

**DATES:** The finding announced in this document was made on July 14, 1999.

**ADDRESSES:** Send questions, comments, data, or information concerning this petition to the State Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Allen Ratzlaff at the above address or telephone 828/258-3939, ext. 229.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), for any petition to revise the Federal List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, we are required to make a finding within 12 months of the date of receipt of the petition as to whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On March 31, 1998, we received a petition dated March 30, 1998, from Appalachian Voices and the Biodiversity Legal Foundation. The petition requested that we list the Junaluska salamander (*Eurycea junaluska*) as an endangered species and designate critical habitat under 16 U.S.C. 1533(a)(3)(A) of the Act. The petition identified timber harvesting, predation by nonnative trout, exposure to acid-bearing rock, siltation, genetic drift, the inadequacy of current laws, and random events as immediate threats to the species' continued existence. We made a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. We announced the 90-day finding and the initiation of a status review in the **Federal Register** on October 28, 1998 (63 FR 57640).

The processing of this petition conforms with our final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited

number of delistings and reclassifications (Tier 2); and third priority to processing proposed and final designations of critical habitat (Tier 3). The processing of this petition falls under Tier 2.

We reviewed the petition, the literature cited in the petition, and other available literature and information, and consulted with biologists and researchers familiar with the Junaluska salamander. Based on the best available scientific and commercial information, we find that listing the Junaluska salamander (*Eurycea junaluska*) as endangered or threatened is not warranted at the present time.

The Junaluska salamander is an aquatic to semi-aquatic lungless (*plethodontid*) salamander known from a portion of the Blue Ridge Mountains in southwestern North Carolina and southeastern Tennessee. Bruce and Ryan (1995) described the habitat of the Junaluska salamander at three sites in North Carolina as relatively low-elevation and wide-basin streams, with sand-gravel substrates and numerous large rocks that serve as refugia and brooding sites.

Prior to receiving the petition, we had some knowledge of the status of the Junaluska salamander, principally from North Carolina. Consequently, we had already initiated a status survey for the Tennessee portion of the species' range. Through this survey and surveys being conducted by the National Park Service in the Great Smoky Mountains National Park, biologists observed the Junaluska salamander in 11 additional streams, for a total of 17 inhabited streams. Many of these streams are on National Park Service land, where the species receives considerable protection. The discovery of additional populations also lessens the potential impacts that any particular project or random event could have on the species. We do not expect any of the other threats outlined by the petitioner to occur so quickly or extensively as to pose substantial immediate threats to the Junaluska salamander's continued existence. There is no direct evidence of any population decline and no populations are known to have been lost since the species was described, though it is likely that reservoir impoundment negatively affected some populations. While small populations are inherently more vulnerable to extirpation, many of the reservoirs in the salamander's range have been in place for more than 60 years, and there is no evidence that the smaller populations are suffering from genetic problems. Additionally, there is no evidence to suggest that predation by nonnative trout is a significant threat to the species. Trout feeding studies

conducted in western North Carolina show that salamanders are a rare food item for trout (Tebo and Hassler 1963).

We now consider threats to the Junaluska salamander to be low. Listing this species as either threatened or endangered is not appropriate at this time because it is not presently in danger of extinction or likely to become so in the foreseeable future. However, in the event that conditions change and the species becomes imperiled due to the factors discussed in this finding, or other unforeseen factors, we could propose to list the species under the Act or, if circumstances warranted, invoke the emergency listing provisions of the Act.

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (See **ADDRESSES** section).

Author: The primary author of this document is Mr. J. Allen Ratzlaff (see **ADDRESSES** section).

**Authority**

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

Dated: July 14, 1999.

**Marshall P. Jones,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 99-19425 Filed 7-28-99; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AC91**

**Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Least Chub as Endangered With Critical Habitat**

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We withdraw the September 29, 1995, proposed rule to list the least chub (*lotichthys phlegethontis*), a fish, as an endangered species with critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information we find that the least chub is no longer likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Habitat loss and degradation were significant threats to the least chub at

the time of the proposed rule and a major causes of the least chub's decline. Conservation activities implemented in the last several years have significantly reduced these threats. Enhancement, maintenance, and protection projects implemented over the last several years have focused on those specific factors that have contributed to habitat degradation. Extensive monitoring of the status of the least chub indicate that the status of the species has improved. The known range of the least chub was enlarged by the inclusion of three previously unknown populations discovered during surveys in historical habitats.

The State of Utah, other cooperating agencies and stakeholders continue as active participants in the effort to reduce or eliminate threats to the least chub through the implementation of the Least Chub Conservation Agreement and Strategy (Perkins *et al.* 1997). This Agreement calls for enhancement, maintenance, and protection of least chub habitat, as well as the development of mitigation protocols for proposed water development and future habitat alteration. Conservation actions implemented since the publication of the proposed rule include extensive surveys, habitat protection and enhancement activities, the acquisition of wetland habitat, genetic studies and the introduction of the least chub onto Fish Spring National Wildlife Refuge.

