

sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this proposal easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also send the comments by e-mail to [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

This rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

### Paperwork Reduction Act

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

### National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

### Author

The primary author of this document is Kirsten Tarp, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

### Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

### § 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for *Berberis sonnei* (= *Mahonia* s.), Truckee barberry, under “FLOWERING PLANTS,” from the List of Endangered and Threatened Plants.

Dated: August 15, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02–22300 Filed 8–30–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants: Notice of Intent To Prepare a Status Review for the Westslope Cutthroat Trout

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

**ACTION:** Notice of Intent.

**SUMMARY:** We, the Fish and Wildlife Service, announce initiation of a new status review for the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. We request additional data, information, technical critiques, and relevant comments that may be available for this species.

**DATES:** Data, information, technical critiques, and comments must be submitted by November 4, 2002 to be considered in the status review and 12-month finding.

**ADDRESSES:** Comments should be submitted to Westslope Cutthroat Comments, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Room 301, Billings, MT 59102. The amended petition and its bibliography, our initial status review document and petition finding, related **Federal Register** notices, the recent Court Order and Judgement and Memorandum Opinion, and other pertinent information are available for inspection, during normal business hours and by appointment, at that address. The above information also may be obtained at our Internet Web site <<http://mountain-prairie.fws.gov/endspp/fish/wct/>>. Comments may be

submitted electronically to <[fw6\\_westslope@fws.gov](mailto:fw6_westslope@fws.gov)>.

### FOR FURTHER INFORMATION CONTACT:

Lynn R. Kaeding at e-mail ([Lynn\\_Kaeding@fws.gov](mailto:Lynn_Kaeding@fws.gov)) or telephone (406) 582–0717.

### SUPPLEMENTARY INFORMATION

#### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt of the petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. If the petition contains substantial information, the Act requires that we initiate a status review for the species and publish a 12-month finding indicating whether the petitioned action is—(a) not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. Notice of such 12-month findings are to be published promptly in the **Federal Register**.

On June 6, 1997, we received a formal petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Act. The petitioners were American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Inc., Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited's Madison-Gallatin Chapter, and Mr. Bud Lilly.

The westslope cutthroat trout (WCT) is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992). Cutthroat trout owe their common name to the distinctive red slash that occurs just below both sides of the lower jaw. Adult WCT typically exhibit bright yellow, orange, and red colors, especially among males during the spawning season. Characteristics of WCT that distinguish this fish from the other cutthroat subspecies include a pattern of irregularly shaped spots on the body that has few spots below the lateral line, except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct evolutionary lineage (Behnke 1992).

The historic range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992).

Although not known precisely, the historic distribution of WCT in streams and lakes can be summarized as follows—West of the Continental Divide, the subspecies is native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Washington-British Columbia border; the Spokane River above Spokane Falls and into Idaho's Coeur d'Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho's Snake River basin. The historic distribution of WCT also includes disjunct areas draining the east slope of the Cascade Mountains in Washington (Methow River and Lake Chelan drainages), the John Day River drainage in northeastern Oregon, and the headwaters of the Kootenai River and several other, disjunct regions in British Columbia. East of the Continental Divide, the historic distribution of WCT includes the headwaters of the South Saskatchewan River drainage (U.S. and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton. Today, various WCT stocks remain in each of these major river basins in Montana, Idaho, Washington, Oregon, and Wyoming.

On July 2, 1997, we notified the petitioners that our Final Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as being of lower priority than completion of emergency listings and processing of pending proposed listings. A backlog of listing actions, as well as personnel and budget restrictions in Region 6 (Mountain-Prairie Region), which was assigned responsibility for the WCT petition, prevented our staff from working on a 90-day finding for the petition.

On January 25, 1998, the petitioners provided an amended petition to list the WCT as threatened throughout its range and designate critical habitat for the subspecies. The amended petition contained additional new information in support of the requested action. Because substantial new information was provided, we treated the amended petition as a new petition.

On June 10, 1998, we published a notice in the **Federal Register** (63 FR

31691) of a 90-day finding that the amended WCT petition provided substantial information indicating that the requested action may be warranted and immediately began a comprehensive status review of WCT (U.S. Fish and Wildlife Service 1999). In the notice, we asked for data, information, technical critiques, comments, or questions relevant to the amended petition.

