

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Application for Hospital Project Mortgage Insurance/ Section 242.

*OMB Control Number, if applicable:* 2502-0518.

*Description of the need for the information and proposed use:* Information is collected to provide HUD with the data necessary to determine if a hospital qualifies for FHA insurance under section 242 of the National Housing Act. HUD reviews the information to determine if the proposed project meets basic eligibility criteria, underwriting standards, and adequacy of State and/or local certifications, approvals, and waivers.

*Agency form numbers, if applicable:* HUD-92013-HOSP.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of burden hours needed to prepare the information collection is 17,280; the number of respondents is 18, generating approximately 18 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response 960 hours.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: April 8, 2004.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Colorado River 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 for a petition to list the Colorado River cutthroat trout (CRCT)

(*Oncorhynchus clarki pleuriticus*) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition and additional information available in our files did not present substantial scientific or commercial information indicating that listing this subspecies may be warranted. We will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of or threats to the species. This information will help us monitor and encourage the conservation of this species.

**DATES:** The finding announced in this document was made on April 8, 2004. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** Information, data, or comments concerning this finding should be submitted to the Assistant Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506, or by e-mail to [al\\_pfister@fws.gov](mailto:al_pfister@fws.gov). 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:** Patty Schrader Gelatt, at the above address, by telephone at 970-243-2778, or by e-mail at [patty\\_schradergelatt@fws.gov](mailto:patty_schradergelatt@fws.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), requires that within 90 days of receipt of a petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. The finding is based upon all information provided or referenced in the petition and all other information available to us at the time the finding was made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the

status of the species (50 CFR 424.14). "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted."

On December 16, 1999, we received a formal petition to list the CRCT as threatened or endangered in its occupied habitat within its known historic range, in accordance with provisions in section 4 of the ESA. The petition was filed by the Center for Biological Diversity, the Biodiversity Legal Foundation, Biodiversity Associates, Ancient Forest Rescue, Southwest Trout, Wild Utah Forest Campaign, Colorado Wild, and Mr. Noah Greenwald.

On January 12, 2000, we notified the petitioners that our Listing Priority Guidance, published in the **Federal Register** (64 FR 57114) on October 22, 1999, designated the processing of new listing petitions as a "Priority 4" activity, a lower priority than emergency listing (Priority 1), processing final decisions on proposed listings (Priority 2), and resolving the status of candidate species (Priority 3). We also informed the petitioners that due to staff and budget limitations, the petition could not be immediately addressed.

On August 8, 2000, we received a notice of intent to sue from the Center for Biological Diversity, Biodiversity Associates, Biodiversity Legal Foundation, Colorado Wild, Wild Utah Forest Campaign, and Mr. Noah Greenwald concerning our failure to produce a 90-day finding on the subject petition in accordance with the provisions of section 4 of the ESA. We responded on August 31, 2000, reiterating that we would not be able to begin an evaluation of the CRCT petition until the work on the higher priority activities was completed. In the spring of 2003, the Service determined appropriate funds were available to address the subject petition.

In addition, the Service received correspondence from Mr. Noah Greenwald on September 20, 2002, providing additional information.

The September 20, 2002, correspondence from the petitioners recognized that some of the information presented in the original petition is outdated due to the passage of time. The petitioners discussed information provided by the states focusing on three specific issues—hybridization, competition, and predation from nonnatives; habitat degradation; and inadequacy of existing regulation. The petitioners again asserted that the range

of the CRCT has been reduced to a small fraction of its historic range, resulting in small isolated populations. They also stated that none of the populations can be considered secure because every one is threatened by nonnatives, limited stream length, small population size, habitat limitations, or a combination of these factors. The petitioners asserted that most CRCT populations are either hybridized or sympatric with nonnative trout species despite efforts to construct barriers and remove nonnatives. In addition, the States stock nonnative trout in CRCT historic range, which limits potential streams where CRCT can be recovered. The petitioners recommended that we use the same criteria to evaluate the status of the Colorado River cutthroat trout as was used for the Rio Grande cutthroat trout (*Onchorhynchus clarki virginalis*) candidate status review. The Service did not use these criteria in this 90-day finding because it does not constitute a status review under the ESA.

