

invites comments on whether the rule could be written so that it is easier to understand.

#### List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 337 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 337 continues to read as follows:

**Authority:** 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831.

2. In § 337.6, revise paragraphs (a)(5)(iii), (b)(2)(ii)(B), and (b)(4) to read as follows:

#### § 337.6 Brokered deposits.

(a) \* \* \*

(5) \* \* \*

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution that is not well capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area. For purposes of this paragraph, the prevailing rates of interest in such depository institution's normal market area shall be deemed to be the national rate as defined in paragraph (b)(2)(ii)(B) of this section unless the FDIC determines, based on available evidence, that the prevailing rates differ from the national rate.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* (ii) \* \* \*

(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate, which would be calculated and published by the FDIC, shall be a simple average of rates paid by all insured depository institutions and branches for which data are available.

\* \* \* \* \*

(4) For purposes of the restrictions contained in paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section, a presumption shall exist that the effective yield in the relevant market is the national rate as

defined in paragraph (b)(2)(ii)(B) of this section unless the FDIC determines, based on available evidence, that the effective yield differs from the national rate. An effective yield on a deposit with an odd maturity violates paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market. A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area.

\* \* \* \* \*

Dated at Washington, DC, this 27th day of January, 2009.

Authorized to be published in the **Federal Register** by Order of the Board of Directors of the Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R9-IA-2008-0123; 96100-1671-0000-B6]

RIN 1018-AI83

#### Endangered and Threatened Wildlife and Plants; Petition To Reclassify the Wood Bison From Endangered to Threatened

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding on a petition to reclassify the wood bison (*Bison bison athabasca*) from endangered to threatened throughout its range in the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presents substantial scientific and commercial information indicating that the petitioned action of reclassifying the wood bison from endangered to threatened status under the Act may be warranted. Therefore, we are initiating a

status review of the wood bison to determine if reclassification, as petitioned, is warranted under the Act. To ensure that the status review is comprehensive, we are requesting submission of any new information on the wood bison since its original listing as endangered throughout its entire range under the predecessor of the Act on June 2, 1970 (35 FR 8491). At the conclusion of our status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

**DATES:** The finding announced in this document was made on January 14, 2009. To be considered in the 12-month finding on this petition, we will accept comments and information from all interested parties until April 6, 2009.

**ADDRESSES:** You may submit information, materials, and 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-R9-IA-2008-0123; 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:** Rosemarie Gnam, Ph.D., Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone 703-358-1708; facsimile 703-358-2276; electronic mail [ScientificAuthority@fws.gov](mailto:ScientificAuthority@fws.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Information Solicited

We intend that any final action resulting from this status review will be as accurate and as effective as possible based on the best available scientific and commercial information. Therefore, we solicit information, comments, or suggestions on the wood bison from the public, concerned government agencies, the scientific community, or any other interested party. We are opening a 60-day public comment period to allow all interested parties an opportunity to provide information on the status of the

wood bison throughout its range, including:

(1) Information on taxonomy, distribution, habitat selection and use, food habits, population density and trends, habitat trends, disease, and effects of management on wood bison;

(2) Information on captive herds, including efficacy of breeding and reintroduction programs, origin of parental stock, stock supplementation for genetic purposes, growth rates, birth and mortality rates in captivity; location of captive herds in comparison to wild populations, effects of captive breeding on the species' natural habitats and wild populations, and any other factors from captive breeding that might affect wild populations or natural habitat;

(3) Information on the adequacy of existing regulatory mechanisms; trends in domestic and international trade of live specimens, sport-hunted trophies, or other parts and products; poaching of wild wood bison; illegal trade and enforcement efforts and solutions; and oversight of reintroduction or introduction programs;

(4) Information on the effects of other potential threat factors, including contaminants, changes of the distribution and abundance of wild populations, disease episodes within wild and captive populations, large mortality events, climate change, or negative effects resulting from the presence of invasive species; and

(5) Information on management programs for wood bison conservation in the wild, including private, tribal, or governmental conservation programs that benefit wood bison.