**ADDRESSES:** The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Utah Field Office, Ecological Services, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

**FOR FURTHER INFORMATION CONTACT:** Mr. Reed E. Harris, Field Supervisor, Utah Field Office, at the above address, telephone (801)524-5001.

**SUPPLEMENTARY INFORMATION:**

**Background**

The least chub is a small monotypic (the sole member of its genera) minnow (Family Cyprinidae), less than 2.5 inches long, that is endemic to the Bonneville Basin of Utah, an area within the Great Basin of southwestern North America. The least chub has a very oblique or upturned mouth, large scales, and lacks a lateral line (rarely with one or two pored scales). It has a deeply compressed body and a slender caudal peduncle (the narrowest section of the rear of the body just anterior to the caudal fin). A colorful fish, the least chub has a gold stripe along its blue sides with white to yellow fins. Males

are olive-green above, steel-blue on the sides, and have a golden stripe behind the upper end of the gill opening. The fins are lemon-amber, and the paired fins are sometimes bright golden-amber. Females and young are pale olive above, silvery on the sides and have watery white fins. Their eyes are silvery with only a little gold coloration, rather than golden as in the males (Sigler and Miller 1963).

Historically, the least chub was widely distributed within the Bonneville Basin of northwestern Utah. The species occupied a variety of aquatic habitats including springs, streams, and ponds and was classified as excessively common in its preferred habitats (Jordan and Evermann 1896). The species was historically found in the Beaver River, ponds near the mouth of the Provo River, tributaries of the Great Salt Lake and Sevier Lake, Utah Lake, Parawan Creek, Clear Creek, the Provo River, Gandy Salt Marsh, and the Leland Harris Spring complex (Cope and Yarrow 1875; Jordan 1891, cited in Jordan and Evermann 1896; Sigler and Miller 1963; Hickman 1989).

The proposed rule to list the least chub as endangered with critical habitat (60 FR 50518, September 29, 1995) was based on the decline of the species' occupied range, its relative abundance, and the continued threats to the species' survival. A decline in distribution and abundance of the least chub was first noted in the 1940's and 1950's (Baugh 1980; Holden *et al.* 1974). The decline of the species has been attributed to predation and competition from nonnative species, and habitat loss and alteration. The known distribution of the species at the time it was proposed for listing was limited to the Snake Valley in northwestern Utah, where the species inhabits springs, marshes, pools and stream habitats. Since the proposed rule to list the species as endangered with critical habitat was published, the existing range of the species has expanded to include two newly discovered populations along Utah's Wasatch Front, one newly discovered population at Lucin Pond in Box Elder County, and a new population at the Fish Springs National Wildlife Refuge (FSNWR) where the least chub has been introduced into two springs. Additional introductions at the Refuge are planned for the spring of 1999.

Conservation actions implemented since publication of the proposed rule to reduce the threats to the least chub and conserve the species include—

(1) *Extensive surveys throughout least chub historical habitat.* Surveys have identified three previously unknown populations; one at Lucin Pond in Box

Elder County, Utah, where a 1989 least chub introduction effort was thought to have failed; and two populations discovered along Utah's Wasatch Front, one at a spring complex in Juab County and another in the Sevier River drainage in Mills Valley.

(2) *Habitat protection and enhancement activities.* In 1995, the Bureau of Land Management (BLM) constructed a second cattle enclosure (a barrier for the exclusion of cattle) on part of the Gandy Salt Marsh Complex in order to protect occupied least chub habitat. BLM has also entered into an extension agreement with a private landowner to fund an additional cattle enclosure, a small dam to control water releases, and fencing materials at and surrounding a spring head in least chub occupied habitat in the Utah's West Desert. The fencing material will be used to implement a rotational grazing system to decrease grazing pressure at this least chub occupied spring head and adjacent marsh habitat. The project will be completed in the summer of 1999. Plans to implement an additional rotational grazing system at a nearby spring source are being negotiated with a private landowner. BLM has also declined a request from Juab County, Utah, to implement a mosquito control spraying operation in marsh and spring areas on BLM lands occupied by least chub. The State of Utah has further begun discussions with Juab County to protect occupied least chub habitats on private lands from this threat. BLM conducted several years of intensive habitat use studies in least chub occupied springs to better define the habitat needs of the species. The Utah Reclamation Mitigation and Conservation Commission (URMCC) also acquired 85.5 acres (ac) (34.6 hectares (ha)) of wetland habitat occupied by least chub along Utah's Wasatch Front. Negotiations are currently underway with the landowner to acquire either a conservation easement or fee title for an additional 20 ac to protect this sensitive habitat. A management plan for these acquired habitats and fencing projects to exclude cattle are scheduled for completion by the summer of 1999.

(3) *Range expansion activities.* In addition to expanding the known range of the species by locating three additional populations, two introductions were completed at FSNWR after removal of nonnative species was completed. Introductions of least chub in two additional springs at the Refuge will be completed in the spring of 1999 after nonnative species were removed last fall. An interpretive sign will be posted at these sites to

inform visitors to the Refuge of the life history and presence of this sensitive species. Negotiations are also underway to introduce the least chub to a suitable spring on lands managed by Hill Air Force Base. To assist with range expansion activities and the development of least chub brood stock, as well as other native species, feasibility studies were done at Gandy and Goshen Warm Springs for a native aquatic/warm water species hatchery. To further assist with range expansion activities, potential survey and reintroduction sites were identified from historic least chub habitat using aerial photography.