### Biology and Distribution

The CRCT is the only salmonid (*i.e.*, salmon, trout, and their close relatives) native to the upper Colorado River basin, and is 1 of 14 subspecies of cutthroat trout recognized by Behnke (1992, 2002) that are native to interior regions of western North America. It has red or orange slash marks on both sides of the lower jaws and relatively large spots concentrated on the posterior part of the body. Sexually mature males exhibit brilliant colors; the ventral region can be bright crimson, with red along the lateral line, and the lower sides of the body are typically golden yellow (Behnke 1992).

The CRCT historically occupied portions of the Colorado River drainage in Wyoming, Colorado, Utah, Arizona, and New Mexico (Behnke 1992). Its original distribution probably included portions of larger streams, such as the Green, Yampa, White, Colorado, and San Juan Rivers. Behnke and Zarn (1976) suggested this subspecies was absent from the lower reaches of many large rivers because of summer thermal barriers. The CRCT still occurs throughout its historic range, but remaining populations now occur mostly in headwater streams and lakes.

The CRCT spawn over a gravel substrate in spring when water temperatures reach 7°C (45°F). The female digs out a nest in flowing water and, after fertilization, the eggs are covered with gravel and hatch in the summer (Behnke and Benson 1980). The CRCT feed on a wide range of invertebrates; larger CRCT prey on other fishes (Behnke and Benson 1980).

The States of Colorado, Utah, and Wyoming have implemented conservation efforts for CRCT for many years. Each State has developed plans to facilitate conservation action for CRCT within their respective States (Wyoming Game and Fish Department (WGFD) 1987; Colorado Division of Wildlife (CDOW) 1992; Langlois *et al.* 1994; Utah Division of Wildlife Resources (UDWR) 1997). The three States, U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service, Ute Indian Tribe, and the Service formed a task force to address conservation efforts for CRCT on a rangewide basis. A Conservation Agreement and Strategy (CAS) (CRCT Task Force 1999, 2001) was developed to expedite implementation of conservation measures for the CRCT in Colorado, Utah, and Wyoming as a collaborative and cooperative effort among resource agencies. The primary goal of the CAS is to assure the long-term prosperity of CRCT throughout their historic range by establishing two self-sustaining metapopulations, each consisting of five separate, viable but interconnected subpopulations, in each geographic management unit within the historic range. The short-term goal is to establish one metapopulation in each geographic management unit. Additional goals of the CAS are to maintain areas that currently support abundant CRCT and manage other areas for increased abundance; to maintain the genetic diversity of the subspecies; and to increase the distribution of CRCT where ecologically and economically feasible. The specific objective of the CAS is to maintain and restore 383 conservation populations in 2,823 stream kilometers (km) (1,754 stream miles (mi)) and 18 populations in 264 lake hectares (ha) (652 lake acres (ac)) in 14 geographic management units within the historic range.

The CAS (CRCT Task Force 2001) classifies CRCT populations according to their genetic purity using the criteria established in "Cutthroat Trout Management—a Position Paper. Genetic Considerations Associated with Cutthroat Trout Management" (UDWR 2000). This position paper was developed by fishery administrators and biologists from the following agencies—Idaho Department of Fish and Game; Montana Fish, Wildlife and Parks; Nevada Division of Wildlife; New Mexico Game and Fish; UDWR; WGFD; the Service; USFS; and other technical experts. The Position Paper defines a "core conservation population" as a population that is >99 percent pure and represents the historic genome of the

native cutthroat trout. Core conservation populations contain cutthroat trout that have not been impacted by genetic alteration linked to human intervention. A "conservation population" is defined as a reproducing and recruiting population of native cutthroat trout that has managed to preserve the historical genome and/or unique genetic, ecological, and/or behavioral characteristics. In general, a conservation population is at least 90 percent pure CRCT, but purity may be lower depending on circumstances and the values and attributes to be preserved.

The CAS established a CRCT Coordination Team to periodically update the population status information provided in the appendices. As of July 16, 2003, the States of Colorado, Utah, and Wyoming reported 327 conservation populations, which include 286 populations in approximately 1,625 stream km (1,010 stream mi) and 41 populations in approximately 455 ha (1,124 ac) of lakes (CRCT Coordination Team, unpublished data). These populations include 221 populations that meet the Coordination Team's definition of core conservation populations. Of these 221 core conservation populations, 191 are found in approximately 1,101 km (684 mi) of streams and 30 are found in approximately 221 ha (545 ac) of lakes.

