

to the most recent Trends in Telephone Service data, 808 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio Telephone (SMR) service, which are placed together in the data.⁸⁵ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by any regulations adopted pursuant to this proceeding.

42. *Fixed Microwave Services.* Microwave services include common carrier,⁸⁶ private-operational fixed,⁸⁷ and broadcast auxiliary radio services.⁸⁸ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.⁸⁹ We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

43. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the

Rural Radiotelephone Service.⁹⁰ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).⁹¹ We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁹² There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

44. The Competitive Networks FNPRM Rulemaking proposes no additional reporting, recordkeeping or other compliance measures. We note *supra*, however, that the Competitive Networks FNPRM seeks comment on termination or phase out of exclusivity and preferential provisions in contracts between telecommunications providers and MTEs.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.

45. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁹³

46. In this Competitive Networks FNPRM, we seek comment on proposals that are intended to promote competition in local communications markets by ensuring that competing telecommunications providers are able to serve customers in MTEs. Specifically, we seek comment on the following proposals: (1) Whether we should require building owners, who allow access to their premises to any telecommunications provider, to make comparable access available to all providers on a nondiscriminatory basis;

(2) whether we should prohibit local exchange carriers from serving buildings that do not afford nondiscriminatory access to all telecommunications service providers; (3) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with residential building owners; (4) whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs; (5) whether we should phase out exclusive access provisions by establishing a future termination date for such provisions; (6) whether we should phase out exclusive access provisions for carriers that qualify as small entities and the timing of any such phase out; (7) whether, and to what extent, preferential agreements between building owners and LECs should be regulated by the Commission; (8) whether the Commission's rules governing access to cable home run wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (9) the extent to which utility rights-of-way within MTEs are subject to access by telecommunications carriers (except incumbent LECs) and cable companies pursuant to Section 224 of the Act.⁹⁴ We anticipate that the proposals, if enacted in whole or in part, would benefit consumers, telecommunications carriers and building owners, including small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH68

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Dolly Varden as Threatened in Washington Due to Similarity of Appearance to Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

⁸⁵ FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

⁸⁶ 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

⁸⁷ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

⁸⁸ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The relay also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁸⁹ 13 CFR 121.201, SIC 4812.

⁹⁰ The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

⁹¹ BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

⁹² 13 CFR 121.201, SIC code 4812.

⁹³ 5 U.S.C. 603(c).

⁹⁴ 47 U.S.C. 224.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Dolly Varden (*Salvelinus malma*) as threatened under the "Similarity of Appearance" provisions of the Endangered Species Act of 1973, as amended. In Washington, the Dolly Varden, an anadromous char and a member of the family Salmonidae, occurs in several river drainages within the Coastal-Puget Sound distinct population segment of the bull trout (*Salvelinus confluentus*), which is listed as a threatened species under the Act. Because of the close resemblance in appearance between bull trout and Dolly Varden, law enforcement personnel have substantial difficulty in differentiating between the two species. The determination of threatened status due to similarity of appearance for Dolly Varden will extend to this species the prohibitions against take that apply to bull trout, and will substantially facilitate law enforcement actions to protect bull trout. Actions that result in take of Dolly Varden may include capture as a result of fishing and actions that degrade or destroy habitat.

DATES: Comments from all interested parties must be received by March 12, 2001. Public hearing requests must be received by February 23, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments to Gerry Jackson, Manager, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503.

(2) You may send comments by e-mail to dolly_warden@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN 1018-AH68]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Western Washington Office at phone number 360-753-9440. Please note that the e-mail address "dolly_warden@fws.gov" will be closed out at the termination of the public comment period.

(3) You may hand-deliver comments to our Western Washington Office at 510 Desmond Drive SE, Suite 102, Lacey, Washington.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule,

will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gerry Jackson, Manager, Western Washington Office (see **ADDRESSES** section) (telephone 360/753-9440; facsimile 360/753-9008).