We will base our finding on a review of the best scientific and commercial information available, including all information received during the public comment period.

You may submit your comments and materials concerning this proposed rule 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 90-day 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, Division of Scientific Authority (see **FOR FURTHER INFORMATION CONTACT**).

### Background

We received a petition from the co-chairs of the National Wood Bison Recovery Team (NWBRT) based at the University of Calgary, Canada, dated November 26, 2007, requesting that we reclassify the wood bison (*Bison bison athabascae*) from endangered to threatened. The petition contained information about recovery efforts in Canada and referred to information provided to the United States Division of Scientific Authority by the NWBRT since 2004 regarding the natural history and biology of the wood bison, including the species' current status and distribution.

All wild, disease-free wood bison, 3,382 specimens in 2004, are found in northwestern Canada (Reynolds *et al.* 2004, p. 32). They are distributed among seven managed populations in the Northwest Territories, the Yukon Territory, British Columbia, Alberta, and Manitoba. There are also 15 captive-breeding herds (5 public herds and 10 private herds), with all of the public herds located in northwestern Canada.

The wood bison differs morphologically from the more common plains bison (*Bison bison bison*). The wood bison is larger and heavier within similar age and sex classes, darker in color with a more squarish hump than the rounder hump of the plains bison. There is less hair on top of the head of the wood bison, around the horns and in the beard, which makes the horns appear longer and the head appear smaller than those of the plains bison. The long hair on the front legs of plains bison is short or absent in wood bison, and the cape on the hump, shoulders, and neck is less distinct (Reynolds *et al.* 2003, p. 1013).

In contrast to the plains bison, wood bison herds are smaller. During rut, wood bison herds disperse into even smaller groups with some bulls temporarily becoming solitary (Reynolds *et al.* 2003, p. 1021). Whereas plains bison bulls establish dominance hierarchies for breeding, wood bison bulls establish harems (Reynolds *et al.* 2003, p. 1021). Wood bison home range size varies with age, sex, and availability of forage (Reynolds *et al.* 2003, pp. 1024–25). The breeding season is from July to October. Bulls between the ages of 6 and 9 years do most of the breeding (Reynolds *et al.* 2003, p. 1025). Peak breeding age for cows is between 5 and 14 years of age. Wood bison forage in open meadows,

and rest and ruminate in aspen and coniferous forests (Government of Canada 1997, p. 2; Reynolds *et al.* 2003, p. 1037).

### History of the Endangered Species Act Listing

The wood bison was listed under the U.S. Endangered Species Conservation Act of 1969; the listing of which went into effect on June 2, 1970, with the publication of our final rule, Conservation of endangered species and other fish or wildlife (35 FR 8491). At that time through the present, the only wild wood bison herds were found in the boreal wilderness of northwestern Canada (Government of Canada 1997, p. 2). While never numerous, the subspecies, which numbered approximately 200,000 animals in Canada in 1800, was almost exterminated by the late 1800s due to overhunting for food and the fur trade. About 250 specimens survived in the early 1900s and were protected by the Government of Canada in Wood Buffalo National Park. The growing herd was jeopardized by the introduction of plains bison, however, with which the remaining wood bison hybridized. The plains bison also introduced tuberculosis and brucellosis in wood bison herds. A total of 200 disease-free bison with wood bison morphological characteristics were discovered in 1959 in a remote area of Wood Bison National Park. Between 1963 and 1965, just prior to the Endangered Species Conservation Act listing, 42 of these specimens were introduced into the Mackenzie Bison Sanctuary, near Fort Providence, in the Northwest Territories, and into Elk Island National Park in Central Alberta (Government of Canada 1997, p. 2). These specimens became the founder stock for the 4,336 disease-free specimens of wood bison (Reynolds *et al.* 2004, p. 32).

