

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****[FWS-R8-ES-2008-0098; 92220-1113-0000-C5]****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Lahontan Cutthroat Trout****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) from the Federal List of Threatened and Endangered Wildlife (List) under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that removing Lahontan cutthroat trout from the List may be warranted. Therefore, we will not initiate a status review in response to this petition. However, we are currently conducting a 5-year review of this species under section 4(c)(2)(A) of the Act. This review was initiated on February 14, 2007, and will consider information that has become available since the last status review. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Lahontan cutthroat trout or its habitat at any time.

DATES: The finding announced in this document was made on September 9, 2008. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> and <http://www.fws.gov/nevada>. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone (775) 861-6300; facsimile (775) 861-6301. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Bob D. Williams, Field Supervisor, or Selena Werdon, Assistant Field Supervisor,

U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES**). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:**Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that we 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. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

This finding is based on the information included in and with the petition and information available in our files at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations in 50 CFR 424.14(b), our review is limited to a determination of whether the information in the petition meets the "substantial scientific or commercial information" threshold. Our standard for substantial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). In making this finding, we consider whether the petition: (1) Clearly indicates the administrative action recommended; (2) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities and maps (50 CFR 424.14(b)(2)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

We received a petition dated December 18, 2006, from Dynamic Action on Wells Group, Inc. (DAWG) requesting that the Lahontan cutthroat trout be removed from the List. The submission clearly identified itself as a petition and included the requisite identification information of the petitioners, as required in 50 CFR 424.14(a). This notice constitutes our 90-day finding on the petition.

Previous Federal Action

On October 13, 1970, we listed Lahontan cutthroat trout as endangered under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135, 83 Stat. 275) (35 FR 16047). The species was subsequently listed under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). On July 16, 1975, we reclassified Lahontan cutthroat trout from endangered to threatened (40 FR 29863). We also published findings on two previous petitions to delist populations of the Lahontan cutthroat trout, one to delist Lahontan cutthroat trout in the Truckee River and Pyramid Lake (51 FR 29671; August 20, 1986) and the other to delist Lahontan cutthroat trout in the Humboldt River Drainage Basin in Nevada (59 FR 28329; June 1, 1994), neither of which resulted in a determination that delisting was warranted.

Species Information**Range and Habitat**

Historically, Lahontan cutthroat trout were found in a wide variety of cold-water habitats including large, terminal, alkaline lakes (e.g., Pyramid and Walker Lakes); alpine lakes (e.g., Lake Tahoe and Independence Lake); slow, meandering rivers (e.g., Humboldt River); mountain rivers (e.g., Carson, Truckee, Walker, and Marys Rivers); and small headwater tributary streams (e.g., Donner and Prosser Creeks). Generally, Lahontan cutthroat trout occur in cool flowing water with available cover of well-vegetated and stable stream banks, in areas where there are stream velocity breaks, and in

relatively silt-free, rocky riffle-run areas (Service 1995, p. 19).

The Lahontan cutthroat trout is endemic, or native, to the Lahontan Basin of northern Nevada, eastern California, and southern Oregon (Service 1995, pp. 3–4). In 1844, there were 11 lake-dwelling populations of Lahontan cutthroat trout and 400 to 600 stream-dwelling populations in over 5,794 kilometers (km) (3,600 miles) of streams within the major basins of Pleistocene Lake Lahontan (Service 1995, p. 6). Lahontan cutthroat trout currently occupy between 123 and 129 streams within the Lahontan Basin (Service 1995, p. 7). The species is currently found in five historic lakes including Pyramid Lake (Service 2003a, pp. 41–43), Walker Lake (Service 2003b, pp. 18–21), Fallen Leaf Lake (Service 2003a, pp. 41, 58), Independence Lake (Rissler *et al.* 2006, pp. 25–27, 34), and Summit Lake (Service 1995, pp. 14–15). Lahontan cutthroat trout are also found in numerous lakes and streams within the Sierra Nevada and elsewhere outside their historic range (Service 1995, pp. 7, 9, 11–13, 18–19, E–9, E–10).

Reproduction

Lahontan cutthroat trout inhabit lakes and streams but are obligatory stream spawners. Small, intermittent, tributary streams and headwater reaches are sometimes used as spawning sites (Coffin 1981, p. 41; Trotter 1987, pp. 129–132). Spawning generally occurs from April through July, depending upon stream flow, elevation, and water temperature (La Rivers 1962, p. 287; McAfee 1966, p. 227; Lea 1968, pp. 68–69; Moyle 2002, p. 291). Fecundity of 600–8,000 eggs per female has been reported for lacustrine (lake-dwelling) populations (Lea 1968, pp. 80–83; Cowan 1983, p. 16; Sigler *et al.* 1983, p. 17; Moyle 2002, p. 291), while only 100–300 eggs were found in females collected from small Nevada streams (Coffin 1981, p. 40). Eggs are deposited in small gravels within riffles or pool crests (Service 1995, p. 21). Eggs generally hatch within 4–6 weeks, depending on water temperature, and fry emerge 13–23 days later (Lea 1968, p. 69; Moyle 2002, p. 291).