Since 1998, 125 stream populations and 29 lake populations have been added to the list of conservation populations (including core conservation populations and conservation populations) (CRCT Coordination Team, unpublished data). Most of the additions to the list of conservation populations are due to results of genetic testing that indicated genetic purity of at least 90 percent. Some waters were removed from the list due to the results of genetic testing. Other waters were added after reclamation and restocking were completed. Still other stream segments were removed because CRCT were extirpated due to competition from nonnative trout.

### Assessment of the Petition and Other Available Information

The 1999 petition and subsequent 2002 letter provided information regarding the status and threats to CRCT. Soon after we received the petition, we made the document available on our web site. We also contacted natural resource agencies whose responsibilities include CRCT management and requested that these agencies review the petition and provide information on the current

status of the subspecies. In response to our request, we received information from UDWR, WGFD, CDOW, USFS, National Park Service, and BLM. We reviewed the information provided by these agencies, scientific journal articles, agency reports, and other information in our files to determine whether the information provided or cited in the petition or other information readily available to us met the ESA's standard for "substantial information." We respond to each of the major assertions made in the petition, organized by ESA listing factors. This 90-day finding is not a status assessment and does not constitute a status review under the ESA.

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

With respect to factor A, the petition asserted that the CRCT has been reduced to small, unstable headwater drainages in less than 5 percent of its historic range and that this reduction in range is due to livestock grazing, water diversions, mining, logging, and roads. The petition presented an analysis of the reduction of historic range primarily based on information in a USFS Report (Young *et al.* 1996). While we consider this report a source of reliable information, it was based on a questionnaire distributed to various agency biologists and not all biologists responded. Therefore, Young *et al.* (1996) considered the data base presented as incomplete. The information contained in this report gave a general overview of the decline of the subspecies, but did not contain adequate information on the subspecies' status throughout its current or historical range to determine reduction in historic range. In fact, Young *et al.* (1996) stated, "comprehensive descriptions of the historical range of the CRCT are unavailable." However, for years, scientists have recognized that the current range of the CRCT has been greatly reduced from its historic range (Behnke and Zarn 1976; Binns 1977; Behnke and Benson 1980; Martinez 1988; CRCT Task Force 2001), and we concur with the conclusion that the range of the CRCT has been greatly reduced from historic levels. The ESA does not indicate threshold levels of historic range at which listing as either threatened or endangered becomes warranted. Instead the principal considerations in determining whether a species warrants listing are the threats that currently confront the species within its range and the likelihood that the species will persist in the foreseeable future.

The petition used two sources of information for the distribution and status of CRCT—Young *et al.* (1996) and the 1999 CAS (CRCT Task Force 1999). While the Service considered these adequate and reliable sources of information at the time of the original petition, new information is also available to the Service, including the latest information (CRCT Coordination Team, unpublished data) on numbers of conservation populations and core conservation populations by State.

While the total number of conservation populations (106) and core conservation populations (221) represents a relatively secure subspecies, total numbers of populations does not provide the full picture of the status of a species. The CAS (CRCT Task Force 2001) recognized that some past and present land management practices (overgrazing, heavy metal pollution, and water depletion and diversions) contribute to the isolation of upstream populations of CRCT. In some cases those practices serve to protect populations from invasion by nonnative salmonids, but they also cause fragmented stream segments that restrict movement between formerly connected populations, leaving small isolated populations that may be subject to extirpation and loss of genetic interchange (CRCT Task Force 2001). Many of these populations occur in headwater streams where water temperatures and small stream size make habitat conditions less than optimal. Harig and Fausch (2002) noted that cold summer water temperatures, typical of high elevation streams, tend to delay spawning, which reduces overwinter survival. They also found that many small streams lack sufficient pools deep enough for overwinter survival. The work of Novinger and Rahel (2003) also suggested that isolated headwater mountain streams lack some of the necessary habitat components based on the finding, in some cases, that isolation management (the process of constructing an artificial barrier, removal of brook trout, and stocking CRCT) resulted in more CRCT below the artificial barrier than above. However, small, isolated populations have persisted for many years in some situations, such as above waterfalls or in desert basins (Hilderbrand and Kershner 2000). It is unclear what population and habitat sizes are required for long-term population viability.

