DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Delist Gray Wolves in Minnesota, Wisconsin, and Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the gray wolf (*Canis lupus*) under the Endangered Species Act of 1973, as amended (Act). The Service finds that the petition does not present substantial information indicating that delisting may be warranted.

DATES: The finding announced in this document was made on October 19, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by December 18, 1998.

ADDRESSES: Questions, comments, or information concerning this petition should be sent to the Ecological Services Operations Supervisor, U.S. Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. The separate petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. T.J. Miller; 612–713–5334 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The processing of this petition conforms with the Service's final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications (Tier 2); and third priority to processing proposed and final designations of critical habitat (Tier 3). The processing of this petition falls under Tier 2.

The Service has made a 90-day finding on a petition to delist the gray wolf (*Canis lupus*) in Minnesota, Wisconsin, and Michigan. The petition, dated February 9, 1998, was submitted by Mr. Lawrence Krak and was received on February 13, 1998. The petition requested that the Service delist the gray wolf in these three states, because the wolf is improperly listed as a subspecies in that area. The petition alleged that the subspecies listing is invalid because the subspecies found in these three states freely mixes with wolves in adjacent portions of Canada. Thus, because the wolves in these three states do not constitute a valid and listable subspecies, the petition stated that the gray wolf should be delisted immediately. Mr. Krak sent a second letter, dated June 15, 1998, which enclosed additional information relevant to his petition.

A review of the petition and Mr. Krak's subsequent letter and enclosure indicates that the petition is based upon a misunderstanding of the scope of the current listing of the gray wolf and of the Service's Vertebrate Population Policy.

The gray wolf is currently listed throughout the coterminous 48 states and Mexico at the species level; this listing is not based in any way upon subspecific affiliation or validity. Thus, the claim that the listing is based upon an improper listing as a subspecies is invalid. While the subspecies *C. l. lycaon* was listed as endangered in Minnesota and Michigan in 1974 (U.S. Fish and Wildlife Service 1974), that listing was superseded by a 1978 listing (43 FR 9607) of the gray wolf, *C. lupus* (i.e., the full species), throughout the 48 coterminous states and Mexico.

Furthermore, the Service's Vertebrate Population Policy (61 FR 4722, February 7, 1996), promulgated to clarify the definition of ''species'' found in the Act, would allow a listing of a vertebrate species or subspecies in a portion of the United States even if it freely mixes with a larger population across an international border. This policy would allow the Service to list, as a distinct population segment, the U.S. portion of a wolf subspecies which has a much larger population in adjacent Canada. Thus, even if the current listing of the gray wolf was done at the subspecies level, the Vertebrate Population Policy would encompass it within the scope of the Service's listing authority.

The Service has reviewed the petition; the material submitted with, and subsequent to, the petition; and additional information in the Service's files. The Service also solicited comments and data from the States and Tribes within the area included in the petition and has reviewed the information received from those sources. On the basis of the best scientific and commercial data available, the Service finds that the petition does not present substantial information that delisting the gray wolf in Minnesota, Wisconsin, and Michigan may be warranted.

References Cited

U.S. Fish and Wildlife Service. 1974. United States list of endangered fauna, May 1974. U.S. Department of the Interior. Washington, D.C. 20240. 22 pp.

Author: The primary author of this document is Ronald L. Refsnider of the Service's Regional Office (U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056; 612–713–5346).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–27977 Filed 10–16–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–

Endangered and Threatened Wildlife and Plants; Extension of Comment Period for Proposed Rule To List the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposal to list the contiguous United States distinct population segment of the Canada Lynx is being extended. All interested parties are invited to submit comments on this proposal.

DATES: Comments will be accepted until November 16, 1998.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, Montana Field Office, (see **ADDRESSES** section) (telephone 406/449–5225; facsimile 406/449–5339).

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1998 (63 FR 36994), the U.S. Fish and Wildlife Service (Service) published a proposed rule to list the contiguous United States distinct population of the Canada lynx (*Lynx canadensis*) as threatened under the Endangered Species Act of 1973, as amended. This population segment includes the States of Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts. The contiguous United States population segment of the Canada lynx is threatened by human alteration of forests, low numbers as a result of past overexploitation, expansion of the range of competitors (bobcats (*Felis rufus*) and coyotes (*Canis latrans*)), and elevated levels of human access into lynx habitat. This rule also lists the captive population of Canada lynx within the coterminous United States (lower 48 States) as threatened due to similarity of appearance and permits the continued export of captive-bred Canada lynx.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are solicited.

The original comment period on this proposal was scheduled to close on September 30, 1998. To accommodate the Great Lakes Indian Fish and Wildlife Commission council meeting schedule, the Service extended the comment period to October 14, 1998. The Service is once again extending the comment period to accommodate a request from a variety of members of the Senate and the House of Representatives. Written comments may now be submitted until November 16, 1998, to the Service's Montana Field Office (see **ADDRESSES** section above). All comments must be received before the close of the comment period to be considered.

Author

The author of this notice is Lori Nordstrom, U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES** section).

Authority

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

Dated: October 14, 1998.

Terry T. Terrell,

Regional Director, Denver, Colorado.

[FR Doc. 98–28028 Filed 10–16–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE38

Migratory Bird Hunting; Temporary and Conditional Approval of Tungsten-Matrix Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to amend its regulations and grant temporary and conditional approval of tungsten-matrix shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y–K) Delta, Alaska, while reproductive/chronic toxicity testing is being completed. Tungsten-matrix shot has been submitted for consideration as nontoxic by Kent Cartridge Manufacturing Company, Ltd. (Kent), of Kearneysville, West Virginia.

DATES: Comments on the proposed rule must be received no later than November 18, 1998.

ADDRESSES: Copies of the draft EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 634–ARLSQ, Washington, D.C. 20240. Comments may also be forwarded to this same address. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, or James R. Kelley, Jr., Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel and bismuth-tin shot are approved by the Service as nontoxic. On October 7, 1998 tungsten-iron (63 FR 54015) and tungsten-polymer (63 FR 54021) shot were given temporary conditional approval for the 1998–99 hunting season. Compliance with the use of nontoxic shot is increasing over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types. The Service is eager to consider these other materials for approval as nontoxic shot.

The revised procedures for approving nontoxic shot (50 CFR 20.134) consist of a three-tier process whereby existing information can minimize the need for full testing of a candidate shot. However, applicants still carry the burden of proving that the candidate shot is nontoxic. By developing the new approval procedure, it was the Service's intent to discontinue the practice of granting temporary conditional approval to candidate shot material. However, the application by Kent was initiated prior to implementation of the new protocol. To date, scientific information presented in the application suggests that tungsten-matrix is nontoxic under conditions for the proposed shot configuration. Therefore, the Service has agreed to grant temporary conditional approval for the 1998–99 hunting season. Permanent approval will not be granted until further testing is successfully completed; which is consistent with the previous nontoxic shot approval process.

Kent's original candidate shot was fabricated from what is described in their application as "* * * a mixture of powdered metals in a plastic matrix whose density is comparable to that of lead. All component metals are present as elements, not compounds. Tungsten-