(4) *Nonnative interactions.* To remove the threat to least chub and other native species from competition and predation by nonnative species, in 1997 the State of Utah enacted a new policy for Fish Stocking and Transfer Procedures that specifically protects native species, including the least chub. Additionally, nonnative species were removed from springs at the FSNWR prior to introducing least chub. Nonnative species will also be removed from any new introduction or reintroduction sites. Selective removal of nonnative species will continue at occupied least chub habitats.

(5) *Genetic analysis.* Utah State University is conducting genetic characterization of all known least chub populations and is expected to complete this effort by the fall of 1999. This information will be used for developing broodstock for the planned warmwater fish hatchery and for reintroduction efforts.

#### Previous Federal Action

We have conducted three status reviews and prepared two status reports on the least chub. In 1980, we reviewed all existing information on the least chub and determined that insufficient data was available to warrant listing as either endangered or threatened. On December 30, 1982, we classified the least chub as a category 2 candidate species (47 FR 58454). We included this species again as a category 2 candidate in the revised vertebrate notice of review of September 18, 1985 (50 FR 37958). Category 2 comprised taxa for which there was available biological information in our possession indicating that listing was possibly appropriate, but the information was insufficient to support listing the species as endangered or threatened. After preparation of a 1989 status report, we reclassified the least chub as a category 1 candidate species (54 FR 554; January 6, 1989).

We included this species as a Category 1 candidate in the Animal Candidate notice of review of November 21, 1991 (56 FR 58804), and maintained it as a Category 1 species in the subsequent Animal Candidate notice of review of November 15, 1994 (59 FR 58982). Category 1 comprised taxa for which sufficient information was on file to support proposals for endangered and threatened status. On February 28, 1996, we published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the use of different categories of candidate species. Candidate species are now those species for which sufficient information is on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions.

On September 29, 1995, after reviewing available information, we proposed the least chub as an endangered species with critical habitat (60 FR 50518). We solicited public comment on the proposal and informed the public of the availability of a public hearing upon request. Several requests for a public hearing were made in writing to our Utah Field Supervisor. However, due to the moratorium on listing actions imposed by Congress in 1995, we postponed further actions regarding the least chub proposal.

A serious backlog of listing actions resulted from decreases in the listing budget beginning in Fiscal Year 1995 and as a result of a moratorium on certain listing actions during parts of Fiscal Year 1995 and Fiscal Year 1996. The enactment of Public Law 104-6 in April 1995 rescinded \$1.5 million from our budget for carrying out listing activities through the remainder of Fiscal Year 1995. Public Law 104-6 also prohibited the expenditure of the remaining appropriated funds for final determinations to list species, whether foreign or domestic, or designate critical habitat; thus placing a moratorium on those activities. During the first half of Fiscal Year 1996, the moratorium continued while a series of continuing resolutions provided little or no funding for listing activities. The net effect of the moratorium and reductions in funding resulted in a suspension of all listing activities. The moratorium on final listings and the immediate budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. By that time a backlog of proposed listings for

243 domestic and foreign species had accrued.

To deal with this considerable backlog, we developed and published the Interim (61 FR 9651) and Final Listing Priority Guidelines for Fiscal Year 1996 (61 FR 24722). Using a multi-tiered approach, we prioritized listing activities giving priority to the processing emergency listing actions for species that faced an imminent risk of extinction. During this period, on June 7, 1996, we reopened the comment period on the least chub proposed listing and announced that a public hearing would be held on the proposal on June 27, 1996 in Wendover, Utah (61 FR 29047). At the public hearing numerous individuals expressed an interest in meeting with us to discuss the proposed listing of the least chub and other options available to conserve the species, in particular, the idea of a conservation agreement. In response to this interest our staff scheduled and attended a public informational meeting in Partoun, Utah on July 17, 1996.

On December 5, 1996, we published a Final Listing Priority Guidance for Fiscal Year 1997 (61 FR 64475) that maintained a four tiered listing priority process, identifying the processing of final decisions on proposed listings as the tier two activity. However, the effort required to update status information on the least chub and our work on other higher priority species delayed publication of a final rule to list the least chub.

On September 25, 1997, we announced the availability of a draft conservation agreement for the least chub and comment on the draft document from the public was solicited (62 FR 50394). On May 8, 1998, we published in the **Federal Register** the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). This new guidance adopted the existing three-tiered approach and further identified that during Fiscal Years 1998 and 1999 we will concurrently undertake: tier 1 emergency listing actions and; tier 2, the processing of final decisions on proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the lists and petitions to delist or reclassify species, and a limited number of delisting or reclassifying actions. Tier 3 encompasses the processing of critical habitat determinations. This final listing decision for the least chub is a tier 2 activity under the current listing priority guidance.

