

§ 745.324(h) of this part but no later than 1 year after the effective date of the revisions.

(3) A State or Tribe submitting its application for approval of a renovation program on or after the effective date of the revisions must demonstrate in its application that it meets the requirements of the new renovation program requirements in subparts E and L of this part.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2009-0065]

[MO 9221050083-B2]

#### Endangered and Threatened Wildlife and Plants; Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System

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

**ACTION:** Notice of intent to conduct status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), give notice of our intent to conduct a status review of Arctic grayling (*Thymallus arcticus*) in the upper Missouri River system. We conduct status reviews to determine whether the entity should be listed as endangered or threatened under the Act. Through this notice, we encourage all interested parties to provide us information regarding Arctic grayling in the upper Missouri River basin.

**DATES:** We must receive information no later than November 27, 2009.

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

- Via e-mail to: [fw6\\_arcticgrayling@fws.gov](mailto:fw6_arcticgrayling@fws.gov)
- U.S. mail or hand-delivery: Arctic Grayling Status Review, U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, Montana 59601.

We will not accept faxes.

**FOR FURTHER INFORMATION CONTACT:** Mark Wilson, Montana Field Office; telephone (406) 449-5225. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

#### Request for Information

To ensure that the status review is based on the best available scientific and commercial information and to provide an opportunity to any interested parties to provide information for consideration during the status assessment, we are requesting information concerning Arctic grayling in the upper Missouri River system. We request information be provided within 30 days. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, and any other interested party. We are seeking:

(1) General information concerning the taxonomy, biology, ecology, genetics, and status of the Arctic grayling of the upper Missouri River system;

(2) Specific information relevant to the consideration of the potential distinct population segment (DPS) status of Arctic grayling in the upper Missouri River system in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722, February 7, 1996) (known as the DPS Policy), which specifically considers two elements: (i) discreteness of the population segment in relation to the remainder of the species to which it belongs; and (ii) the significance of the population segment to the species to which it belongs. 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 (relating to, or inhabiting, a river or stream) and/or adfluvial (fish that live in lakes and migrate into streams to spawn) Arctic grayling in the upper Missouri River system;

(3) Specific information on the conservation status of Arctic grayling in the upper Missouri River system, including information on distribution, abundance, and population trends;

(4) Specific information on threats to Arctic grayling in the upper Missouri River, including: (i) the present or threatened destruction, modification, or curtailment of its habitat or range; (ii) overutilization for commercial, recreational, scientific, or educational purposes; (iii) disease or predation; (iv) the inadequacy of existing regulatory mechanisms; and (v) other natural or manmade factors affecting its continued existence; and

(5) Specific information on conservation actions designed to

improve Arctic grayling habitat or reduce threats to grayling in the upper Missouri River system.

If you submit information, we request you support it with documentation such as data, maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we receive and use in preparing this finding will be available for you to review by appointment during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Background

The Arctic grayling is a fish belonging to the family Salmonidae (salmon, trout, charr, whitefishes), subfamily *Thymallinae* (graylings), and is represented by a single genus, *Thymallus* (Scott and Crossman 1973, pp. 301–302; Behnke 2002, pp. 327–331). Arctic grayling have long, thin bodies with deeply forked tails, and adults typically average 254 to 330 millimeters (10 to 13 inches) in length. Coloration varies from silvery or iridescent blue and lavender, to dark blue (Behnke 2002, pp. 327–328). Arctic grayling have a prominent sail-like dorsal fin, which is large and vividly colored with rows of orange to bright green spots, and often has an orange border. Dark spots often appear on the body toward the head (Behnke 2002, pp. 327–328).

Arctic grayling are native to Arctic Ocean drainages of northwestern Canada and Alaska; the Peace, Saskatchewan, and Athabasca River drainages in Alberta, eastward to Hudson Bay and westward to the Bering Straits; and eastern Siberia and northern Eurasia (Scott and Crossman 1973, pp. 301–302). Arctic grayling also are native to Pacific coast drainages of Alaska and Canada as far south as the Stikine River in British Columbia (Scott and

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