the ADDRESSES section. We will then compile and issue a service list. Copies of comments and replies must be served on all persons designated on the list as a party of record. Comments on the proposal are due June 15, 1998; replies are due July 15, 1998.

A copy of this decision is being served on all parties on the service list in Ex Parte No. 575. This decision will serve as notice that persons who were parties of record in the Ex Parte 575 proceeding will not be placed on the service list in the Ex Parte 628 proceeding unless they notify us of their intent to participate therein.

The Board preliminarily certifies that the proposed rules, if adopted, would not have a significant effect on a substantial number of small entities. While the proposed rules, if adopted, may ease the burdens on obtaining alternative rail service in the limited situations described, we do not expect them to affect a substantial number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1146

Administrative practice and procedures, Railroads.

Decided: May 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1146, consisting of § 1146.1, is proposed to be added to read as follows:

PART 1146—EXPEDITED RELIEF FOR SERVICE INADEQUACIES

1. The authority for part 1146 will read as follows:

Authority: 49 U.S.C. 721, 11102, 11123, and 10705.

§ 1146.1 Prescription of Alternative Rail Service

(a) *General.* Alternative rail service will be prescribed under 49 U.S.C. 11102(a), 11102(c), 10705(a), or 11123(a), if the Board determines that, over an identified period of time, there

has been a substantial, measurable deterioration in rail service provided by the incumbent carrier.

(b)(1) *Petition for Relief.* Parties may seek relief described in paragraph (a) of this section by filing an appropriate petition containing:

(i) A full explanation, together with all supporting evidence, to demonstrate that the standard for relief contained in paragraph (a) of this section is met;

(ii) A summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with the shipper's needs within a reasonable period of time;

(iii) A commitment from another available railroad to provide alternative service that would meet the shipper's service needs, and how that carrier would provide the service safely without degrading service to its existing customers or unreasonably interfering with the incumbent's overall ability to provide service; and

(iv) A certification of service of the petition, by overnight delivery, on the incumbent carrier.

(2) *Reply.* The incumbent carrier must file a reply to a petition under this subsection within five (5) business days.

(3) *Rebuttal.* The party requesting relief may file rebuttal no more than three (3) business days later.

(c) *Presumption of Continuing Need.* Unless otherwise indicated in the Board's order, a Board order issued under paragraph (a) of this section that prescribes relief under 49 U.S.C.

11123(a) shall establish a rebuttable presumption that the transportation emergency will continue for more than 30 days from the date of that order.

(d)(1) *Petition to Terminate Relief.* Should the Board prescribe alternative rail service under paragraph (a) of this section, the incumbent carrier may subsequently file a petition to terminate that relief. Such a petition shall contain a full explanation, together with all supporting evidence, to demonstrate that the carrier is providing, or is prepared to provide, adequate service to affected shippers. Absent special circumstances, carriers are discouraged from filing such a petition less than 90 days after relief is granted under paragraph (a) of this section.

(2) *Reply.* Parties must file replies to petitions to terminate filed under this subsection within five (5) business days.

(3) *Rebuttal.* The incumbent carrier may file any rebuttal no more than three (3) business days later.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on the Proposed Threatened Status of the Sacramento Splittail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the reopening of the comment period for the proposed threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*). The comment period has been reopened to acquire additional information on the status, abundance and distribution of the Sacramento splittail in the Central Valley of California.

DATES: Comments received by July 17, 1998 will be considered by the Service.

ADDRESSES: Written comments, materials and data, and available reports and articles concerning this proposal should be sent directly to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Thabault, at the address listed above (telephone 916/979-2725, facsimile 916/979-2723).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (*Pogonichthys macrolepidotus*), is the only large cyprinid that is endemic to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River, as far south as the present-day site of Friant Dam on the San Joaquin River, and as far upstream as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908).

In recent times, dams and diversions have increasingly prevented upstream access to large rivers, and the species is now apparently restricted to a small portion of its former range (Moyle and Yoshiyama 1992). Splittail enter the

lower reaches of the Feather (Jones and Stokes 1993) and American rivers (Charles Hanson, State Water Contractors, *in litt.*, 1993) on occasion; however, the species now is largely confined to the delta, Suisun Bay, Suisun Marsh, and Napa Marsh. The "Delta" refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code of 1969. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanilau and San Joaquin Rivers at the southeast corner and Chipps Island in Suisun Bay.