### Summary of Comments and Recommendations

In the September 29, 1995, proposed rule and the associated notifications, we invited all interested parties to submit comments or suggestions concerning biological information and potential threats to the least chub that might contribute to the development of a final rule to list the least chub as an endangered species with critical habitat. We requested comments directly from appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published a notice inviting general public comment on the proposed listing in the following newspapers— Salt Lake Tribune/Deseret News, Millard County Chronicle, Fillmore Chronicle Progress, Tooele Transcript Bulletin, Nephi Times News, and the Wendover Times. We received no public comments in response.

We received requests to hold a public hearing on the proposed listing from three separate parties, all landowners within the Snake Valley of western Utah. On June 7, 1996, we published a notice in the **Federal Register** reopening the comment period on the least chub proposed listing until July 15, 1996, and also announced that a public hearing would be held on the proposal on June 27, 1996, in Wendover, Utah (61 FR 29047). In addition to the announcement in the **Federal Register** and in local newspapers, we sent a letter to all interested parties announcing the date of the public hearing and the extended closing date for public comment. Six parties presented testimony at a public hearing held on June 27, 1996, in Wendover, Utah. At the public hearing many individuals expressed an interest in meeting with us to discuss the proposed listing of the least chub and other options available to conserve the species, the idea of a conservation agreement was of particular interest. In light of the above request, we held a second public informational meeting in Partoun, Utah on July 17, 1996, that was attended by nineteen individuals.

During the comment period we received written and oral comments from 17 parties, including the testimony presented at the public hearing. We received comments from two State agencies, two environmental organizations, nine private individuals or groups, and four representatives of the petroleum and energy industry. Of the 17 comments received, 1 supported the listing, 11 opposed the listing, 2 were neutral, and 3 recommended the development of a conservation

agreement. We have combined written and oral statements from both the public hearing and the comment period in the following discussion. Comments and other information submitted by respondents are incorporated into this notice of withdrawal and organized into specific issue topics. These issues and our response to each are summarized as follows—

**Issue 1:** Several respondents suggested that listing was not warranted given the current conservation efforts on behalf of the least chub, including the conservation agreement being developed by the State of Utah. These comments generally supported efforts in behalf of the agreement rather than listing the species.

**Service Response:** We actively participated in the development of the conservation agreement and believe that its continued implementation will facilitate the recovery of the species. The implementation of the conservation measures outlined in the agreement has reduced the actual and potential threats to the species. These efforts are directed at restoring and maintaining least chub populations throughout its historic range to ensure its continued existence. For a list of conservation actions completed to date, please refer to the Background discussion of this rule.

**Issue 2:** Several respondents opposed the listing due to direct economic impacts to the local livestock industry, petroleum and energy industries from the proposed listing and designation of critical habitat.

**Service Response:** Under the Act, the Secretary must make determinations on the listing of species solely on the basis of the best available scientific and commercial information without reference to economic or other social impacts. The listing of the least chub could indirectly affect some industry sectors by modifying the allowable land use practices on certain Federal lands. However, we believe that if the least chub became listed in a final rule there would be no significant impact upon either the livestock, petroleum, or energy industries. The Act requires that Federal agencies consult on any action they undertake, authorize or fund which may affect a proposed or listed species. However, in the majority of cases consultation neither slows or halts project planning or construction. In fact, the likelihood that any implementation or enforcement actions resulting from a species listing under the Act would result in economic impacts is minimal, given the ready availability of conservation tools and balancing mechanisms such as incidental take

permits, habitat conservation plans, and safe harbor agreements.

**Issue 3:** One respondent suggested that a more proactive approach be taken in working with Snake Valley citizens to assure adequate habitat restoration, species reintroduction, and recovery of the least chub.

**Service Response:** In response to considerable local concern regarding the listing of the least chub, we held a public hearing on June 27, 1996, and a second public informational meeting on July 17, 1996, for the citizens of Snake Valley, Utah. During these meetings issues such as the development of a conservation agreement, the possibility of Safe Harbor Agreements, and the local involvement of the public, especially school children, in the conservation of the species were discussed.

We are actively working in a cooperative effort with the State of Utah and with private landowners located within Miller Springs and Leland Harris Spring Complex, to protect populations of least chub through the Partners for Wildlife Program. To support this effort, Federal and State funds were disbursed for such conservation measures as the purchase of fencing materials to exclude cattle from the spring heads and to allow for implementation of a rotational grazing regime to lessen cattle impacts at the spring complexes.

**Issue 4:** One respondent raised the issue of reintroducing the least chub onto the FSNWR which is already under our management and within the historical range of the species.

**Service Response:** On July 11, 1997, we entered into a Challenge Cost Share Agreement with the State of Utah under the authority of the U.S. Fish and Wildlife Coordination Act (16 U.S.C. 661–667) and the provisions of the Interior and Related Agencies Appropriation Act (Public Law 104–208, 110 STAT. 3009). The purpose of this agreement is to facilitate the reintroduction of the least chub onto the FSNWR. FSNWR is located within the historical range of least chub and offers high potential for creating refugia for additional populations to aid recovery. Funds have already been disbursed pursuant to this agreement to implement structural changes at the Refuge, eliminate nonnative mosquitofish, and to introduce least chub into two springs on the refuge. There are also plans for the introduction of least chub into two additional springs on the Refuge and the construction of an educational bulletin board alongside one of these springs.