SUPPLEMENTARY INFORMATION:

Background

Section 4(e) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C., 1531 *et seq.*, and implementing regulations (50 CFR 17.50-17.52), authorize the treatment of a species (subspecies or population segment) as endangered or threatened if (a) The species so closely resembles in appearance a listed endangered or threatened species that law enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the purposes of the Act. Listing a species as endangered or threatened under the similarity-of-appearance provisions of the Act extends the take prohibitions of section 9 to cover the species. A designation of endangered or threatened due to similarity of appearance under section 4(e) of the Act, however, does not extend other protections of the Act, such as the consultation requirements for Federal agencies under section 7 and the recovery planning provisions under section 4(f), that apply to species that are listed as endangered or threatened under section 4(a).

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char (trout in the genus *Salvelinus*) that are native to the Pacific Northwest and western Canada. On November 1, 1999, we added the bull trout to the List of Endangered and Threatened Wildlife (50 CFR 17.11) as a threatened species throughout its range in the coterminous United States (64 FR 58910). This determination was based on our finding that the Coastal-Puget Sound and St. Mary-Belly River distinct population segments of bull trout are threatened, coupled with our earlier findings of threatened status for the Klamath River, Columbia River, and Jarbidge River distinct population segments (63 FR 31647; 64 FR 17110).

Bull trout and Dolly Varden (*Salvelinus malma*) occur together only within the area occupied by the Coastal-Puget Sound bull trout distinct

population segment. This area of overlap includes western Washington (west of the Cascades) and the Olympic Peninsula (64 FR 58910). Although these two species of "native char" were previously considered a single species, the bull trout and the Dolly Varden are now formally recognized as two separate species (Cavender 1978; Robins *et al.* 1980; Bond 1992). Specific distinctions between bull trout and Dolly Varden are based on morphometrics (measurements), meristic variation (variation in characters that can be counted), osteological characteristics (bone structure), and distributional evidence (Cavender 1978). Currently, genetic analyses can distinguish between the two species (Crane *et al.* 1994; Baxter *et al.* 1997; Leary and Allendorf 1997). Bull trout and Dolly Varden, however, are virtually impossible to differentiate visually, and misidentifications occur even using an established morphometric field identification procedure. In a study of the errors in, and problems with species identification, bull trout were misidentified as Dolly Varden 48 percent of the time, and the error rate was 2.5 percent for Dolly Varden misidentified as bull trout (Haas and McPhail 2000). Washington Department of Fish and Wildlife (WDFW) currently manages the two species together as "native char." Consequently, we delineated 34 subpopulations of "native char" (bull trout, Dolly Varden, or both species) within the Coastal-Puget Sound distinct population segment (64 FR 58910).

Fifteen of the thirty-four subpopulations had been analyzed when the bull trout was listed as threatened. Bull trout likely occur in the majority of the remaining 19 subpopulations. Genetic analyses determined that three of the tested "native char" subpopulations within the Coastal-Puget Sound distinct population segment contained only Dolly Varden (64 FR 58910). Because of the limited sample sizes used in the analyses, however, and evidence that bull trout and Dolly Varden frequently co-occur, we considered it premature to conclude that bull trout do not exist in these subpopulations. The proposal to list the Dolly Varden due to similarity of appearance to bull trout includes all 34 "native char" subpopulations described in the bull trout rule (64 FR 58910).

We did not include the similarity-of-appearance designation for Dolly Varden in the listing for bull trout based on WDFW's management strategies for these two species. We considered that, for fisheries regulations, WDFW manages the two species together as

“native char.” For conservation management, WDFW has combined the two species into common inventory stock units (spawning populations) that represent composites of both bull trout and Dolly Varden char within specific areas (WDFW 1998). After further consideration, however, we have determined that law enforcement personnel will have substantial difficulty in attempting to differentiate between bull trout and Dolly Varden because of their close resemblance in appearance. The effect of such a close resemblance between the two species will be an additional threat to bull trout because of the difficulty in prosecuting cases of illegal take of bull trout.