Genetics

The petitioners provided some information about the genetic structure of Lahontan cutthroat trout. They state that Lahontan cutthroat trout populations in the Lahontan Basin are not genetically distinct and that recent studies to identify Lahontan cutthroat trout differentiation among Lahontan sub-basins failed to find statistically significant variation or asserted sub-

basin distinctions without adequate evidence (DAWG 2006, p. 5). However, the petition does not clearly articulate how this information supports their claim that Lahontan cutthroat trout should be delisted (*i.e.*, the genetics information does not contribute to a “detailed narrative justification for the recommended measure” (50 CFR 424.14(b)(2))).

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated information presented in the petition and its supporting information in the context of the above listed five factors to determine whether the petition presented substantial information indicating that delisting the species under the Act may be warranted. Based on information in the petition and other information available in our files, our evaluation is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioners claim that two conditions necessary to delist Lahontan cutthroat trout have been met, one being habitat conditions in the Pyramid Lake-Truckee River Basin (the other condition necessary to delist asserted by the petitioners is discussed under other natural or manmade factors affecting its continued existence (Factor E)). The petitioners state that most diversions from the lower Truckee River have ended, obstructions to Lahontan cutthroat trout spawning in the Truckee River have been removed, and Pyramid Lake has increased in volume and elevation. The petitioners also state that the Truckee River has generated sufficient flows to maintain a viable Lahontan cutthroat trout population in Pyramid Lake, and that the Truckee-Pyramid Basin could form a potential, naturally reproducing, self-sustaining Lahontan cutthroat trout fishery.

However, the petition provides no discussion, citations, or other sources of more detailed information to support their claim that the threat has been eliminated.

In addition to the lack of supporting information in the petition, the petitioners misstate information in the final rule reclassifying the species from endangered to threatened (40 FR 29863). The petitioners assert that in the final rule we determined that Lahontan cutthroat trout is a threatened species because “water diversions from the Truckee River had lowered the water level of Pyramid Lake, silted up the mouth of the Truckee River at its entry into the lake, and eliminated much of the Lahontan cutthroat trout annual spawn up the River from Pyramid Lake” (DAWG 2006, pp. 3–4). The petitioners also state that Walker Lake “was not mentioned as evidence ‘pertinent to the determination’” (DAWG 2006, p. 4). However, the petition misinterprets the final rule. The final rule stated that “water diversions within its native range continue to be a threat” and noted that this was “especially evident” in Pyramid Lake (40 FR 29864). While the final rule did not specifically mention Walker Lake, our reference to water diversions within the native range of Lahontan cutthroat trout encompassed the Walker River drainage and Walker Lake, as well as the other streams and lakes discussed above in the Habitat and Range section. While improved habitat conditions in the Truckee River and Pyramid Lake would contribute to recovery of Lahontan cutthroat trout, amelioration of the threat from water diversion also would involve areas within the native range of Lahontan cutthroat trout in addition to the Truckee River and Pyramid Lake. Thus, the petitioners’ second assertion that conditions necessary to delist Lahontan cutthroat trout have been met is also based on a misinterpretation of the final rule.

To summarize, the petition lacks information to support its assertion that threats from diversions in the Truckee River have been eliminated, and is incorrect in its assumptions and interpretations of the final downlisting rule. Therefore, we find the petition does not present substantial information demonstrating that delisting Lahontan cutthroat trout across all or a significant portion of its range may be warranted at this time due to a lack of threats from any present or threatened destruction, modification, or curtailment of the species’ habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not provide information regarding the effects of overutilization for commercial, recreational, scientific, or educational purposes on Lahontan cutthroat trout. A review of information in our files does not suggest that overutilization for commercial, recreational, scientific or educational purposes currently threatens Lahontan cutthroat trout. However, we will analyze all available information with respect to this factor in our 5-year review under section 4(c)(2) of the Act, which was initiated on February 14, 2007 (72 FR 7064).

