

Crossman 1973, pp. 301–302; Nelson and Paetz 1991, pp. 253–256; Behnke 2002, pp. 327–331).

Pleistocene glaciations isolated two North American populations of Arctic grayling outside of Canada and Alaska (Vincent 1962, pp. 23–31). One population occurred in streams and rivers of the Great Lakes region of northern Michigan, but was extirpated in the 1930s (Hubbs and Lagler 1949, p. 44; Scott and Crossman 1973, p. 301). The second population (Arctic grayling of the upper Missouri River) inhabits watersheds in the upper Missouri River basin upstream of Great Falls, Montana. This population is the subject of our status review.

#### Previous Federal Actions

We have published a number of documents on Arctic grayling, and we describe our actions relevant to this notice below:

We initiated a status review for the Montana Arctic grayling (*Thymallus arcticus montanus*) in a **Federal Register** notice on December 30, 1982 (47 FR 58454). In that notice, we designated the purported subspecies Montana Arctic grayling as a Category 2 species. At that time, we designated a species as Category 2 if a listing as endangered or threatened was possibly appropriate, but we did not have sufficient data to support a proposed rule to list the species.

On October 9, 1991, the Biodiversity Legal Foundation and George Wuerthner petitioned us to list the fluvial Arctic grayling in the upper Missouri River basin as an endangered species throughout its historical range in the coterminous United States.

We published a notice of a 90–day finding in the January 19, 1993, **Federal Register** (58 FR 4975), concluding the petitioners presented substantial information indicating that listing the fluvial Arctic grayling of the upper Missouri River in Montana and northwestern Wyoming may be warranted. This finding noted that taxonomic recognition of the Montana Arctic grayling (*Thymallus arcticus montanus*) as a subspecies (previously designated as a category 2 species) was not widely accepted and that the scientific community generally considered this population a geographically isolated member of the wider species (*T. arcticus*).

On July 25, 1994, we published a notice of a 12–month finding in the **Federal Register** (59 FR 37738) concluding that listing the DPS of fluvial Arctic grayling in the upper Missouri River was warranted but precluded by other higher priority

listing actions (it should be noted that this DPS determination predated our DPS policy (61 FR 4722, February 7, 1996), so it did not undergo a formal DPS analysis as required by the policy). This finding placed fluvial Arctic grayling of the upper Missouri River on the candidate list and assigned it a listing priority of 9. On May 4, 2004, we elevated the listing priority number of the fluvial Arctic grayling to 3 (69 FR 24881).

On May 31, 2003, the Center for Biological Diversity and Western Watersheds Project (Plaintiffs) filed a complaint in U.S. District Court in Washington, D.C., challenging our “warranted but precluded” determinations. On July 22, 2004, the Plaintiffs amended their complaint to challenge our failure to emergency list this population. We settled with the Plaintiffs in August 2005, and we agreed to submit a final determination on whether this population warranted listing as endangered or threatened to the **Federal Register** on or before April 16, 2007.

On April 24, 2007, we published a revised 12–month finding on the petition to list the upper Missouri River DPS of fluvial Arctic grayling (72 FR 20305). In this finding, we determined that fluvial Arctic grayling of the upper Missouri River did not constitute a species, subspecies, or DPS under the Act. Therefore, we found that the upper Missouri River population of fluvial Arctic grayling was not a listable entity under the Act, and as a result listing was not warranted. With that notice, we withdrew the fluvial Arctic grayling from the candidate list.

On November 15, 2007, the Center for Biological Diversity filed a complaint to challenge our revised 12–month finding. We initiated a voluntary remand of our finding in May 2009. With this notice, we are initiating a new status review for Arctic grayling of the upper Missouri River system. Per our recent settlement, we will consider various DPS designations that include different life histories of Arctic grayling in the upper Missouri River system. Specifically, we may consider DPS configurations that include the fluvial and/or adfluvial Arctic grayling in the upper Missouri River system.

For additional information on the biology or previous Federal actions on grayling, see the April 24, 2007, revised 12–month finding (72 FR 20305).

#### References Cited

Behnke, R.J. 2002. Trout and salmon of North America. The Free Press, New York.