**Issue 5:** One respondent suggested that since there are no recent studies

assessing least chub population status, that such studies be initiated as soon as possible to ascertain its occurrence, genetic purity, and habitat condition.

*Service Response:* Through the combined effort of the Utah Division of Wildlife Resources, BLM, and ourselves the yearly monitoring of least chub populations was expanded to include extended surveys for least chub within historical habitat. These extended surveys have resulted in the identification of two previously unknown populations of least chub along Utah's Wasatch Front, where the species was previously considered extirpated (no longer present), and an additional population in Box Elder County.

Researchers at Utah State University have initiated the genetic analysis of all known least chub populations with completion of this analysis scheduled by Spring of 1999. In separate research efforts, least chub habitat condition, availability and use are being analyzed in several different ways. BLM is conducting an extensive habitat use survey of all known least chub populations in the Snake Valley. The State of Utah also has conducted aerial photography in Utah's West Desert and Wasatch Front to identify potential least chub habitat.

*Issue 6:* One respondent noted that the greatest factor in the decrease of the least chub population is the 10 years of extended drought, and suggested that because the least chub has endured drought in the past that their numbers will again increase when conditions become wetter and additional springs begin flowing.

*Service Response:* Researchers have identified nonnative fish predation and competition (Hickman 1989; Osmundson 1985) and direct physical habitat loss and habitat degradation (Holden et al. 1974; Hickman 1989; Crist 1990) as factors in the decline of the least chub. While drought may play a role in the current reduced numbers of the species, historically, the species has been able to recover from such drought-induced declines. Presently, however, other factors such as habitat loss and degradation, and nonnative fish predation and competition, may be contributing to slower species recovery.

*Issue 7:* One respondent noted that cattle have coexisted with least chub for over 100 years and explained that livestock grazing practices have improved considerably and that ranchers are no longer mismanaging pasture land with continuous grazing as in the past.

*Service Response:* Livestock grazing practices have improved. However, in

the proposed rule to list the least chub as endangered (60 FR 50518), we identified habitat degradation caused by livestock trampling as a significant threat to the species. Additionally, large influxes of organic material to springheads as a result of livestock activities may result in the extirpation of least chub from these habitats. Local ranchers are working with us in an effort to secure funding and manpower for fencing projects on private lands to provide for rotational grazing practices and/or exclusion of cattle from least chub occupied springheads.

*Issue 8:* One respondent expressed the opinion that there are unsurveyed spring complexes that probably contained least chub and suggested that these areas had not been surveyed because they were on the military's test and training range where access has been denied.

*Service Response:* Cooperating staff biologists for the military continue to periodically advise us of the status of the species and of the availability of habitat on military lands. Presently there are no known populations of least chub on military lands. However, we have joined with staff of the military's test and training range and the State of Utah to begin discussions with the goal of introducing least chub into unoccupied springs on military lands in Utah's West Desert.

*Issue 9:* One respondent, who supported the listing and critical habitat designation, suggested that BLM needed greater inducements to abate or prevent habitat degradation than are presently provided under BLM's current stipulations or activity plan objectives.

*Service Response:* If the least chub became listed under the Act, BLM would have an affirmative obligation under section 7(a)(1) of the Act to utilize its authorities in furtherance of the purposes of the Act and to carry out programs for the conservation of endangered and threatened species. BLM has been a participating member of both the Least Chub Conservation Technical Team and the Bonneville Basin Conservation and Recovery Team since the inception of both teams. BLM is also involved in several fencing projects designed to exclude cattle from spring heads occupied by least chub and is currently involved in evaluating habitat preferences of least chub in the West Desert. Furthermore, BLM is a signatory to the Least Chub Conservation Agreement and, as such, has agreed to protect and conserve the species.

*Issue 10:* One respondent expressed the opinion that although human activity has had an impact on the

welfare of the least chub, it is endangered primarily because Lake Bonneville has dried up. The respondent anticipated, therefore, that the endangerment of this fish was inevitable.

*Service Response:* Ancient Lake Bonneville has undergone at least ten separate cycles of desiccation and flooding. The most recent desiccation occurred approximately 10,000 years ago and the Great Salt Lake has remained relatively stable since that time. Least chub were abundant until the 1940's and 1950's at which time a decline in their distribution and abundance was noted (Baugh 1980). This decline can be attributed to human intervention through habitat loss and alteration and the introduction of nonnative species.

*Issue 11:* One respondent identified that some oil and gas leases have been denied in anticipation of the least chub endangered species designation.