Because the wood bison was summarily listed under the 1969 Endangered Species Conservation Act, along with many other species, there was no separate **Federal Register** final rule for its listing. On June 2, 1970, the wood bison first appeared on the list of foreign species (Appendix A) in our final rule, Conservation of endangered species and other fish or wildlife (35 FR 8491). According to this rule, the taxa included in Appendix A of that document were considered as endangered throughout their range. It was likely that the total subspecies population of about 200 specimens contributed to the listing decision. Appendix A indicated Canada as the sole range country (in the "Where Found" column), with the explanation

that the range information “is a general guide to the native countries or regions where the named animals are found. It is not intended to be definitive.”

In 1979, the listing status of wood bison within the United States was reviewed due to a potential failure to comply with a procedural requirement of the 1969 Act (i.e., consulting with the governor of any state in which the species was found) (44 FR 43705; July 25, 1979). On July 25, 1980, the Service published a proposed rule discussing the earlier procedural error, but did not propose changes to the listing status of wood bison as we had determined that no pure bred individuals of the subspecies were known to occur in the United States (45 FR 49844).

#### Other Wood Bison Listings

The wood bison was placed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) on July 1, 1975, when the treaty went into effect (42 FR 10462; February 22, 1979). On September 28, 1997, the wood bison was downlisted to Appendix II based on a proposal from Canada that described progress in implementation of the Canadian recovery plan (Government of Canada, 1997; 62 FR 44627; August 22, 1997). The United States voted in support of the downlisting. Listing in CITES Appendix II allows for regulated commercial trade as long as certain findings are made, whereas a listing in Appendix I generally prohibits commercial trade. The wood bison is also listed as a threatened species under Canada’s Species at Risk Act (SARA), which went into effect on June 1, 2004. The 2006 IUCN Red List of Threatened Species (<http://www.iucnredlist.org/>) classifies the American bison (Bison

bison) as “lower risk–conservation dependent.” Subspecies, such as the plains bison and wood bison, are not evaluated separately from the species on the IUCN list.

The NWBRT petition is the second petition that we have received regarding the wood bison. On May 14, 1998, the Service received a petition from a private individual requesting that we remove the wood bison from the List of Endangered and Threatened Wildlife, primarily because it had just been downlisted under CITES. In a 90-day finding published on November 25, 1998 (63 FR 65164), we found that the petitioner did not supply substantial information to indicate that the delisting was warranted.

The NWBRT, with this petition, requests reclassification of the wood bison from endangered to threatened because—according to their petition—populations are healthy, habitat remains plentiful, and recovery and management plans are being implemented. With this action, we find that the NWBRT petition presents substantial scientific evidence and commercial information indicating that reclassification from an endangered species to a threatened species may be warranted.

#### Finding

On the basis of the information provided in the petition or contained in Service files, we have determined that the petition presents substantial scientific and commercial information indicating that reclassifying the wood bison from endangered to threatened may be warranted. Therefore, we are initiating a status review to determine if reclassification of the subspecies is warranted. To ensure that the status review is comprehensive, the Service is

soliciting scientific and commercial information regarding this subspecies.

#### References Cited

- Government of Canada. 1997. Prop. 10.35. Proposal for the transfer of wood bison (*Bison bison athabasca*) from Appendix I to Appendix II of the Convention on International Trade in Endangered Species. Tenth Meeting of the Conference of the Parties held in Harare, Zimbabwe, 9–20 June, 1997. 2 pp.
- Reynolds, H.W., C.C. Gates, and R.D. Glaholt. 2003. Bison (*Bison bison*). In: G.A. Feldhamer, B.C. Thompson, and J.A. Chapman (eds.), Wild Mammals of North America. Biology, Management, and Conservation. 2nd Edition. The Johns Hopkins University Press, Baltimore. Pp. 1009–1060.
- Reynolds, H., C. Gates, J. Nishi, T. Jung, H. Schwantje, and B. Stephenson. 2004. Draft background on wood bison recovery efforts and legal status in Canada. Submitted to U.S. Fish and Wildlife Service, August 2004. 32pp.

#### Author

The primary author of this document is Jeffrey P. Jorgenson, Ph.D., Division of Scientific Authority, U.S. Fish and Wildlife Service (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: January 14, 2009.

#### Kenneth Stansell,

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

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