Hubbs, C.L., and K.F. Lagler. 1949. Fishes of the Great Lakes Region. Cranbrook Institute of Science. Bulletin No. 26, Bloomfield Hills, Michigan.

Nelson, J.S., and M.J. Paetz. 1991. The fishes of Alberta, second edition. University of Alberta Press, Calgary, Alberta, Canada.

Scott, W.B., and E.J. Crossman. 1973. Freshwater fishes of Canada. Fisheries Research Board of Canada, Bulletin 184, Ottawa.

Vincent, R.E. 1962. Biogeographical and ecological factors contributing to the decline of Arctic grayling, (*Thymallus arcticus*), in Michigan and Montana. PhD Dissertation. University of Michigan, Ann Arbor, Michigan. 169 PP.

#### Author

The primary author of this document is Douglas Peterson, U.S. Fish and Wildlife Service, Montana Field Office.

#### Authority

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

Dated: October 20, 2009

**Daniel M. Ashe,**

*Deputy Director, U.S. Fish and Wildlife Service*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R2-ES-2009-0030]

[92210-1111-FY08-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Northern Leopard Frog (*Lithobates [=Rana] pipiens*) in the Western United States as Threatened

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

**ACTION:** Notice of a 90–day petition finding; reopening of the information solicitation period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public information solicitation period on our July 1, 2009, initiation of status review and 90–day finding on a petition to list the western U.S. population of the northern leopard frog (*Lithobates [=Rana] pipiens*) as threatened under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested

parties with an additional opportunity to submit information and materials on the status of the northern leopard frog. Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered in the 12-month finding.

**DATES:** We are reopening the public information solicitation period. To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before November 27, 2009.

**ADDRESSES:** You may submit comments by any 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-R2-ES-2009-0030; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the "Information Solicited" section below and in our original notice (74 FR 31389) for more details).

**FOR FURTHER INFORMATION CONTACT:**

Steven L. Spangle, Field Supervisor, by U.S. mail at Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; telephone 602-242-0210; facsimile 602-242-2513. Information submitted after November 27, 2009 should be submitted to this address. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Information Solicited**

We, the U.S. Fish and Wildlife Service, published a 90-day finding on a petition to list the northern leopard frog as threatened in the **Federal Register** on July 1, 2009 (74 FR 31389). We are continuing to solicit information during this reopened information solicitation period on the status of the northern leopard frog. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the northern leopard frog. We are seeking information regarding:

(1) the historical and current status and distribution of the northern leopard

frog, its biology and ecology, and ongoing conservation measures for the species and its habitat, and threats to the species and its habitat;

(2) information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (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) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(3) its taxonomy (particularly genetics of the western U.S. population and of the convergence zone of the eastern and western haplotypes in Wisconsin and Ontario, Canada).

If you submitted information previously on the status of this species please do not resubmit it. This information has been incorporated into the public record and will be fully considered in the preparation of the 12-month finding. We will consider information received from all interested parties.

You may submit your information and materials concerning the 90-day finding by any of the methods listed in the

**ADDRESSES** section. Be aware that if you submit information via <http://www.regulations.gov> your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will also post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing the 90-day finding for the northern leopard frog, 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, Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

**Background**

On July 1, 2009, we published a 90-day finding on a petition to list the western U.S. population of the northern leopard frog as threatened (74 FR 31389). In that 90-day finding, we found that the petition presented substantial scientific or commercial information indicating that listing the western U.S. population of the northern leopard frog may be warranted. We also initiated a status review to determine if listing the species is warranted, and announced a 60-day public information solicitation period on the petition finding and status review, which ended on August 31, 2009.

We received multiple requests for an extension of the information solicitation period in order to allow agencies, tribes, and other interested persons the opportunity to provide additional information for our consideration during this status review. The broad geographical distribution of the western U.S. population of the northern leopard frog complicated the timely notification of interested parties. Collection of information from across the full range of the petitioned northern leopard frog population will be important for the status review and 12-month finding on the northern leopard frog.

**Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 20, 2009

**Daniel M. Ashe,**

*Deputy Director, U.S. Fish and Wildlife Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 0906221072-91133-01]

**RIN 0648-AX95**

**Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.