*Service Response:* We proposed the least chub as an endangered species in September 29, 1995. Prior to this, it was a candidate species for listing under the Act. As a precautionary measure Federal agencies proposing projects that may affect sensitive species would take the sensitive status of the species into consideration, whether or not it is actually listed under the Act. The protection and conservation of sensitive species is cost effective for project proponents as well, for it may preclude the need to list a species as federally endangered or threatened pursuant to the Act. When a species is proposed, Federal agencies are required under section 7(a)(4) of the Act to confer on any action which is likely to jeopardize the continued existence of the species.

*Issue 12:* Several respondents suggested that the economic impacts of critical habitat designation be minimized by defining the needed critical habitat as narrowly as possible and restricting it to areas immediately adjacent to springs where the least chub has been identified. One respondent was concerned that the designation of critical habitat would eliminate family operated ranches.

*Service Response:* In determining what areas to propose as critical habitat, we must consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such features include but are not limited to the following: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover,

shelter; (4) sites for breeding, reproduction, rearing of offspring; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. In making this critical habitat determination, areas can only be excluded from the designated critical habitat if the economic or other benefits of exclusion outweighed the benefits of designating the area, unless such exclusion would result in extinction of the species. Critical habitat plays more than an informational role only through section 7 consultations in which the Service reviews proposed Federal actions. Activities on private or state-owned lands that do not involve Federal permits, funding, or other Federal actions are not restricted by the designation of critical habitat, although the "take" provisions of sections 9 and 10 of the Act still apply. If no Federal agency is involved in management, funding, or by other means on non-Federal areas with critical habitat, activities on private lands are not subject to the section 7 consultation process for critical habitat. Thus, activities on private or state-owned lands that do not involve Federal permits, funding, or other Federal actions are not restricted by the designation of critical habitat.

#### Peer Review

In accordance with policy promulgated July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists. In a letter dated October 20, 1995, we requested review and comments on the proposed listing rule from knowledgeable parties. This letter further identified that such advice would be helpful in the decision as to the proposed rule and specifically requested assistance in—(1) providing any factual data concerning the conservation of the species; (2) advising of any special consideration that should be taken into account prior to our final decision of the species status; (3) advice as to whether it would be prudent and determinable to designate critical habitat for the species at this time and; (4) providing any other relevant advice or guidance. We received no additional comments or information in response to this request.

#### Summary of Factors Affecting the Species

We must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their effects on the decision to withdraw the

proposal to list the least chub, are as follows—

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, least chub were widely distributed within the Bonneville Basin of northwestern Utah and occupied many streams, springs, and ponds (Cope and Yarrow 1875; Jordan 1891, cited by Jordan and Evermann 1896; Sigler and Miller 1963; Hickman 1989). At the time of the proposed listing of the species, least chub surveys and monitoring had indicated a steady decline in their distribution and numbers. Extensive monitoring in pre-established sites conducted in the three marsh complexes which comprise the majority of least chub habitat in Utah's West Desert indicated that in 1993, 51.4 percent of springs sampled contained least chub while in 1994, 43.8 percent contained least chub and in 1995, 40.5 percent were occupied by least chub. Habitat loss and degradation have been indicated as major causes of the least chub's decline (Holden *et al.* 1974; Hickman 1989; Crist 1990). Conservation activities implemented over the last several years have reduced the threats to the least chub from habitat loss and degradation. The downward trend in least chub occupied springs in the Utah's West Desert was slowed and in 1998 reversed. Monitoring data from 1996 identified that 40.0 percent of springs sampled contained least chub while in 1997, 38.4 percent were occupied and in 1998, 43.1 percent were occupied by least chub.

Enhancement, maintenance, and protection projects implemented over the last several years have focused on those specific factors that have contributed to habitat degradation such as livestock trampling and grazing, water development and mining activities. Many activities are already underway. In 1995, BLM constructed a second cattle enclosure on part of the Gandy Salt Marsh Complex in order to protect occupied least chub habitat. An extension agreement is being developed with a private landowner to fund an additional cattle enclosure around a springhead in least chub occupied habitat in Utah's West Desert. In addition, plans to implement a rotational grazing system to decrease grazing pressure at sensitive least chub occupied springs are in negotiation with a private landowner. The Utah Division of Wildlife Resources has completed aerial photography mapping of all least chub potential habitat, in part, to assist in the identification of private and public lands available for conservation easements and enclosures, acquisition,

wetland revegetation, and water quality improvements. The State of Utah has also developed plans, in conjunction with the BLM, for the dredging of springheads to alleviate accelerated succession of spring complexes. BLM further declined a request from Juab County, Utah, to implement a mosquito control spraying operation in marsh and spring areas on BLM lands occupied by least chub. The State of Utah has initiated discussions with the County to protect occupied least chub habitats on private lands from this threat. BLM, in addition to the annual habitat surveys conducted during least chub monitoring, has conducted several years of intensive habitat use studies in least chub occupied springs to better define the habitat needs of the species. Acquisition of wetland habitat occupied by least chub along Utah's Wasatch Front is underway, with the purchase of approximately 85.5 ac (34.6 ha) completed by the end of 1998 and additional purchases under negotiations. This habitat will then be enhanced by removal of cattle, re-opening springheads that have been impacted by cattle, reseeding with native vegetation, and selective removal of nonnative species.

