

compatible with sustaining the subspecies in the longterm.

The current threats analysis supports a determination that listing the island marble butterfly under the Act is not warranted. We will continue to assess the status of the butterfly by working with NPS, WDFW, conservation organizations, faculty and students from the University of Washington, the Washington State University Extension Service, and all private landowners with an interest in contributing to the conservation of this species. In addition, we will continue to work with the NPS on implementation of the Conservation Agreement for the butterfly. Although we did not rely on efforts identified in this new agreement as a basis for our determination, we anticipate that these efforts will enhance the conservation of the subspecies.

Based on an analysis of the current status and threats to the subspecies, we find that listing the island marble butterfly under the Act is not warranted. We request that you submit any new information concerning the status of or threats to this species to our Western Washington Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the species and encourage its conservation. If an emergency situation develops for this or any other candidate species or species of concern, we will act to provide immediate protection.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Ted Thomas, U.S. Fish and Wildlife Service, Western Washington 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: November 3, 2006.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 060621175-6175-01; I.D. 101805A]

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf Of Maine Distinct Population Segment

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

ACTION: Notice of 90-day petition finding; request for information.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the Kennebec River population of anadromous Atlantic salmon (*Salmo salar*) as endangered under the Endangered Species Act (ESA) of 1973, as amended. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This normally initiates a formal status review, but as described below under Summary of Previous ESA Actions, in this case, we and the U.S. Fish and Wildlife Service (USFWS) had already initiated a status review of this and other populations, resulting in NMFS' announcement of the completed status review report on September 22, 2006.

DATES: The finding announced in this document was made on November 14, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS Northeast Region, 978-281-9116; or Marta Nammack, NMFS Office of Protected Resources, 301-713-1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

In determining whether a petition contains substantial information, we take into account information submitted with and referenced in the petition and

all other information readily available in our files. We do not conduct additional research at this point, nor do we subject the petition to critical review. Our ESA implementing regulations at 50 CFR 424.14(b)(1) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. If the petition is found to present such information, the Secretary of Commerce (Secretary) must conduct a status review of the involved species. In making a finding on a petition to list a species, the Secretary must consider whether such a petition (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

In a petition submitted on May 11, 2005, Timothy Watts, Douglas Watts, Ed Friedman, and Kathleen McGee requested that we and the USFWS declare the Kennebec River population of anadromous Atlantic salmon endangered under the ESA and presented the following three main areas of evidence to support their request: (1) historic information on the presence of Atlantic salmon; (2) information on other native migratory fish populations in the Kennebec; and (3) microsatellite DNA analysis of Atlantic salmon in the Kennebec. It is the petitioners' contention that historic observations of Kennebec River Atlantic salmon from the 18th century to the present demonstrate that there was no period in the 19th and 20th centuries during which Atlantic salmon were absent from the Kennebec River. The petition states that populations of native migratory fish species have also persisted in the Kennebec despite being subjected to the same environmental pressures as Atlantic salmon. The petition also contends that microsatellite DNA analysis of tissue samples from 180 wild Atlantic salmon captured in the Kennebec River by the USFWS from 1994 to the present show that wild Kennebec River salmon are

genetically distinct from other hatchery and wild populations of Atlantic salmon in Maine.

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a vertebrate species (16 U.S.C. 1532(15)). The petition requests protecting the Kennebec River population of Atlantic salmon in addition to the existing Gulf of Maine (GOM) DPS that was previously delineated and listed under the ESA as endangered. A DPS is a vertebrate population that is discrete in relation to the remainder of the species to which it belongs and significant to the species (61 FR 4722; February 7, 1996). We interpret the petition to request listing the Kennebec River population as part of the existing GOM DPS.

We evaluated whether the information provided or cited in the petition met the ESA's standard for "substantial information." We reviewed the information presented in the petition and other readily available biological information on anadromous Atlantic salmon in the Kennebec River to determine whether the petitioned action may be warranted.

General Biology and Status of the Species

The Atlantic salmon, *Salmo salar*, is in the order Salmoniformes and family Salmonidae. Atlantic salmon is one of only two members of the genus *Salmo* found in North America. The Atlantic salmon is an anadromous fish, spending its first 2 to 3 years in freshwater, migrating to the ocean where it spends typically 2 years, and returning to its natal river to spawn. A non-anadromous variety (recognized in the past by some taxonomists as the subspecies *S. salar sebago*) is found in some lakes and rivers. The other member of the genus *Salmo* is *Salmo trutta*, brown trout, which was introduced from Europe.

Atlantic salmon have a fusiform body shape (i.e., like a spindle, rounded, broadest in the middle and tapering at each end). The shape is somewhat flattened towards the sides and typical of salmonids in general. The head is relatively small, comprising approximately one-fifth of body length. Ventral paired fins are prominent, especially on juveniles.

Parr (juvenile salmon before they enter salt water) have eight to eleven vertical dark bars (known as "parr marks") on silvery sides. After smoltification (the physiological process that enables juvenile salmon to transition from freshwater to salt water and enter the sea), the typical silver coloration with small, dark dorsal spots

of the sea-run pre-adult predominates. Spawning adults darken to a bronze color after entering freshwater and darken further after spawning. They are often referred to as "black salmon" at this stage. The silver coloring returns after re-entering the sea.

