

**DEPARTMENT OF THE INTERIOR**  
**Fish and Wildlife Service**  
 [ 50 CFR Part 17 ]  
**ENDANGERED AND THREATENED**  
**WILDLIFE AND PLANTS**

**Proposed Threatened Status and Critical**  
**Habitat for Little Kern Golden Trout**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Service proposes to determine the Little Kern golden trout (*Salmo aguabonita whitei*) to be a Threatened species and identify Critical Habitat for this species. This action is being taken because of the threatened modification of its habitat and the existing threats of hybridization with the introduced rainbow trout. This proposal would protect the populations of pure Little Kern golden trout and its habitat. This species occurs in Tulare County, California.

**DATES:** All relevant comments and materials with regard to this proposed rulemaking received no later than December 1, 1977, will be considered.

**ADDRESSES:** Comments and materials concerning this proposed rulemaking, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street, N.W., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202/343-4646).

**SUPPLEMENTARY INFORMATION:**  
**Background.**

Section 4(a) of the Act states:

**General.**—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

- (2) overutilization for commercial, sporting, scientific, or educational purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

**SUMMARY OF FACTORS AFFECTING THE SPECIES**

These findings are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the Little Kern golden trout, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

The Little Kern golden trout is only known from the Little Kern River in Tulare County, California. In the Little Kern River watershed, the water quality of the streams inhabited by this fish is generally good. However, forestry management plans under consideration call for logging activities in a large portion of the drainage basin in which the trout occurs. This would result in an alteration

of existing water quality by increasing temperature and siltation which would seriously threaten the survival of the Little Kern golden trout.

2. *Overutilization for commercial sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued existence.* Rainbow trout were introduced into the Little Kern River System in the 1930's. Subsequent hybridization between the Little Kern golden trout and the introduced rainbow trout resulted in a reduction in the number of pure populations of Little Kern golden trout. At present, pure populations of Little Kern golden trout exist only in headwater streams which were not stocked with rainbow trout or have barrier falls which have prevented upstream migration of rainbow trout.

#### CRITICAL HABITAT

Section 7 of the Act, entitled "Inter-agency Cooperation", states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765).

The areas delineated below do not necessarily include the entire Critical Habitat of the Little Kern golden trout and modifications to Critical Habitat descriptions may be proposed in the future. In accordance with Section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the Critical Habitat of the Little Kern golden trout found within the areas delineated below.

Until publication of final Section 7 regulations, all Federal departments and agencies should, in accordance with Section 7 of the Act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect Critical Habitat within the delineated areas. Consultation pursuant to Section 7 should be carried out using the procedures contained in the "Guidelines to Assist the Federal Agencies in Complying with Section 7 of the Endangered Species Act of 1973" which have been

made available to the Federal agencies by the Service.

#### CRITICAL HABITAT DETERMINATION

Based upon literature reviews, Critical Habitat for the Little Kern golden trout includes the following areas (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species):

Little Kern River: California, Tulare County. Main channel of Little Kern River and all streams tributary to the Little Kern River above the junction of the Little Kern River and the Kern River.

#### EFFECTS OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. All of those prohibitions and exceptions also apply to any Threatened species unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered species, are found at Section 17.21 of Title 50 and, for the convenience of the reader, are reprinted below.

##### § 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

- (i) Aid a sick, injured or orphaned specimen; or
- (ii) Dispose of a dead specimen; or
- (iii) Salvage a dead specimen which may be useful for scientific study; or
- (iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is

done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take Endangered Species, for conservation programs in accordance with the Cooperative Agreement provided that such taking is not reasonably anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days."

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

*Example.* A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(1) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

Regulations published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412) provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species.

In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to Section 4(b) of the Act, the Director will notify the Governor of California with respect to this proposal and request his comments and recommendations before making final determinations.

**PUBLIC COMMENTS SOLICITED**

The Director intends that the rules finally adopted will be as accurate and effective in the conservation of any Endangered or Threatened species as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the Little Kern golden trout;

(2) The location of and reasons why any habitat of the Little Kern golden trout should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(3) Additional information concerning the range and distribution of the Little Kern golden trout.

Final promulgation of the regulations on the Little Kern golden trout will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C. 20240, and may be examined during regular business

hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2) (C) of the National Environmental Policy Act of 1969.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884), and the primary author is Dr. James D. Williams, Office of Endangered Species (202/343-7814).

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

It is proposed to amend § 17.11 by adding in alphabetical order the following to the list of animals:

**§ 17.11 Endangered and threatened wildlife.**

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered			
Fish: Trout, Little Kern golden.	<i>Salmo aguabonita whitei</i>	NA.	USA (California)	Entire	T		17.44(c)

Section 17.44 is amended by adding a new paragraph (c) as follows:

**§ 17.44 Special rules—fishes.**

(c) Little Kern golden trout (*Salmo aguabonita whitei*).

(1) All provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

Subpart I of Part 17 (Interagency Cooperation) is amended by adding the following streams as Critical Habitat:

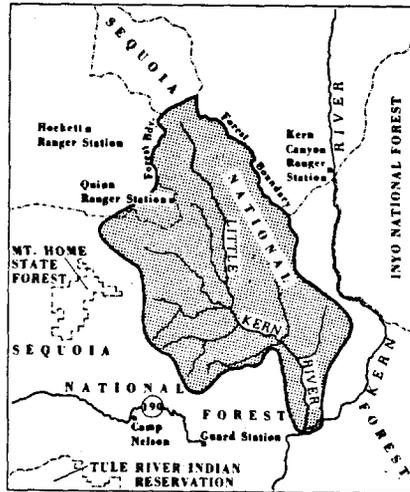
**§ 17.95 Critical habitat—fish and wildlife.**

(e) Fishes \* \* \*

(8) Little Kern golden trout.

(i) The following streams are Critical Habitat for the Little Kern golden trout (*Salmo aguabonita whitei*):

Little Kern River: California, Tulare County. Main channel of Little Kern River and all streams tributary to the Little Kern River above the junction of the Little Kern River and the Kern River.



NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 25, 1977.

LYNN A. GREENWALT,  
Director, Fish and Wildlife Service.

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