



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 240520-0140; RTID 0648-XR135]

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List Gulf of Alaska Chinook Salmon as Threatened or Endangered Under the Endangered Species Act

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

ACTION: 90-day petition finding; request for information, and initiation of status review.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list Gulf of Alaska (GOA) Chinook salmon (*Oncorhynchus tshawytscha*), or any evolutionarily significant unit (ESU) that may exist in the petitioned area, as a threatened or endangered species under the Endangered Species Act (ESA) and to designate critical habitat concurrent with the listing. We find that the petition, viewed in the context of information readily available in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we are commencing a review of the status of Gulf of Alaska Chinook salmon to determine whether listing under the ESA is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species from any interested party.

DATES: Scientific and commercial data pertinent to the petitioned action must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit data and information relevant to our review of the status

of GOA Chinook salmon, identified by “Gulf of Alaska Chinook salmon Petition” or by the docket number, NOAA-NMFS-2024-0042, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2024-0042 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Anne Marie Eich, Assistant Regional Administrator, Protected Resources Division, Alaska Region NMFS, Attn. Susan Meyer. Mail comments to P.O. Box 21668, Juneau, AK 99802.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The petition is available on the NMFS website at:

<https://www.fisheries.noaa.gov/endangered-species-conservation/candidate-species-under-endangered-species-act>.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, NMFS Alaska Region, julie.scheurer@noaa.gov, (907) 586-7111; or Heather Austin, NMFS Office of Protected Resources, heather.austin@noaa.gov, (301) 427-8422.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 2024, we received a petition from the Wild Fish Conservancy

(petitioner) to delineate and list one or more ESUs of Chinook salmon in southern Alaska—which the petition states “encompasses all Chinook populations that enter the marine environment of the Gulf of Alaska”—as threatened or endangered under the ESA, and to designate critical habitat concurrently with the listing. The petition indicates that this “includes all populations on the southern side of the Aleutian Peninsula, Cook Inlet, and the coast of Alaska south of Cook Inlet to the southern end of the Alaska/British Columbia border.” The petition asserts that GOA Chinook salmon are threatened by all of the ESA section 4(a)(1) factors: (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms to address identified threats; and (5) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)). The petition is available online (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions, and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable that, within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). If NMFS finds that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more

thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a positive 90-day finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies, and for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). In 1991, NMFS issued the Policy on Applying the Definition of Species Under the Endangered Species Act to Pacific Salmon (ESU Policy; 56 FR 58612, November 20, 1991). Under this policy, a Pacific salmon population is considered a DPS, and hence a “species” under the ESA, if it represents an “evolutionarily significant unit” of the biological species. The two criteria for delineating an ESU are (1) it is substantially reproductively isolated from other conspecific populations; and (2) it represents an important component in the evolutionary legacy of the species. NMFS has not yet used the ESU Policy to define ESUs of Chinook salmon in the petitioned area of Alaska.

In 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS) (together, “the Services”) adopted a joint policy that clarifies the Services’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). In announcing this policy, the Services indicated that the ESU Policy for Pacific salmon was consistent with the DPS Policy and that NMFS would continue to use the ESU Policy for Pacific salmon.

A species, subspecies, DPS, or ESU is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the five

section 4(a)(1) factors noted above.

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(h)(1)(i)) define “substantial scientific or commercial information” in the context of reviewing a petition to list, delist, or reclassify a species as “credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted.” Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial information.” In reaching the initial (90-day) finding on the petition, we will consider the information included in the petition as required by sections 50 CFR 424.14(c), (d), and (g) (if applicable).

Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in

the petition. See 50 CFR 424.14(d).

We may also consider information readily available at the time the determination is made. We are not required to consider any supporting materials cited by the petitioner if the petitioner does not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*, publications, maps, reports, letters from authorities). See 50 CFR 424.14(c)(6).

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us evaluate the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review would conclude it supports the petitioners' assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone necessitates a negative 90-day finding if a reasonable person conducting an impartial scientific review would conclude that the unknown information itself suggests the species may be at risk of extinction presently or within the foreseeable future.

To make a 90-day finding on a petition to list a species, we first evaluate whether the information presented in the petition, in light of the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species may face an extinction risk such that listing may be warranted; this may be indicated in

information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.*, population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1) of the ESA.