Designating Dolly Varden as threatened due to similarity of appearance will extend take prohibitions to this species in the 34 “native char” subpopulations in the Coastal-Puget Sound area. The term “take” as defined in section 3 of the Act means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” In the definition of take, the term “harass” is defined (50 CFR 17.3) as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.” The term “harm” is further defined (50 CFR 17.3) as meaning, in the definition of take, an act which actually kills or injures wildlife. Such actions may include “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” Because Dolly Varden and bull trout cannot easily be distinguished visually, take prohibitions against any actions that may result in harm or harassment to bull trout will also apply to Dolly Varden where individuals cannot readily be identified as to species. Such actions may include not only capture as a result of fishing, but any actions that might result in habitat degradation or destruction.

Special Rule

In the final listing for bull trout, we included a special rule, as provided by section 4(d) of the Act, exempting certain activities from the take prohibition. This special rule exempts from the take prohibition fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations and take for educational purposes,

scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act (64 FR 58910). We propose to extend the same take prohibitions to Dolly Varden as are in place to protect bull trout and, if this proposed rule is made final, this special regulation will also apply to the Dolly Varden in the 34 “native char” populations in the Coastal-Puget Sound area.

Actions that would and would not likely be considered a violation of section 9 that apply to bull trout were included in the final rule to list the bull trout (64 FR 58910). These also would apply to Dolly Varden in the 34 “native char” subpopulations in the Coastal-Puget Sound area if this rule is made final. Actions that, without a permit or other authorization from us, are likely to be considered a violation of section 9 include:

(1) Take of Dolly Varden without a permit or other incidental take authorization from us. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State, National Park Service, and Tribal fish and wildlife conservation laws and regulations;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Dolly Varden;

(3) Unauthorized interstate and foreign commerce (commerce across State and international boundaries) and import/export of Dolly Varden;

(4) International introduction of nonnative fish species that compete or hybridize with Dolly Varden;

(5) Destruction or alteration of Dolly Varden habitat by dredging, channelization, diversion, instream vehicle operation or rock removal, grading of unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, turbidity, temperature, and migratory corridors used for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting Dolly Varden that result in death or injury of this species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting Dolly Varden by timber harvest, grazing,

mining, hydropower development, road construction, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by these species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider this list to be exhaustive and provide it as information to the public.

The designation of Dolly Varden as threatened due to similarity of appearance will substantially facilitate law enforcement protection of bull trout and further the purposes of the Act. Therefore, we are proposing to list the Dolly Varden as threatened under section 4(e), “Similarity of Appearance” provisions, of the Act.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Any final regulation concerning the listing of this species will take into consideration the comments and any additional information received by us, and such communications may lead to a final regulation that differs from this proposal.

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 from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent’s identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. 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.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in

Dated: December 13, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for Status Review Addressing the Washington Population of Western Sage Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status Review; notice of reopening of comment period.

SUMMARY: Pursuant to the Endangered Species Act of 1973, as amended (Act), the United States Fish and Wildlife Service (Service) provides notice of the reopening of the comment period for the status review addressing the Washington population of western sage grouse (*Centrocercus urophasianus phaios*). Reopening of the comment period will allow further opportunity for all interested parties to submit additional information and written comments to be considered by the Service for this status review (see **DATES** and **ADDRESSES**).

DATES: Written materials from interested parties must be received by February 16, 2001.

ADDRESSES: You may submit written comments, reports, map products, and other information concerning this status review to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia River Basin Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Chris Warren at the address listed above, or by telephone at (509) 893-8020, or by facsimile at (509) 891-6748.

SUPPLEMENTARY INFORMATION:

Background

In July 2000, the American Ornithologists' Union (AOU) recognized sage grouse (*Centrocercus urophasianus*) by the common name of greater sage grouse. In addition, the AOU now recognizes sage grouse inhabiting southwestern Colorado and extreme southeastern Utah as a congeneric species (*C. minimus*), referred to as Gunnison sage grouse (AOU 2000). The western subspecies of

greater sage grouse (*C. u. phaios*) was first described in 1946 (Aldrich 1946), and was recognized by the AOU in 1957 (AOU 1957). Compared to birds throughout the remainder of the species' range, western sage grouse have reduced white markings and darker grayish-brown feathering, resulting in a more dusky overall appearance. The above nomenclature and recognized ranges for these taxa have been adopted by the United States Fish and Wildlife Service in this notice, and will be used for subsequent work concerning this status review.