In response to our June 10, 1998, **Federal Register** notice, we received information on WCT from State game and fish departments, the U.S. Forest Service, National Park Service, tribal governments, and private corporations, as well as private citizens, organizations, and other entities (U.S. Fish and Wildlife Service 1999). That information indicated WCT presently occur in about 4,275 tributaries or stream reaches that collectively encompass more than 23,000 linear miles (36,800 kilometers) of stream habitat (U.S. Fish and Wildlife Service 1999). Those WCT stocks are distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins. In addition, WCT were determined to occur naturally in 6 lakes totaling about 72,900 hectares (180,000 acres) in Idaho and Washington, and in at least 20 lakes totaling 2,165 hectares (5,347 acres) in Glacier National Park in Montana. The status review also revealed that most of the habitat for extant WCT stocks lies on lands administered by Federal agencies, particularly the U.S. Forest Service (U.S. Fish and Wildlife Service 1999). Moreover, most of the strongholds for WCT stocks occur within roadless or wilderness areas or national parks, all of which afford considerable protection to WCT. In addition, there are numerous Federal and State regulatory mechanisms that, if properly administered and implemented, protect WCT and their habitats throughout the range of the subspecies.

On April 14, 2000, we published a notice in the **Federal Register** (65 FR 20120) of our 12-month finding that the WCT is not likely to become a threatened or endangered species within the foreseeable future. We found that, although the overall WCT population has been reduced from historic levels and extant stocks of this subspecies face threats in several areas of the historic range, the magnitude and imminence of those threats are small when considered in the context of the widespread distribution and current status of the overall WCT population. Therefore, we concluded that listing of the WCT as a

threatened or endangered species under the Act was not warranted at that time.

On October 23, 2000, plaintiffs filed, in the U.S. District Court for the District of Columbia, a suit alleging four claims. Plaintiffs alleged that our consideration of existing regulatory mechanisms was arbitrary. Plaintiffs further claimed that our consideration of hybridization as a threat to WCT was arbitrary because, while identifying hybridization as a threat to WCT, we relied on a draft Intercross policy (61 FR 4710) to include hybridized WCT in the total WCT population considered for listing under the Act. Plaintiffs' third claim averred that we arbitrarily considered the threats to the trout posed by the geographic isolation of some WCT stocks and the loss of some WCT life-history forms. Finally, plaintiffs claimed that we failed to account for the threat of whirling disease and other important factors, and that our decision to not list the WCT as threatened was arbitrary and capricious. In subsequent oral argument, plaintiffs conceded that their strongest argument, and the one from which their other concerns stemmed, was that we included hybridized fish in the WCT population considered for listing under the Act, while also recognizing hybridization as a threat to the subspecies.

On March 31, 2002, the U.S. District Court for the District of Columbia found that our listing determination for WCT did not reflect a reasoned assessment of the Act's statutory listing factors on the basis of the best available science. The Court remanded the listing decision to us with the order that we reconsider whether to list WCT as a threatened subspecies, and that in so doing we evaluate the threat of hybridization as it bears on the Act's statutory listing factors. Specifically, the Court ordered us to determine—(1) the current distribution of WCT, taking into account the prevalence of hybridization; (2) whether the WCT population is an endangered or threatened subspecies because of hybridization; and (3) if existing regulatory mechanisms are adequate to address threats posed by hybridizing, nonnative fishes.

The Court also pointed out that the draft Intercross policy (61 FR 4710) in no way indicates what degree of hybridization would threaten WCT, or that the existing levels of hybridization do not currently threaten WCT. Furthermore, the Court ruled that plaintiffs would have us assert a scientifically based conclusion about the extent to which it is appropriate to include hybrid WCT stocks and stocks of unknown genetic characteristics in the WCT population considered for

listing. We are particularly interested in receiving data, information, technical critiques, and relevant comments that will help us address this and other issues raised by the Court.

#### **Request for Information**

We are soliciting comments from all interested parties regarding the status of this species. We are particularly interested in receiving information that will help us address the issues outlined above.

#### **References Cited**

- Behnke, R.J. 1992. Native trout of western North America. American Fisheries Society Monograph 6.
- U.S. Fish and Wildlife Service. 1999. Status review for westslope cutthroat trout in the United States. Regions 1 and 6. Available at our Web site (see **ADDRESSES** section).

#### **Authors**

The primary author of this document is Lynn R. Kaeding, Chief, Branch of Native Fishes Management, Montana

Fish and Wildlife Management Assistance Office, U.S. Fish and Wildlife Service, 4052 Bridger Canyon Road, Bozeman, MT 59715.

#### **Authority**

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

Dated: August 12, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02-22303 Filed 8-30-02; 8:45 am]

**BILLING CODE 4310-55-P**