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do “not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act” because NatureServe assessments have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these

two types of lists should not be expected to coincide

(<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Chinook Salmon Species Description

The following species description is summarized primarily from Groot and Margolis (1991). Chinook salmon (also called “king” salmon) are the largest species of the Pacific salmon. Like all species in the genus *Oncorhynchus*, Chinook salmon are anadromous (meaning they are born in freshwater, migrate to saltwater to feed and grow, and return to freshwater to reproduce or “spawn”) and semelparous (meaning they die after spawning once). Chinook salmon naturally range throughout the North Pacific Ocean from northern Hokkaido to the Anadyr River on the Asian coast and from central California to Kotzebue Sound, Alaska, on the North American coast.

Within their general anadromous life history, Chinook exhibit remarkable variation within populations and across their range. Chinook salmon are typically 3 or 4 years old when they return to spawn; however, age at sexual maturity ranges from 2 to 7 years. Two behavioral forms predominate within the Chinook salmon life history. “Stream type” populations spend one or more years as juveniles in freshwater before migrating to the sea, often making extensive ocean migrations, and return to their natal river in spring or summer to spawn. “Ocean type” Chinook salmon migrate to sea during their first year, often within months of hatching, spend most of their marine phase in coastal waters, and return to their natal rivers in the fall to spawn. In Alaska, most Chinook salmon demonstrate the stream type behavioral form, except for a few ocean

type populations in rivers of southern Southeast Alaska near the United States border with Canada.

Evaluation of the Petition and Information Readily Available in NMFS's Files

The petitioners request that NMFS delineate and list one or more ESUs of Chinook salmon in southern Alaska as threatened or endangered under the ESA, and designate critical habitat concurrently with the listing. The petition indicates that this “includes all populations on the southern side of the Aleutian Peninsula, Cook Inlet, and the coast of Alaska south of Cook Inlet to the southern end of the Alaska/British Columbia border.” We interpret the petitioner’s request as asking NMFS to consider populations of Chinook salmon on the southern side of the Alaska Peninsula, including Kodiak Island, Cook Inlet, Prince William Sound, and the GOA coastline and inside waters of Southeast Alaska to the United States/Canada border at approximately 54°45’ N latitude. The petition is accompanied by literature citations and electronic copies of supporting material, including published scientific literature and unpublished reports.

In the sections that follow, we provide a synopsis of the assertions made in the petition for the population status and trends and each of the factors identified in section 4(a)(1) of the ESA, followed by our analysis and conclusions that support the 90-day finding.

Population Status and Trends

The petition asserts that since at least 2007, all populations of GOA Chinook salmon have experienced significant declines in abundance compared to levels exhibited in the previous two or more decades. The petition provides as evidence examples of missed escapement goals for some stocks. Additionally, the petition asserts that size and age at maturity have been decreasing across most populations for more than two decades. The petition notes that seven stocks have action plans developed in response to their designations by the State of Alaska as stocks of management concern.

Analysis of ESA Section 4(a)(1) Factors for GOA Chinook Salmon

The petition asserts that GOA Chinook salmon is experiencing threats under each of the categories listed below and under section 4(a)(1) of the ESA.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petition asserts that GOA Chinook salmon habitat is degraded by clear-cut logging, erosion and sedimentation, elevated stream temperatures, habitat fragmentation, chemical run-off, road building, fish passage barriers, and mining.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition asserts that overharvest by directed commercial fisheries and bycatch in other commercial fisheries threatens the continued existence of GOA Chinook salmon and cites missed escapement goals in recent years to support this assertion. The petition asserts that reduced recreational harvest in 2021 relative to harvest levels in 2005 and 2006 indicates overharvest by the recreational sector.

Disease or Predation

The petition asserts that diseases originating in hatcheries (*e.g.*, furunculosis, piscine reovirus, bacterial gill and kidney disease) have been transmitted to wild populations, driving mortality of all life stages of GOA Chinook salmon.

The petition asserts that predation pressure on adult GOA Chinook salmon is increasing as a result of growing populations of killer whales (*Orcinus orca*), and that humpback whales (*Megaptera novaeangliae*) may be learning to target hatchery releases of Chinook salmon in Southeast Alaska.