In recent years, splittail have been found most often in slow moving sections of rivers and sloughs and dead-end sloughs (Moyle et al. 1982, Daniels and Moyle 1983). Reports from the 1950's, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). California Department of Fish and Game survey data from the last 15 years indicate that the highest catches occurred in shallow areas subject to flooding. Historically, major flood basins, distributed throughout the Sacramento and San Joaquin Valleys, provided spawning and rearing habitat. These flood basins have all been reclaimed or modified into flood control structures (bypasses). Although primarily a freshwater species, splittail can tolerate salinities as high as 10 to 18 parts per thousand (Moyle and Yoshiyama 1992).

On January 10, 1995, a second comment period was opened for 45 days, and a 6-month extension added to the final rulemaking time frame, in accordance with section 4(b)(6)(B)(i) of the Act. A moratorium on listing actions, imposed on April 10, 1995 (Pub. L. 104-6), was lifted on April 26, 1996. Severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996 were followed by passage of the Omnibus Budget Reconciliation Act on April 26, 1996, allowing work to continue on various listing actions in accordance with fiscal year guidance that assigned priorities in a multi-tiered approach in accordance with section 4 of the Act (61 FR 64479). The guidance stated that handling emergency situations was highest priority (Tier 1), and resolving the listing status of outstanding proposed rules was second highest priority (Tier 2). Processing of this proposed rule fell under Tier 2.

On March 19 and March 20, 1998, the California Department of Water Resources and the State Water Contractors, respectively, requested a reopening of the comment period. The basis of this request is that substantial data have been collected since 1995 regarding the abundance and distribution of the splittail. The Service believes that consideration of this and any new information is significant to make the final determination for the Sacramento splittail. For this reason, the Service particularly seeks information concerning abundance and distribution data for this species from 1995-1997. Specifically, the Service seeks comments regarding the paper "Resilience of Splittail in the Sacramento-San Joaquin Estuary" (Sommer et al. 1997), and how the information contained in this paper affects the Service's recommendation for listing the Sacramento splittail as a threatened species.

Written comments may be submitted until July 17, 1998 to the Service office in the ADDRESSES section.

Author.

The primary author of this notice is Diane Windham, U.S. Fish and Wildlife Service (see ADDRESSES section).

References

- Caywood, M.L. 1974. Contributions to the life history of the splittail *Pogonichthys macrolepidotus* (Ayres). M.S. Thesis, California State University, Sacramento.
- Daniels, R.A., and P.B. Moyle. 1983. Life history of the splittail (Cyprinidae: *Pogonichthys macrolepidotus*) in the Sacramento-San Joaquin estuary. Fish. Bull. 84:105-117.
- Jones and Stokes Assoc., Inc. 1993. Sutter Bypass fisheries technical memorandum II: Potential entrapment of juvenile chinook salmon in the proposed gravel mining pond. May 27, 1993. (JSA 91-272). Sacramento, California. Prepared for Teichert Aggregates, Sacramento, California. 31 pp. + Appendix.
- Moyle, P.B., J.J. Smith, R.A. Daniels, and D.M. Balz. 1982. Distribution and ecology of stream fishes of the Sacramento-San Joaquin Drainage System, California: A review. Univ. Calif. Publ. Zool. 115:225-256.
- Moyle, P.B., and R.M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: A plan to protect California's native aquatic biota. Draft report prepared for California Policy Seminar, Univ. of Calif. Berkeley, California. July 1992. 196 pp.
- Rutter, C. 1908. The fishes of the Sacramento-San Joaquin basin, with a study of their distribution and variation. U.S. Bull. 27:103-152.

Sommer, T., R. Baxter, and B. Herbold. 1997. Resilience of the Splittail in the Sacramento-San Joaquin Estuary. Transactions of the American Fisheries Society 126:961-976.

Authority

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

Dated: May 12, 1998.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Region 1.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980508122-8122-01; I.D. 042498A]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Control Date for Spiny Dogfish

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

ACTION: Advance notice of proposed rulemaking; notice of control date for spiny dogfish fishery.

SUMMARY: NMFS announces that anyone entering the spiny dogfish (*Squalus acanthias*) (dogfish) fishery after May 18, 1998 (control date) will not be assured of future access to the dogfish resource in Federal waters if a management regime is developed and implemented under the Magnuson-Stevens Act that limits the number of participants in the fishery. This announcement is intended to promote awareness of potential eligibility criteria for future access to that portion of the dogfish fishery and to discourage new entries into this fishery based on economic speculation while the Mid-Atlantic and New England Fishery Management Councils (Councils) contemplate whether and how access to that portion of the dogfish fishery in Federal waters should be controlled. The potential eligibility criteria may be based on historical participation. This announcement, therefore, gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the dogfish fishery in Federal waters.

DATES: Comments must be received by June 17, 1998.