

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Yellowstone Cutthroat Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; opening of public comment period on status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period for a status review of the Yellowstone cutthroat trout (*Oncorhynchus clarki bouvieri*) in the United States, which has been initiated pursuant to a recent Court order requiring us to prepare a 12-month finding on a petition to list the subspecies as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). This action will allow all interested parties an opportunity to provide information on the status of the subspecies of fish.

DATES: Comments must be submitted on or before October 31, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of the following methods:

1. You may submit written comments and information by mail to Yellowstone Cutthroat Comments, U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, Montana 59901-8239.

2. You may hand-deliver written comments and information to our Creston Fish and Wildlife Center, at the above address, or fax your comments (406) 758-6887.

3. You may send your comments by electronic mail (e-mail) to fw6_yellowstonecut@fws.gov. For directions on how to submit electronic filing of comments, by e-mail see the "Public Comments Solicited" section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our Kalispell Ecological Services Suboffice at the above address. Further information also is available on the Internet at <http://mountain-prairie.fws.gov/species/fish/yct/index.htm>.

FOR FURTHER INFORMATION CONTACT:

Wade Fredenberg at the above address (fax: (406) 758-6887; telephone: (406) 758-6872; e-mail: wade_fredenberg@fws.gov).

SUPPLEMENTARY INFORMATION:**Background**

On February 23, 2001, we published a **Federal Register** notice (66 FR 11244) announcing our 90-day finding on an August 14, 1998, petition to list Yellowstone cutthroat trout as threatened or endangered under the Act. We determined that the petition failed to present substantial information indicating that listing this subspecies may be warranted. During the period leading up to this finding, we received written comments from the game and fish departments of the States of Idaho, Montana, Wyoming, Utah, and Nevada, as well as from Yellowstone National Park, several entities of the U.S. Forest Service, and the Shoshone-Bannock tribes of the Fort Hall Indian Reservation. In their letters and attachments, those entities provided important information relevant to the status of Yellowstone cutthroat trout. That information, as well as information supporting the petition, was used in the 90-day finding.

On January 20, 2004, the Center for Biological Diversity and others filed a complaint in the U.S. District Court for the District of Colorado, alleging that the Service had used the wrong procedures and standards to assess the petition as part of the 90-day finding process. On December 17, 2004, the Court ruled in favor of the plaintiffs and ordered the Service to produce a status review and 12-month finding for Yellowstone cutthroat trout. On February 14, 2005, the Court clarified its order and attached a February 14, 2006, due date for the Service to complete the review and finding.

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a 12-month finding whether a petitioned action is (a) not warranted, (b) warranted, or (c) warranted but the immediate proposal of a regulation is precluded by other pending proposals to determine whether other species are threatened or endangered. This finding is based on a status review that is normally initiated by a positive 90-day finding. In this case, the status review is being initiated by court order.

We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Yellowstone cutthroat trout. The Service will base its 12-month finding on a review of the best

scientific and commercial information available, including all information received during the public comment period.

Public Comments Solicited

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: (*Oncorhynchus clarki bouvieri*)" and your name and return address in your e-mail message regarding the (*Oncorhynchus clarki bouvieri*) status review. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

Author

The primary author of this document is Wade Fredenberg, Fisheries Biologist, U.S. Fish and Wildlife Service, Creston Fish and Wildlife Center, Kalispell, Montana.

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

Dated: August 19, 2005.

Marshall Jones,

Acting Director, U.S. Fish and Wildlife Service.

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