The scientific literature addresses species population viability in a theoretical manner, providing recommendations for minimum population size based on theoretical

models (Franklin 1980; Gilpin and Soule 1986; Rieman and McIntyre 1993; Hilderbrand and Kershner 2000). Through modeling, Hilderbrand and Kershner (2000) estimated minimum stream length for several subspecies of cutthroat trout (Colorado River, Bonneville (*Oncorhynchus clarki utah*), and westslope (*Oncorhynchus clarki lewisi*)), in relation to population size. They estimated that a stream length of 3 km (2 mi) was required to support a population of 1,000 fish; 8 km (5 mi) to support 2,500 fish; and 17 km (10 mi) to support 5,000 fish. Recent data show stream lengths for core conservation populations vary from less than 1.5 km to 34 km (less than 1 mi to 21 mi), with 77 of the 191 (40 percent) core conservation populations in stream segments of 3 km (2 mi) or less (CRCT Coordination Team, unpublished data). Core conservation populations of CRCT ranged in size from 20 to 6,830 adult fish, with the majority (92 percent) of the adult populations having either fewer than 1,000 fish or no available population data. However, it is important to recognize that the Coordination Team has not adopted the population criteria discussed above and has not developed specific standards for population viability for CRCT (CRCT Task Force 2001). The Coordination Team considered using the criteria for demographic and habitat requirements for bull trout (*Salvelinus confluentus*) as presented by Rieman and McIntyre (1993), but determined those criteria were not appropriate for CRCT. While limited habitat size, small population size, inappropriate water temperatures, and habitat fragmentation are a concern, it is unclear how these factors affect the long-term viability of the subspecies.

When addressing a species with multiple populations, such as CRCT, population viability is just one factor to consider when determining the likelihood of species persistence. The CAS stresses the establishment of metapopulations to assure the long-term prosperity of CRCT (CRCT Task Force 2001). The CAS defines metapopulations as "a collection of localized populations that are geographically distinct yet are genetically interconnected through natural movement of individual fish between populations." Metapopulations are important for stabilizing population dynamics by maintaining genetic exchange (increasing genetic diversity) and providing individuals to repopulate stream segments where populations are lost due to stochastic environmental events (*i.e.*, fire, drought) (UDWR 1997). The long-term goal of the CAS is to

establish two self-sustaining metapopulations, each consisting of five separate, viable but interconnected subpopulations, in each geographic management unit within the historic range. Two of the 14 geographic management units currently meet the long-term goal of the CAS. The short-term goal is to establish one metapopulation in each geographic management unit. Seven additional geographic management units currently meet the CAS short-term goal. Overall, metapopulations currently exist in Colorado, Utah, and Wyoming, where 11 metapopulations meet the criteria of 5 separate but interconnected subpopulations and an additional 23 metapopulations contain 2 to 4 subpopulations (CRCT Core Coordination Team, unpublished data).

The States are actively working to establish metapopulations in each geographic management unit. For example, in Wyoming, a large restoration project is currently ongoing to establish a metapopulation in the LaBarge watershed in the southwestern portion of the State. Completion of this project is expected 2007, and will result in restoration of 58 stream miles, including 18 miles of LaBarge Creek and 40 stream miles of tributaries (Remmick 2002). Challenges in establishing metapopulations include difficulty in obtaining approval for chemical treatments, reinvasion of nonnative trout, funding, and landowner approval. Based on their work in Colorado, Brauch and Hebein (2003) found that current technical limitations of chemical treatments for reclamation limit potential reclamation sites to smaller streams with low flows of less than 0.42 cubic meter/second (15 cubic feet/second). State efforts to overcome these challenges continue.

