

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[RIN 1018-AH73]

Endangered and Threatened Wildlife and Plants; Notice of Remanded Determination of Status for the Sacramento splittail (*Pogonichthys macrolepidotus*)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule; revised determination.

SUMMARY: On January 6, 1994, we, the U.S. Fish and Wildlife Service (Service) proposed to list the Sacramento splittail (*Pogonichthys macrolepidotus*), a fish species native to central California, as a threatened species under the Endangered Species Act of 1973, as amended (Act). We published a final rule to list the species as threatened on February 8, 1999. Our final decision to list the Sacramento splittail was subsequently challenged 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.* On June 23, 2000, the Federal Eastern District Court of California found our final rule to be unlawful and on September 22, 2000, remanded the determination back to us for a re-evaluation of our final decision. However, because the District Court did not vacate our previous final decision, the decision remained in place until we issued a new determination. After a thorough review and consideration of all the best scientific and commercial information available, we are removing the Sacramento splittail from the list of threatened species. In accordance with the Administrative Procedure Act, the Service has determined that this rule relieves an existing restriction, and good cause exists to make the effective date of this rule immediate.

EFFECTIVE DATE: In compliance with the Federal Eastern District Court of California order, this rule is effective September 22, 2003.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final decision, are available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Wayne White (see **ADDRESSES**),

(telephone: 916/414-6600; facsimile: 916/414-6713). Information is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:**Background**

The Sacramento splittail (hereafter referred to as splittail) is a fish species native to central California and represents the only extant species in its genus in North America. We have previously discussed the taxonomic history of the splittail along with the physical description of the taxon in our final listing rule (64 FR 5963). Please refer to that document for a detailed discussion of these subjects. It is our intent, in this document, to reiterate and discuss only those topics directly relevant to this decision.

To assist the reader in understanding terminology used in this determination, we have provided below several terms with their corresponding definitions as they are used in this document. As used in this determination, the term "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. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanislaus and San Joaquin Rivers at the southeast corner and Chipps Island in Suisun Bay at the southwest corner. The term "Estuary," as used in this determination, refers to tidal waters contained in the Sacramento and San Joaquin Rivers, the Delta, and San Pablo and San Francisco bays. "Export facilities," as used in this determination, refers to the Bureau of Reclamation (USBR) Central Valley Project (CVP) and the California Department of Water Resources (CDWR) State Water Project (SWP) water export facilities in the South Delta.

Splittail are native to California's Central Valley. Historically, splittail were found as far north as Redding on the Sacramento River (Rutter 1908). Splittail were also found in the tributaries of the Sacramento River as far as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908). Along the San Joaquin River, historic distribution is unclear. Girard (1854) reported two *Pogonichthys* species in the San Joaquin River. These reports do not make a distinction between which of the two species was found at particular locations on the San Joaquin River. In the southern Central Valley, Tulare Lake was likely to have supported many native fish species, including splittail (Moyle 1976) but has

since been drained and reclaimed. Splittail were present within Buena Vista and Kern Lakes (Moyle 2002), both of which are reclaimed.

Some researchers (Sommer *et al.* (1997)) indicate that splittail still occur, at least during optimal conditions, through as much as 78 percent of their former range in terms of river reaches. However, others (Moyle and Yoshiyama 1992) believe the species appears to be restricted to a small portion of its former range, with dams and diversions preventing access to upstream habitat in large rivers and streams beyond the valley floor (Moyle and Yoshiyama 1992). The State of California indicates that splittail still occur in a large portion of its range (80% in the Sacramento, and 70% in the San Joaquin). There appears to be consensus that at least 20% and possibly more of the species range has been reduced. Baxter (2001b) found that the range of the splittail extends away from the Delta, though detections on the periphery of its range appear to be part of a single, mobile, Sacramento and San Joaquin River/Bay-Delta population that includes fish from the Napa and Petaluma River systems. Their distribution in the Estuary suggests that brackish water may characterize optimal rearing habitat for fish greater than 75 millimeters (mm) (3.0 inches (in)) standard length (SL) (Moyle *et al.* 2001). Suisun Marsh includes the largest areal extent of shallow water habitat available to the splittail and likely has the greatest concentrations of the species.

Splittail are relatively long-lived and larger fish may be 8 to 10 years old (Moyle 2002). Splittail reach about 110 mm (4.3 in) SL in their first year, 170 mm (6.6 in) SL in their second year, and 215 mm (8.4 in) SL in their third year (Moyle 2002). Male and female splittail may mature by the end of their second year (Daniels and Moyle 1983), but some males mature in their first year and some females do not mature until their third year (Caywood 1974).

The largest females can produce over 250,000 eggs per year (Daniels and Moyle 1983). Other and more current estimates of splittail fecundity have shown high variability and occasionally, lower numbers. Caywood (1974) found a mean of 165 eggs per mm (6.5 in) of SL of fish sampled and reported a maximum of 100,800 eggs in one female. Daniels and Moyle (1983) observed approximately 17,500 to 266,000 eggs per female splittail. Feyrer and Baxter (1998) found a mean of 261 eggs per mm (10.2 in) of SL and estimated maximum fecundity at 150,000 eggs. Bailey *et al.* (1999) examined fish held for a considerable time in captivity and found that