

management of the species. We will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If we find that circumstances change to the point that any of these threats change significantly, we will reexamine the status of the splittail.

#### Coordination With the State of California

The State of California administers, via CDFG, the California Endangered Species Act (CESA) (Fish and Game Code sections 2050 to 2116, *et seq.*). The purposes of the CESA are to conserve, protect, restore, and enhance any bird, mammal, fish, amphibian, reptile, or plant meeting CESA criteria for threatened or endangered status, and to acquire lands for habitat for these species.

Procedures governing the submission and review of petitions for listing, uplisting, downlisting, and delisting of CESA endangered and CESA threatened species of plants and animals are described in section 670.1, Title 14, California Code of Regulations.

Under CESA, a State "threatened" species is a California native species that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts (Fish and Game Code section 2067). A State "endangered" species is that which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease (Fish and Game Code section 2062). The splittail is not listed as threatened or endangered by the State of California under the authority of CESA. There appears to be substantive similarity between the Federal requirement under section 4(a)(1) of the Act and the State requirement under section 14(i)(1)(A) of the California Code of Regulations to consider all factors affecting a species. There also appears to be a high degree of similarity between the definition of a "threatened species"

under both section 3(20) of the Act and CESA (Fish and Game Code section 2067).

CDFG submitted comments regarding the status of the splittail during the January 12, 2001, May 8, 2001, and August 17, 2001, comment periods (66 FR 2828, 66 FR 23181, and 66 FR 43145, respectively) subsequent to the court's June 23, 2000, summary judgement. Further, CDFG staff were involved in an interagency peer review effort undertaken concurrent with the August 17, 2001, comment period. CDFG comments were limited only to alternate analyses of species abundance (see the Summary of Comments and Recommendations section).

We are actively coordinating with California Environmental Protection Agency (CalEPA), the State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Boards (RWQCBs) through public comment periods on their regulatory program actions (USFWS 2002b). The CalEPA, SWRCB, and OEHHHA provided no comments regarding the listing, however. The CDWR and the Reclamation Board did comment to a certain degree regarding the factors affecting the splittail (see the Summary of Comments and Recommendations section).

We have given full consideration to CDFG as well as CDWR recommendations to employ an alternate abundance analysis (see Abundance and our response to Comment 1). Indeed, we used the CDFG/USBR MRF model, the result of a joint State and Federal scientific undertaking, to determine if a trend exists for the species. Based on our evaluation of conservation efforts completed, currently underway, and likely to stem from CALFED and the CVPIA, we now agree with the State that listing of the splittail as a threatened species is not warranted at this time.

#### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the

Endangered Species Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Paperwork Reduction Act

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. For additional information concerning permits and associated requirements for threatened wildlife species, see 50 CFR 17.21 and 17.22.

#### References Cited

A complete list of all references cited in this final rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

#### Authors

The primary authors of this document are staff of the Sacramento Fish and Wildlife Office.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

#### Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—(AMENDED)

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by removing the entry "Sacramento splittail" under "FISHES" from the List of Endangered and Threatened Wildlife and Plants.

Dated: September 15, 2003.

**Marshall P. Jones, Jr.,**

*Acting Director, Fish and Wildlife Service.*

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