Outmigrating Atlantic salmon smolts in Maine average 14 to 18 centimeters (cm) in length. The size of returning adults depends on the time spent at sea. Grilse, young salmon returning to freshwater after 1 winter at sea (1SW), average 50 to 60 cm and weigh 1 to 2 kilograms (kg) while 2SW salmon (adult salmon returning after 2 years at sea) range from 70 to 80 cm and 3.5 to 4.5 kg. Salmon that are 3SW (adult salmon returning after 3 years at sea) are 80 to 90 cm long and often weigh more than 7 kg (Baum, 1997).

Historically, the geographic range of the GOM DPS within the United States extended from the Androscoggin River in the south of Maine, northward to the mouth of the St. Croix River on the United States-Canada border (NMFS and USFWS, 1999). This delineation was based on examination of life history, biogeographical, genetic, and environmental information.

Zoogeographic maps helped identify boundaries between areas that likely exert different selective pressures on Atlantic salmon populations and have substantial differences in riverine-marine ecosystem structure and function. Key elements to the delineation included: (1) spatial arrangements of river systems to create isolation, and (2) watershed location within ecological provinces and subregions that affect the productivity and ecology of riverine-marine ecosystem complexes (NMFS and USFWS, 1999).

Summary of Previous ESA Actions

In response to a petition submitted in 1993 to list Atlantic salmon under the ESA, NMFS and the USFWS (the Services) completed a review of the species' status in 1995 (USFWS and NMFS, 1999). The Services concluded that the GOM DPS was likely to become endangered. Later in 1995, the Services published a proposed rule to list a GOM DPS of Atlantic salmon in seven Maine rivers as threatened (60 FR 50530; Sept. 29, 1995). In that proposed rule, the State of Maine was invited to prepare a plan to eliminate, minimize, and mitigate threats to Atlantic salmon and their habitat. On December 18, 1997, the Services withdrew the proposed rule to designate the Atlantic salmon GOM DPS as threatened (62 FR 66325; Dec. 18, 1997). The withdrawal was based on an evaluation of the information then

known about the biological status of the species, as well as consideration of ongoing actions by international, State, Federal, and private entities, including the State's Atlantic Salmon Conservation Plan for Seven Maine Rivers (Conservation Plan) (MASCP, 1997). The Services committed to review this decision on an annual basis.

In January 1999, the Services received the State of Maine's 1998 Annual Progress Report on implementation of the Conservation Plan (ASC, 1998). After review of the Annual Report, public comments, and a 1999 Atlantic salmon status review report (NMFS and USFWS, 1999), the Services determined that the species' status was more precarious than indicated by the available information at the time of the December 1997 determination not to list the species (64 FR 62627). On November 17, 1999, the Services proposed to list the Atlantic salmon GOM DPS, this time as an endangered species. After review of public comments and consideration of the best available scientific and commercial information and data, the Services published a final rule on November 17, 2000, listing the Atlantic salmon GOM DPS as an endangered species (65 FR 69459).

The GOM DPS includes all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River, to, but not including, the mouth of the St. Croix River at the United States-Canada border. The Penobscot and its tributaries downstream from the site of the Bangor Dam are included in the range of the GOM DPS (65 FR 69459; November 17, 2000). At the time of the listing, there were at least eight rivers within the geographic range of the GOM DPS that still contained functioning wild salmon populations, although at substantially reduced abundance levels (65 FR 69459; November 17, 2000). These remnant populations are located in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot rivers and in Cove Brook, Maine (65 FR 69459; November 17, 2000). Salmon from the GOM DPS taken for hatchery rearing and broodstock purposes, and any captive progeny of these salmon, are included as part of the GOM DPS. In the final rule listing the Atlantic salmon GOM DPS (65 FR 69459), the Services deferred the determination of inclusion of fish that inhabit the mainstem and tributaries of the Penobscot River (above the site of the former Bangor Dam (65 FR 69459 at 69464; November 17, 2000)) and other rivers, which are outside the

range of the GOM DPS. The deferred decision reflected the need for further analysis of scientific information, including a detailed genetic characterization of the Penobscot population.

In response to the availability of new genetic data, the Services convened a Biological Review Team (BRT) to conduct a review of that new information and to determine the status of Atlantic salmon in the Penobscot River, Kennebec River, and other rivers not currently included in the GOM DPS. The BRT, consisting of biologists from the Maine Atlantic Salmon Commission, the Penobscot Indian Nation, NMFS, and USFWS, prepared a written draft status review report for the Services. The information presented in the petition, along with all other relevant scientific data, was examined by the BRT in its preparation of a status review report. We announced the availability of the completed status review report on September 22, 2006 (71 FR 55431), after the draft status review report had been peer reviewed and peer review comments had been addressed.