In addition to the above completed and planned conservation activities, the development of the Least Chub Conservation Agreement, a multi-agency cooperation effort, has established a means to curtail future habitat loss and degradation. The Agreement calls for enhancement, maintenance, and protection of least chub habitat, as well as the development of a mitigation protocol for proposed water development and future habitat alteration. The Agreement requires; (1) enhancement and/or restoration of habitat conditions in designated areas throughout the historical range of least chub, including bank stabilization, riparian/spring fencing, and sustainable grazing practices; and (2) maintaining and restoring, where possible, the natural hydrologic characteristics and water quality.

B. *Over utilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not presently a factor in the decline of the species. Although some least chub specimens have been collected for scientific and educational purposes (Sigler and Workman 1975; Workman *et al.* 1979; Crawford 1979; Osmundson 1985), such collections do not presently present a significant threat. No commercial or recreational uses for the least chub are known at this time.

C. *Disease or predation.* The introduction of nonnative species into

least chub habitat has contributed to the decline of the least chub (Workman *et al.* 1979; Hickman 1989; Osmundson 1985). Predation by nonnative fishes has been a major factor in the decline and extirpation of desert fishes in southwestern North America (Shoenherr 1981; Meffe 1985; Minckley *et al.* 1991). Surveys of spring complexes indicate that where nonnative fishes have been introduced, few if any least chub remain (Osmundson 1985). To reduce this threat to the least chub the following conservation activities have been implemented. In 1997, the State of Utah enacted a new policy for Fish Stocking and Transfer Procedures that specifically protects native species, including the least chub. The new policy puts the protection of native aquatic species above the enhancement of recreational fisheries providing for fish stocking and transfer in a manner that does not adversely affect the long term viability of native aquatic species or their habitat and, among other things, aiding native species conservation. Additional activities completed to remove the threat of competition and predation by nonnative species include the removal of all nonnatives from two springs at FSNWR prior to introducing least chub, and at two additional springs in the fall of 1998 prior to reintroductions proposed for 1999. Nonnative species will be removed from any future introduction or reintroduction sites. Selective removal of nonnative species has and will continue to occur at occupied least chub habitats. To educate the public on the adverse effects of introducing nonnative species to previously unoccupied habitats, an interpretive billboard has been developed and will be installed at FSNWR.

In addition to the conservation activities already implemented and in the planning stages, future threats from disease and predation are directly addressed in the conservation agreement for the Least Chub. The selective control of nonnative species is one of the seven conservation actions to be implemented by the Agreement. Management and control of nonnative species will focus on—(1) determining where detrimental interactions, such as predation, competition, hybridization, or disease occur or could occur; (2) control or modification of stocking, introductions, and spread of nonnative aquatic species where appropriate; and (3) eradication of detrimental nonnative fish where feasible, and control to the maximum extent possible where eradication is not possible. Several species targeted for control and/or

eradication include mosquitofish, killifish, and in some cases, nonnative sportfish and forage fish. In addition, in an effort to reduce such threats, we have planned a public education and outreach campaign to explain the benefits of ecosystem integrity, the detrimental effects of nonnative introductions, and the potential for disease transmission from such introductions.

*D. Inadequacy of existing regulatory mechanisms.* While the land ownership of occupied and potential least chub habitat is divided among Federal, State and private landowners, cooperation among the various groups is helping to protect the least chub. The establishment by the State of Utah, in 1997, of a new Fish Stocking and Transfer Procedures Policy established a regulatory mechanism that has and will afford the least chub greater protection from the threats to the species from introductions of nonnative species. Furthermore, the status of the least chub in Utah has changed, for it is now identified as a conservation species. This status identifies the species as one which is currently receiving special management under a conservation agreement. Signatory parties to the conservation agreement include the Utah Department of Natural Resources, BLM, Utah Reclamation Mitigation and Conservation Commission, the U.S. Bureau of Reclamation, the Confederated Tribes of the Goshute Reservation, the Central Utah Water Conservancy District and the Service. The conservation agreement was developed to expedite conservation measures needed for the continued existence and recovery of the least chub. It focuses on two objectives: (1) To eliminate or significantly reduce threats to least chub and its habitat to the greatest extent possible, and (2) to restore and maintain a minimum number of least chub populations throughout its historical range to ensure the continued existence of least chub. These objectives will be met through: determining baseline least chub population, life history, and habitat needs; determining and maintaining genetic integrity; enhancing, maintaining and protecting habitat; selectively controlling nonnative species; expanding least chub populations and range through introduction or reintroduction; monitoring populations and habitat; and developing a mitigation protocol for proposed water development and future habitat alteration that may affect least chub. When the agreement is fully implemented it will provide for the

recovery of the least chub by establishing a framework for interagency cooperation and coordination on conservation efforts and setting recovery priorities. In addition to the Agreement, other partnerships will continue to be developed on specific actions within the least chub's range involving other interested agencies or groups. In light of the change in the State status of the least chub, the adoption of the conservation agreement and of a new State stocking policy affording greater protection to the least chub, we conclude that the existing regulatory mechanisms are adequate to address significant threat to the species.