Greater sage grouse are the largest North American grouse species. Historically, greater sage grouse were believed to occur in 12 states and 3 Canadian provinces (after Schroeder *et al.* 1999); their range extending from southeastern Alberta and southwestern Saskatchewan, Canada, south to northwestern Colorado, west to eastern California, Oregon, and Washington, and north to southern British Columbia, Canada. Currently, greater sage grouse occur in 11 states and 2 Canadian provinces, having been extirpated from Nebraska and British Columbia (after Braun 1998). The historic distribution of western sage grouse extended from southern British Columbia southward through eastern Washington and Oregon, except in extreme southeastern Oregon near the Idaho/Nevada borders (Aldrich 1963). Currently, western sage grouse occur in southeastern Oregon and central Washington (Johnsgard 1973, Drut 1994, WDFW 1995).

Range wide, the distribution of greater sage grouse has declined in a number of areas, most notably along the periphery of their historic range. In addition, there is general consensus in the literature that there have been considerable declines from historic abundance levels, and much of the overall decline occurred from the late 1800s to the mid 1900s (Hornaday 1916, Crawford and Lutz 1985, Drut 1994, WDFW 1995, Coggins and Crawford 1996, Braun 1998, Schroeder *et al.* 1999, among others). The available information indicates that the current range-wide population estimate for greater sage grouse is between roughly 100,000 and 500,000 individuals. Based on rough historic estimates, greater sage grouse abundance may have declined by over 69 percent from historic levels.

Until the early 1900s, western sage grouse were distributed throughout central and eastern Oregon in sagebrush dominated areas until the early 1900s. By 1920, western sage grouse populations in Oregon had decreased and were considered scarce except for areas in south-central Oregon

(Gabrielson and Jewett 1940, Drut 1994). The distribution of western sage grouse in Oregon declined by approximately 50 percent from 1900 to 1940 (Crawford and Lutz 1985), and further declines in distribution and abundance likely continued into the mid-1980s (Crawford and Lutz 1985). Presently, Malheur, Harney, and Lake Counties harbor the bulk of western sage grouse in Oregon (roughly 24,000 to 58,000 birds), with the remaining portion (roughly 3,000 to 8,000 birds) split among Baker, Crook, Deschutes, Grant, Klamath, Union, and Wheeler Counties (after Willis *et al.* 1993).

Historically, western sage grouse in Washington ranged from Oroville in the north, west to the Cascade foothills, east to the Spokane River, and south to the Oregon border (Yocom 1956). Western sage grouse have been extirpated from 7 counties in Washington and currently occupy approximately 10 percent of their historic range in the state; the two remaining subpopulations total roughly 1,000 birds (WSGWG 1998). One subpopulation occurs primarily on private and state owned lands in Douglas County (approximately 650 birds), the other occurs at the Yakima Training Center (YTC), administered by the Army, in Kittitas and Yakima Counties (approximately 350 birds). These two subpopulations are geographically isolated from the Oregon population (WDFW 1995, Livingston 1998) and nearly isolated from one another (WSGWG 1998).

The May 28, 1999, petition addressing the listing of western sage grouse under the Act requested that the subspecies be listed as threatened or endangered in Washington, yet the Service does not base listing decisions on political subdivisions beyond that of international boundaries. However, the Service has developed policy that addresses the recognition of distinct population segments (DPS) of vertebrate species and subspecies for consideration under the Act (61 FR 4722). The DPS policy was developed to address the measures prescribed by the Act and its Congressional guidance. The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require the protective measures of the Act. Under the DPS policy, two elements are used to assess whether a population under consideration for listing may be recognized as a DPS. The two elements are: (1) A population segment's discreteness from the remainder of the taxon; and (2) the population segment's significance to the taxon to which it belongs.