A status review report is an evaluation of the available information about the biological vulnerability of a species, subspecies, or DPS. Information considered during a status review includes demographic information such as abundance, reproductive success, age structure, and distribution. A status review report considers both historical and recent trends in these parameters, to the extent that this information is available. The status review report must also evaluate the current and potential threats facing the species and ongoing efforts to protect the species, subspecies, or DPS.

The Petition

The petition requested that the Services protect the Kennebec River population of anadromous Atlantic salmon under the ESA. Although we have already conducted a status review of this and other populations (71 FR 55431; September 22, 2006), the ESA requires that we respond to a petition by publishing a **Federal Register** notice with our finding on the petition.

The Services examined the information contained in the petition as well as other genetic data readily available to the Services. This petition presents historic information to support its contention that anadromous Atlantic salmon have persisted in the Kennebec River since the 18th century. The information presented includes, but is not limited to, historical newspaper reports; summaries collected by historians on anecdotal reports

pertaining to the presence of Atlantic salmon in the drainage; historic personal diaries; historic Maine statutes; historic petitions to the Maine legislature regarding Atlantic salmon fisheries; and more contemporary biological studies (Atkins, 1867; Ulrich, 1990; Havey, 1968; Foye *et al.*, 1969; Beland, 1986; Buckley, 1998; King *et al.*, 1999). The petition also cites observations made by the National Academy of Sciences (NAS) in 2004 that wild Atlantic salmon are recolonizing the Kennebec mainstem. The NAS cites National Research Council (NRC, 2002) data and associated reports as the basis for these conclusions.

The second area of information presented in the petition to support the petitioners' request is the persistence of other native migratory fish species in the Kennebec River. The petition specifically discusses Atlantic sturgeon, sea lamprey, shortnose sturgeon, striped bass, white perch, American shad, rainbow smelt, tomcod, alewives, and blueback herring. The petition asserts that the Kennebec River population of anadromous Atlantic salmon must have persisted if these native anadromous fish species have been able to persist over time while being subjected to the same environmental pressures as native Atlantic salmon. With respect to dams, the petition cites studies by Yoder *et al.* (2004) and Squiers (1988) that demonstrate that other native migratory fish populations have persisted despite manmade obstructions to passage. The petition asserts that it is highly unlikely that Atlantic salmon populations would be completely extirpated as a result of dams when other fish species have been able to persist. The same rationale is presented as support for the persistence of Atlantic salmon in the Kennebec River with respect to other threats such as degraded water quality.

Genetic analysis used to characterize Atlantic salmon in the Kennebec River is the third area for which the petition presents information to support the assertion that the Kennebec River population of anadromous Atlantic salmon should be listed under the ESA as endangered. The petition presents information from the NRC report on the genetic status of Maine's salmon. The NRC report presents results of genetic assignment tests that were performed on Atlantic salmon from different Maine drainages. The petition asserts that these data show that the salmon populations of the Kennebec drainage are more distinct than are those of the current GOM DPS rivers. Therefore, the petition interprets the NRC report to suggest that there is a remnant population of wild salmon in the Kennebec that should be

incorporated into any restoration effort. The petition asserts that the data collected from the assignment testing contradict the hypothesis that Kennebec salmon are simply strays from the Penobscot or progeny of strays from the Penobscot. The petition also states that "The assignment test results of King *et al.* (1999) show that the Kennebec collection is no less distinct than any other Maine river collection studied [and that] the Kennebec collection appears at least or more "distinct" as any other Maine collection studied except for the Penobscot." The petition also cites a memo from T. King to J. Marancik and Kings' genetics data from 1999 and 2000 as support for its assertion that there is a stable reproducing population in the Kennebec that is not simply representative of strays from the Penobscot. The petition asserts that if the Kennebec collection was comprised solely of Penobscot strays or their offspring, then it is likely that fish in the Kennebec would be genetically indistinguishable from Penobscot strays.

Assessment of Petition

The primary request of the petitioners appears to be that Atlantic salmon in the Kennebec River warrant protection under the ESA. We interpret the petition to request listing the Kennebec River population of anadromous Atlantic salmon as part of the existing GOM DPS, previously listed as endangered under the ESA. The petition includes scientific data, primarily genetic analysis regarding the Kennebec River population, that has become available since the 1999 status review and subsequent listing determination for the GOM DPS in 2000. Further, the petitioners provide information that the Kennebec River population may be part of the existing GOM DPS. We specifically consider the genetic analysis presented in the petition to represent substantial scientific information. After reviewing the information contained in the petition, as well as other scientific information readily available to us, we have determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

As stated previously, the status review report prepared by the BRT examined the information contained in the petition, along with all other relevant scientific data. We made this status review report available to the public on September 22, 2006 (71 FR 55431). The Services jointly administer the ESA as it applies to anadromous Atlantic salmon. NMFS, having received

the status review from the BRT, is responsible for determining and preparing any appropriate action under the ESA. NMFS is currently considering the information presented in the status review, the comments from peer reviewers, and the response of the BRT

to the peer reviewers to determine if action under the ESA is warranted.

Authority

The authority for this action is the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 7, 2006.

Samuel D. Rauch III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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