C. Disease or Predation

The petition did not provide information regarding the effects of disease or predation on Lahontan cutthroat trout. However, information in our files suggests that there may be threats to Lahontan cutthroat trout from disease or predation. We will analyze all available information with respect to this factor in our 5-year review under section 4(c)(2) of the Act, which was initiated on February 14, 2007 (72 FR 7064). Therefore, we conclude that there is no substantial scientific or commercial information to indicate that delisting Lahontan cutthroat trout may be warranted due to lack of threats from disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition does not present any information pertaining to the inadequacy of existing regulatory mechanisms. However, a review of information in our files suggests that inadequacy of existing regulatory mechanisms may be a concern as it relates to maintenance of habitat conditions for Lahontan cutthroat trout. We will analyze all available information with respect to this factor in our 5-year review under section 4(c)(2) of the Act, which was initiated on February 14, 2007 (72 FR 7064).

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioners referred to the final rule downlisting the Lahontan cutthroat trout from endangered to threatened, stating that the final rule indicated "introduced Brook trout were strong competitors for food and space, and Rainbow trout were hybridizing with the Lahontan cutthroat trout throughout the Lahontan Basin" (DAWG 2006, p. 4). This is an accurate representation of the

information presented in the final rule (40 FR 29864).

The petitioners also stated that the final rule listing Lahontan cutthroat trout as threatened indicated that "the explicit resolution of the competition/hybridization problem was 'regulated taking by sport-fishing' and that 'sport-fishing was explicitly mentioned as the method for reducing competition, hybridization, and overcrowding in streams'" (DAWG 2006, p. 4). With respect to the idea that sport-fishing will reduce competition from and hybridization with nonnative trout, the petitioners misinterpret the information presented in the final rule. The final rule indicates that (1) Lahontan cutthroat trout would benefit from regulated taking by sport-fishing because stocking had led to most suitable streams reaching carrying capacity, and (2) sport-fishing "is an acceptable method of preventing overpopulation which could injure a species by taxing the species' habitat" (40 FR 29864). Therefore, the final rule acknowledges the role of sport-fishing in reducing overpopulation in stocked areas, but it does not indicate that sport-fishing for Lahontan cutthroat trout ameliorates the threat of competition from and hybridization with nonnative trout. The petitioners do not present any information to indicate that threats posed by the presence of these nonnative species have been ameliorated. In addition, the petitioners provide no data or other information indicating that sport-fishing will have the effect of ameliorating those threats. They state that "the competition and hybridization experienced by the Lahontan cutthroat trout throughout the Lahontan Basin has been attenuated by the Nevada Department of Wildlife through regulated taking by sport-fishing" (DAWG 2006, p. 6), without providing substantive support for the statement. Therefore, without any additional information to evaluate the validity of this statement, we find that the petition does not present substantial information indicating that delisting of the Lahontan cutthroat trout across all or a significant portion of its range may be warranted due to a lack of threats from other natural or manmade factors affecting the species' continued existence.

Finding

We have reviewed the petition and supporting information provided with the petition under 50 CFR 424.14(b)(2) and the Act, including information in the final rule listing Lahontan cutthroat trout as threatened. First, our review indicates that the fundamental argument

for delisting presented in the petition was largely based on misinterpretation of information in the final rule downlisting Lahontan cutthroat trout from endangered to threatened (40 FR 29863), specifically with respect to the extent of the threat from water diversions, and with respect to any role sport-fishing for Lahontan cutthroat trout may play in ameliorating the threat of competition and hybridization with nonnative trout. This resulted in incorrect information being presented by the petitioners to support their claims. Second, the petitioners did not provide substantive discussion, data, citations, or other information supporting their statements suggesting that the threats identified in the final listing rule have been ameliorated. Specifically, the petition did not discuss or cite substantive data or other information supporting the notion that water diversions are no longer a threat to Lahontan cutthroat trout in the Truckee River and Pyramid Lake and that competition and hybridization with nonnative trout have been controlled by sport-fishing. The petition also discussed genetic differentiation of Lahontan cutthroat trout within the Lahontan Basin, but it did not clearly articulate the relevance of the information to delisting of the subspecies.

Considering the information in the petition under the Act and our regulations as stated above, we find that the petition (1) did not contain a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species and any threats faced by the species; (2) did not provide information regarding the status of the species over all or a significant portion of its range; and (3) was not accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). Specifically, the supporting documentation that was provided was not appropriate to support the fundamental rationale for the petitioned action. Therefore, we find that the petition does not present substantial information demonstrating that delisting Lahontan cutthroat trout across all or a significant portion of its range may be warranted at this time. We encourage interested parties to continue to gather and provide data that will assist with the conservation of Lahontan cutthroat trout.

References Cited

A complete list of all references cited in this document is available, upon request, from the Nevada Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are staff of Nevada Fish and Wildlife Office (see **ADDRESSES**).

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

Dated: August 19, 2008.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8-20673 Filed 9-8-08; 8:45 am]

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