The Service recognizes that overgrazing can be detrimental to trout habitat, and that overgrazing may occur in some habitats occupied by CRCT. The petition asserted that habitat conditions are degraded in a significant portion of the subspecies' range. Descriptions of habitat conditions are not available for the CRCT on a rangewide basis (Bruce May, USFS, pers. comm. 2003). The petition used the habitat limitations data field presented in Appendix A of the CAS to draw this conclusion. However, this data field is not adequate to determine the habitat condition of individual streams or lakes or to determine the condition of the habitat rangewide (Dan Brauch, CDOW, pers. comm. 2003). This data field was not applied consistently in the three States, nor was it applied consistently over time. In many cases, habitat limitations

noted for the survey location did not apply to the entire stream reach. The CAS (CRCT Task Force 2001) stated that "habitat problems are viewed as site-specific and not an overall threat throughout the range," but no documentation was provided. The petition did not provide additional substantial information to determine the extent of overgrazing in CRCT habitat. Furthermore, the Service can not assume that all livestock grazing within the CRCT habitat is inappropriate. Proper grazing management can reduce or prevent the habitat and water quality degradation discussed in the petition.

The Service recognizes that water diversions can negatively impact CRCT habitat. The petition asserted 59 CRCT populations have been negatively impacted by water diversions. However, the petition relied primarily upon the habitat limitations data field presented in Appendix A discussed above. A rangewide inventory has not been conducted to determine if water diversions are a problem in just a few locations or throughout CRCT range. Many CRCT populations occur in stream segments upstream of water diversions, and some instream flows have been secured in CRCT streams in Colorado and Wyoming. In Utah, the State Engineer has the authority to deny any changes in water rights applications if such action "affects the natural stream environment or public recreation."

Additionally, the petition asserted mining, dams and reservoirs, oil and gas development, road building and logging may be detrimental to CRCT populations. The petition also asserted that mining, through isolation, and dams and reservoirs have preserved pure populations of CRCT. Information on the impacts of dams and reservoirs, oil and gas development, road building and logging is not available on a rangewide basis. The petition did not provide substantial information to determine the rangewide impact on CRCT habitat. We have no other information establishing these activities as significant threats to CRCT.

The USFS and the BLM are currently implementing conservation actions on Federal lands to improve habitat conditions for CRCT (USFS 2002, BLM 2003). These actions include grazing management by constructing fencing, building exclosures, and resting grazing allotments. Other vegetation management activities to improve riparian conditions include weed control and riparian plantings. The BLM has recently facilitated installation of a fish screen to prevent CRCT from entering a water diversion structure and implemented culvert improvements to

provide fish passage. The USFS has moved campsites and excluded vehicle access to improve habitat for CRCT. The Federal agencies have partnered with the State agencies to monitor fish populations, build and maintain barriers, and remove nonnative fish. Some CRCT habitats are afforded protection from land use activities by special land use designations, such as habitats within Rocky Mountain National Park and USFS Wilderness Areas.

We find the petition did not provide substantial information to support its assertions that the threat of past and present destruction, modification, or curtailment of CRCT habitat is sufficient to cause further significant declines in this subspecies' range or extant populations. We conclude that the total number of conservation populations and core conservation populations represent a relatively secure subspecies. While limited habitat size, small population size, inappropriate water temperatures, and habitat fragmentation are a concern, it is unclear how these factors affect the long-term viability of the subspecies. State management efforts to establish metapopulations in each geographic management unit continue to improve the outlook for the CRCT. Further, the petition failed to provide substantial information to support the allegation that overgrazing, mining, logging, or roads pose a threat to the overall habitat or range of the CRCT.

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

With respect to factor B, the petition asserted that CRCT are threatened by recreational fishing, because CRCT are easy to catch and the state regulatory agencies lack sufficient funding to enforce protective regulations effectively. Colorado, Utah, and Wyoming all have special regulations that provide protection against overharvest of CRCT. These special regulations include catch-and-release requirements, very limited harvest, fishing closures, and tackle restrictions. Also, the remote locations of many CRCT streams provide protection from heavy fishing pressure (CRCT Task Force 2001).

The CDOW placed harvest and tackle restrictions on most conservation populations of CRCT in 1999. These regulations prohibit harvest of CRCT and allow anglers to only use flies and lures (*i.e.*, no bait). The CDOW reports that 49 waters with conservation populations are closed to cutthroat trout harvest and 1 lake is closed to fishing (Brauch and Hebein 2003). In Rocky

Mountain National Park, all waters that contain pure native cutthroat trout are limited to catch-and-release angling (except Caddis Lake and Lake Nanita, where there is a two-fish daily limit), and some waters are closed to angling while restoration efforts are being implemented (Rosenlund *et al.* 2001).

