

satellites), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables. In either case, the total potential performance incentives and the total contract fee shall be in accordance with the structure and limitations specified in NFS-1816.404-276(g).

(g) In determining the value of the maximum performance incentive available under the contract, the contracting officer shall follow the following rules.

(1) The total potential contract fee may not exceed the limitations in FAR 15.903(d). The total potential contract fee is the sum of the maximum positive performance incentive and the total potential award fee (including any base fee).

(2) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and performance incentive at the discretion of the contracting officer.

(3) The maximum negative performance incentive for research and development hardware shall be equal to the total earned award fee (including any base fee). The maximum negative performance incentives for production hardware shall be equal to the total potential award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) under the Endangered Species Act of 1973, as amended (Act). The petition has been

found to present substantial information indicating listing may be warranted for this species. Through issuance of this notice, the Service now requests additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the Kootenai River population of the white sturgeon.

DATES: The finding announced in this notice was made on April 8, 1993. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice.

ADDRESSES: Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Duke at the above address (208/334-1931).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within one year of the receipt of a petition that presents substantial information.

On June 11, 1992, the Service received a petition from the Idaho Conservation League (ICL), Northern Idaho Audubon, and Boundary Backpackers for a rule to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) as threatened or endangered under the Act. A letter acknowledging receipt of the petition was mailed to the petitioners on July 1, 1992.

The Kootenai River population of the white sturgeon is restricted to approximately 220 river kilometers in the Kootenai River, primarily upstream of Corra Linn Dam from Kootenay Lake,

British Columbia through the northeast corner of the Idaho panhandle to Kootenai Falls, 50 kilometers below Libby Dam, Montana. Kootenai Falls represents an impassable barrier to the upstream migration of the sturgeon. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River population of the white sturgeon from other white sturgeon populations in the Columbia River basin for approximately 10,000 years (Apperson and Anders 1991).

Recent genetic analysis indicates that the Kootenai River population of the white sturgeon is a unique stock and constitutes a distinct interbreeding population (Setter and Brannon 1990). The electrophoretic analysis found ample evidence to describe these fish as a genetically distinct, isolated population based on differences in allele frequencies, genetic distance calculations and the overall quantity of variation displayed.

In general, individual sturgeon are broadly distributed and may move widely throughout their range in the Kootenai River and Kootenay Lake, although they are not commonly found upstream of Bonners Ferry into Montana (Apperson and Anders 1991). During the summer, sturgeon appear to inhabit water deeper than 12 meters (m) when remaining relatively sedentary, while individuals found in shallower water were exhibiting more extensive or seasonal movements. Kootenai River sturgeon feed on a variety of prey items, including bottom dwelling macroinvertebrates and fish.

Based on recent studies, the Kootenai River population of the white sturgeon has declined to less than 1,000 individuals (Apperson and Anders 1991). This translates to an average abundance of seven sturgeon per river kilometer from Kootenay Lake upstream to Bonners Ferry. The population is considered reproductively mature, with approximately 80 percent of the sturgeon over 20 years old. There has been an almost complete lack of recruitment of juveniles into the population since 1974, soon after Libby Dam began operation (Partridge 1983 Apperson and Anders 1991). The youngest fish sampled in the most recent study was from the 1977 year class.

The lack of natural flows in the Kootenai River below Libby Dam is considered the primary reason for the Kootenai River sturgeon's declining population (Apperson and Anders 1991). Since 1972 when Libby Dam began operating, spring flows in the Kootenai River have been reduced an average 50 percent and winter flows

have increased by 300 percent over normal. As a consequence, natural high spring flows rarely occur during the May-July sturgeon spawning season. In addition, elimination of side channel slough habitat in the Kootenai River floodplain due to diking to protect agricultural lands from flooding is likely a contributing factor to the sturgeon decline. The former slack water areas were considered important rearing and foraging habitat for early age sturgeon and their prey (Partridge 1983).

The petition and supporting information have been reviewed by staff of the Boise Field Office. The Service finds that the petition presents substantial information indicating that listing of the Kootenai River population of the white sturgeon may be warranted. This decision is based on information contained in the petition and scientific and commercial information otherwise available to the Service at this time.

The Service first initiated review of this population for listing in 1991. The Service now requests additional data, information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

References Cited

- Apperson, K.A. and P.J. Anders. 1991. Kootenai River white sturgeon investigations and experimental culture. Annual progress report FY 1990. Prepared for Bonneville Power Administration, Portland, Oregon. 67 pp.
- Partridge, F. 1983. Kootenai River fisheries investigations. Idaho Department Fish and Game. Job completion report. Project F-73-R5, Subproject IV, Study VI, Boise. 85 pp.
- Setter, A. and E. Brannon. 1990. Report on Kootenai River white sturgeon, Electrophoretic studies—1989. Annual progress report FY 1990. Prepared for Bonneville Power Administration, Portland, Oregon. 7 pp.

Author

This notice was prepared by Steve Duke of the Boise Field Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

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.

Dated: April 8, 1993.

Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition to List the Buff-Breasted Flycatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition failed to present substantial scientific or commercial information indicating that listing the buff-breasted flycatcher (*Empidonax fulvifrons*) as an endangered species may be warranted.

DATES: The finding announced in this notice was made on April 8, 1993. The Service will accept information on the status of the buff-breasted flycatcher at any time.

ADDRESSES: Information, comments, or questions concerning the buff-breasted flycatcher petition may be submitted to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, Field Supervisor at the above address (telephone 602/379-4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practical, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On June 2, 1992, Mr. Elmer Richardson submitted a letter to the Service, requesting the Service to list the buff-breasted flycatcher (*Empidonax fulvifrons*) as an endangered species (Richardson 1992). On June 12, 1992, the Service informed the petitioner that his letter had been accepted as a petition.

This finding is based on various documents, including published and unpublished studies, and agency documents. All documents on which this finding is based are on file in the Fish and Wildlife Service Field Office in Phoenix, Arizona.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is likely to become an endangered species (as defined above) within the foreseeable future throughout all or a significant portion of its range may be declared a threatened species under the Act. Section 3(15) of the Act includes under the term species " * * * any subspecies * * * and any distinct population segment of any species * * * which interbreeds when mature."

The buff-breasted flycatcher ranges from central Arizona and southwestern New Mexico, south through Mexico to Honduras and El Salvador. It occurs in open, montane pine or pine-oak forests, generally above 5,500 feet elevation. This flycatcher also occurs in montane canyon riparian groves of sycamore and other deciduous trees at similar elevations (Bailey 1928, Bent 1963, Phillips *et al.* 1964, Davis 1972, Peterson and Chalif 1973, American Ornithologists' Union 1983). The buff-breasted flycatcher appears to prefer relatively open forests, where it forages in the grassy or herbaceous understory (Bent 1963, Hubbard 1972, Phillips *et al.* 1964).

Section 4(a)(1) of the Act lists five factors to be considered in determining whether a species may be threatened or endangered. These five factors are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range.
2. Overutilization for commercial, recreational, scientific or educational purposes.
3. Disease or predation.
4. The inadequacy of existing regulatory mechanisms.
5. Other natural or manmade factors affecting its continued existence.

The petitioner presented information on the first of these factors, contending that extensive loss of habitat has occurred, and that remaining habitat continues to face threats of destruction and modification. In support of this