

action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of

promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*)

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401, *et seq.*

Dated: January 30, 2008.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*  
[FR Doc. E8–2251 Filed 2–6–08; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS–R6–ES–2008–0023; 1111 FY07 MO–B2]

#### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Bonneville Cutthroat Trout (*Oncorhynchus clarki utah*) as Threatened or Endangered

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

**ACTION:** Notice; initiation of status review, and solicitation of new information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period regarding the status of the Bonneville cutthroat trout (*Oncorhynchus clarki utah*) throughout its range in the United States. The 12-month finding for this subspecies, published in the **Federal Register** on October 9, 2001, has been withdrawn by the Service (Stansell Memorandum, August 24, 2007) due to the subsequent development of a formal opinion (Department of the Interior, March 16, 2007) regarding the legal

interpretation of the term “significant portion of the range” of a species. The status review will include analysis of whether any significant portion of the range of the Bonneville cutthroat trout warrants listing as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, the Bonneville cutthroat trout throughout its range, or any significant portion of its range.

**DATES:** To be fully considered for the 12-month finding, comments must be submitted on or before April 7, 2008.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0023; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

#### FOR FURTHER INFORMATION CONTACT:

Larry Crist, Field Supervisor, Utah Field Office, U.S. Fish and Wildlife Service, at the above address, or phone (801) 975–3330, ext. 126. Additional information is available at <http://www.fws.gov/mountain-prairie/species/fish/bct/>.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Bonneville cutthroat trout. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the Bonneville cutthroat trout throughout its range, including:

- (1) Information regarding the species’ historical and current population status, distribution, and trends; its biology and ecology; and habitat selection;

- (2) Information on the effects of potential threat factors that are the basis

for a species' listing determination under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;
  - (b) Overutilization for commercial, recreational, scientific, or educational purposes;
  - (c) Disease or predation;
  - (d) Inadequacy of existing regulatory mechanisms; and
  - (e) Other natural or manmade factors affecting its continued existence.
- (3) Information on management programs for the conservation of the Bonneville cutthroat trout.

Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, because section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue a new 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your comments and materials concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Utah Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119, telephone (801) 975-3330.

#### Background

Section 1533(b)(3)(A) and (B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Threatened and Endangered Wildlife and Plants, to the maximum

extent practicable, within 90 days after receiving the petition, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. In addition, that within 12 months after receiving a petition that is found to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make a finding on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**. This notice is to initiate a 12-month finding.

On October 9, 2001, we announced our 12-month finding (66 FR 51362) in which we found that, after reviewing the best available scientific and commercial information, listing the Bonneville cutthroat trout was not warranted. We were sued by the Center for Biological Diversity on February 17, 2005 on the merits of the 12-month finding. On March 7, 2007, the District Court of Colorado dismissed the lawsuit after determining that Plaintiffs failed to demonstrate the not warranted finding was arbitrary, capricious, or contrary to law. Plaintiffs appealed to the 10th Circuit Court of Appeals. However, due to subsequent development of a formal opinion (Department of the Interior, March 16, 2007) regarding the legal interpretation of the term "significant portion of the range" of a species, we withdrew our finding (Stansell Memorandum, August 24, 2007). The lawsuit was subsequently dismissed and the case was closed on May 14, 2007. The new status review will include an analysis of whether any significant portion of the range of the Bonneville cutthroat trout warrants listing as threatened or endangered under the Act.

At this time, we are soliciting new information on the status and potential threats to the Bonneville cutthroat trout. Information submitted in response to our 2001 12-month finding will be considered and need not be resubmitted. We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received as a result of this notice. For more information on the biology, habitat, and range of the Bonneville cutthroat trout, please refer to our previous 12-month finding published in the **Federal Register** on October 9, 2001 (66 FR 51362).

We request any new information concerning the status of the Bonneville cutthroat trout. If you submit

information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data regarding population size or trends; biology or ecology of the species; effects of current land management on population distribution and abundance; current condition of habitat; and conservation measures that have been implemented to benefit the species. Additionally, we specifically request information on the current distribution of populations, and threats to the subspecies in relation to the five listing factors (as defined in section 4(a)(1) of the Act).

#### Author

The primary authors of this document are staff of U.S. Fish and Wildlife Service, Utah Field Office—Ecological Services.

#### Authority

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

Dated: February 1, 2008.

#### H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E8-2222 Filed 2-6-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R2-ES-2008-0018; 92210-1117-0000-B4]

RIN 1018-AV25

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Devils River Minnow (*Dionda diaboli*)

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

**ACTION:** Proposed rule; reopening of comment period, notice of availability of draft economic analysis, amended required determinations, and notice of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for the Devils River minnow (*Dionda diaboli*) under the Endangered Species