*E. Other natural or human caused factors affecting its continued existence.* Competition and hybridization are identified factors contributing to the decline of the least chub (Lamarra 1981; Sigler and Sigler 1987; Crawford 1979). We expect the control of nonnative species identified in the Least Chub Conservation Agreement as identified in C and D above, to significantly reduce such threats.

A proposed mosquito abatement program for Juab County, Utah, is also a potential threat to least chub. BLM has declined the county's request to implement a mosquito control spraying project on Federal lands. Because spraying by the county may still occur on privately held lands, the Division of Wildlife Resources for the State of Utah has begun negotiations with the Juab County mosquito abatement program to ensure that their activities do not result in additional declines of least chub.

Due to the small number of populations of least chub, they are very susceptible to stochastic (random or naturally occurring) events. The likelihood of such events was identified as a possible threat to the species in the proposed rule. A single catastrophic event could destroy a significant portion of remaining chub habitat, or one or more of their populations. Extensive surveys throughout least chub historical habitat have been conducted over the last six years, and such efforts will continue to identify the known range and populations of least chub. These survey efforts identified three previously unknown populations; one at Lucin Pond in Box Elder County, Utah, where a 1989 least chub introduction effort was thought to have failed; and two populations along Utah's Wasatch Front, one at a spring complex in Juab County and another in the Sevier River drainage in Mills Valley. In addition to expanding the known range of the species by locating three additional populations, FSNRW completed two introductions after removal of nonnative



species, with the introductions of least chub in two additional springs in the spring of 1999. Negotiations are also underway to introduce the least chub to a suitable spring on lands managed by Hill Air Force Base. These additional populations reduce the likelihood of a single catastrophic event affecting a major portion of the population. To assist with range expansion activities and the development of least chub brood stock, as well as other native species, feasibility studies were conducted at Gandy and Goshen Warm Springs for a native aquatic/warm water species hatchery. To further assist with range expansion activities, all least chub historical habitats were aerial photographed to identify potential survey and reintroduction sites.

The expansion in the range of least chub is identified in the Least Chub Conservation Agreement as a necessary action to conserve the species. To expand the range of the least chub, the conservation agreement calls for: (1) Establishing additional populations through introductions or reintroductions from either transplanted (wildstock) or brood stock least chub raised in a designated hatchery; (2) identifying and developing broodstock sources, including identification and taking of wild sources, and hatching and rearing facilities; and (3) restoring least chub populations into appropriate areas.

### Finding and Withdrawal

Section 4(b)(1)(a) of the Act provides that the Secretary shall make listing decisions solely on the basis of the best scientific and commercial data available and after taking into account those efforts being made by any State or foreign nation to protect such species. In accordance with this requirement we have evaluated the species on the basis of each of the five listing factors discussed above; the current improved status of the least chub, and the efforts being made by the State of Utah, other signatories to the Least Chub Conservation Agreement and other private entities; to protect the species. Based on our evaluation of the above information, completed and ongoing actions and protective measures have substantially reduced the threats to the least chub such that the species is not likely to become endangered in the foreseeable future and, therefore, listing is not warranted at this time. We consequently withdraw the proposed rule to list the least chub as endangered with critical habitat.

### Endangered Species Act Oversight

We will continue to monitor the status of the least chub throughout the

term of the conservation agreement and maintain oversight. If it is deemed necessary, an emergency listing of the least chub would not be precluded by the 60-day written notice required to withdraw from the conservation agreement. We will initiate the process for listing the least chub if—(1) an emergency which poses a significant threat to the least chub is identified and not immediately and adequately addressed; (2) the biological status of the least chub becomes such that it is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the least chub becomes such that it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Appropriate notice will be given to signatory members of the Least Chub Conservation Agreement should we find that it is necessary to reinstate the listing process.

### References Cited

A complete list of all references cited is available upon request from the Salt Lake City Field Office (see ADDRESSES above).

Authors: The primary author of this document is Janet A. Mizzi (see ADDRESSES above).

### Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 8, 1999.

**John G. Rogers, Jr.,**  
*Acting Director, Fish and Wildlife Service.*  
[FR Doc. 99-19360 Filed 7-28-99; 8:45 am]  
BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 990304063-9063-01; I.D. 072199B]

### Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Proposed reapportionment of Pacific halibut bycatch mortality allowance specified for the nontrawl

fishery categories; request for comments.

**SUMMARY:** NMFS proposes the reapportionment of the 1999 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the "other nontrawl" fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Comments on this action must be received at the following address no later than 4:30 p.m., A.L.T., August 12, 1999.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. The final environmental assessment and final regulatory flexibility analysis prepared for the final 1999 total allowable catch (TAC) specifications may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP are codified at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 mt of halibut mortality (§ 679.21(e)(2)(i)). The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the apportionment of the nontrawl halibut PSC limit for bycatch allowances for the Pacific cod hook-and-line and "other nontrawl" fisheries as 748 mt and 84 mt respectively. As of July 3, 1999, 480 mt remained of the total 1999 halibut bycatch mortality allowance for the