Inadequacy of Existing Regulatory Mechanisms

The petition asserts that Federal regulatory mechanisms such as the National Environmental Policy Act, ESA, National Forest Management Act, and Clean Water Act are failing to provide adequate protection to GOA Chinook salmon. The petition broadly

states that the State of Alaska's management of salmon fisheries has been inadequate and that the state has not implemented sufficient corrective actions to address missed escapement goals.

Other Natural or Manmade Factors Affecting Its Continued Existence

The petition asserts that artificial propagation of pink salmon increases competition for prey with wild Chinook salmon and has led to decreased rates of growth and survival of Chinook salmon.

The petition asserts that changes in patterns of ocean productivity combined with climate change may be threatening GOA Chinook salmon.

The petition lists numerous potential effects of climate change to freshwater, estuarine, and marine habitats, and assumes that nearly all will have negative effects on GOA Chinook salmon.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. We identified numerous factual errors, omissions, incomplete references, and unsupported assertions and conclusions within the petition. For example, the petition only presents escapement data through 2021, but in 2022 and 2023, some GOA Chinook salmon populations have shown improvements toward meeting their escapement goals. The petition also makes vague references to threats from logging, road building, mining, overharvest, and competition from hatchery salmon without providing specific examples. Nonetheless, we find that some of the information in the petition, in particular the missed escapement goals in recent years for many stocks in the petitioned area, and evidence of decreasing size and age at maturity, would lead a reasonable person to believe that the petitioned action may be warranted. Additionally, it is likely that more than one ESU exists within the petitioned area and, without knowing the boundaries of those ESUs, it is challenging to assess the status and

trends of subpopulations. In light of this uncertainty and the low statutory standard at the 90-day stage, we conclude that the petitioned action may be warranted. Therefore, in accordance with section 4(b)(3)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.14(h)(2)), we will commence a status review to determine whether GOA Chinook salmon constitute one or more ESUs, and if so, whether any such ESU of GOA Chinook salmon is in danger of extinction (endangered) throughout all or a significant portion of its range, or is likely to become so within the foreseeable future (threatened). The petition stated that "overharvest" should be considered as a factor for listing under the ESA. Potential overharvest of some populations of Chinook salmon and missed escapement targets are not necessarily sufficient to indicate that the species may warrant listing under the ESA. Our status review will examine recent harvest levels and escapement targets along with all of the best available information on the status of the species and potential threats. As required by section 4(b)(3)(B) of the ESA, within 12 months of the receipt of the petition, we will make a finding as to whether listing any GOA Chinook salmon ESU as an endangered or threatened species is warranted. If listing is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that our status review is informed by the best available scientific and commercial data, we are opening a 60-day public comment period to solicit information on GOA Chinook salmon. We request information from the public, government agencies, Alaska Native organizations, the scientific community, industry, conservation groups, fishing groups, or any other interested parties concerning the current and/or historical status of GOA Chinook salmon. Specifically, we request information regarding:

- (1) species abundance;
- (2) species freshwater and saltwater productivity;

- (3) species distribution or population spatial structure;
- (4) patterns of phenotypic, genotypic, and life history diversity;
- (5) habitat conditions and associated limiting factors and threats;
- (6) information on the adequacy of existing regulatory mechanisms, whether protections are being implemented, and whether they are proving effective in conserving the species;
- (7) data concerning the status and trends of identified limiting factors or threats to population persistence;
- (8) information on targeted harvest (commercial and non-commercial) and bycatch of the species;
- (9) information to evaluate the ESU factors, specifically,
 - whether any populations are substantially reproductively isolated from other conspecific populations; and
 - whether any population represents an important component in the evolutionary legacy of the species;
- (10) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes; and
- (11) information concerning the impacts of environmental variability and climate change on survival, growth, age, fecundity, recruitment, distribution, and/or extinction risk.

Please send any comments in accordance with the instructions provided in the **ADDRESSES** section above. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, and any association, institution, or business that the person represents. We will base our findings on a review of the best scientific and

commercial data available, including relevant information received during the public comment period.

References Cited

A complete list of all references cited herein is available upon request (See **FOR FURTHER INFORMATION CONTACT**).

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

Dated: May 20, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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