In the early 1980s, the WGFD implemented regulations to better manage CRCT waters. Some waters have complete fishing closures; other waters are catch-and-release only, reduced limits, and seasonal closures. The WGFD continually revises fishing regulations to protect species of concern (Remmick 2002). The WGFD assigned a warden to enforce fishing closures near CRCT habitat when roads were constructed in association with the Cheyenne Stage II Water Project in the Little Snake River drainage in Wyoming (Remmick 2002).

In Utah, the UDWR has established seasonal closures, reduced limits, size restrictions, and implemented fishing closures in areas of recent introductions to protect CRCT. The UDWR has not observed small, remote populations getting enough fishing pressure to influence numbers and size structure (Kimball 2001).

While the petition recognizes that existing fishing regulations are in most cases adequate, it raises concerns that funding for education and enforcement programs may be inadequate. However, the petition and information available in the Service's files fails to provide documentation to support this assertion.

Based on the existing regulations described above, we conclude that the scientific and commercial information available does not support the assertion that overutilization by recreational angling is a threat to CRCT. Furthermore, the petition failed to present substantial information regarding a lack of sufficient funding for education and enforcement of the regulations.

### C. Disease or Predation

With respect to factor C, the petition asserted that CRCT are threatened by whirling disease and the CDOW stocks whirling disease-infected fish within the historic range of CRCT. Also, the petition asserted that CRCT are threatened by predation from brown, brook, and rainbow trout. In recent years, whirling disease has become a great concern to fishery managers in western States. Whirling disease is caused by the nonnative myxosporean parasite, *Myxobolus cerebralis*. This parasite was introduced to the United States from Europe in the 1950s and requires two separate host organisms to

complete its life cycle. Its essential hosts are a salmonid fish and an aquatic worm, *Tubifex tubifex*. Field experiments have shown that CRCT are very susceptible to whirling disease, with an 85 percent mortality rate over a 4-month period when CRCT were exposed to the parasites in the Colorado River (Thompson *et al.* 1999). However, *Tubifex tubifex* is usually most abundant in areas of high sedimentation, low water temperatures, and low dissolved oxygen. Most populations of CRCT occur in cold water stream habitats at high elevations, where *Tubifex tubifex* is unlikely to be abundant. Thompson *et al.* (1999) found infection rates to be low when temperatures are less than 10°C (50°F). Out of the hundreds of CRCT populations reported by the States, only a few populations of CRCT in Utah and Wyoming have been infected by whirling disease (Kimball 2001, Remmick 2002). In Colorado, CDOW has not found any native cutthroat population infected with whirling disease (Nesler 2003). Wyoming reports that no core conservation populations or conservation populations have been infected (Remmick 2002). All three States have developed management activities to protect CRCT populations from whirling disease.

In Colorado, policies require that only fish that have tested negative for *Myxobolus cerebralis*, within the last 60 days are permitted to be released into CRCT waters. Colorado also requires disease-free certification and requires the use of isolation/quarantine units for CRCT stocks (CRCT Task Force 2001). Utah has some of the most stringent fish disease laws in the United States. Utah has a Fish Health Board that oversees the disease testing protocol. Utah does not allow stocking of fish that test positive for whirling disease anywhere (CRCT Task Force 2001). A couple of CRCT waters in Utah have been infected by whirling disease, and the UDWR is studying the effects of whirling disease on these populations (Kimball 2001). Wyoming has a policy that any fish testing positive for *Myxobolus cerebralis* will not be stocked (Remmick 2002).

We find that the scientific and commercial information available supports the allegation that CRCT are susceptible to whirling disease, but due to the physical characteristics of CRCT habitat and the current State policies, whirling disease does not pose a significant threat to CRCT.

Predation was recognized in the petition in association with the presence of nonnative trout in CRCT habitat. The CRCT are often replaced by nonnative trout, primarily brook trout (*Salvelinus*

*fontinalis*), where they occur in the same habitat; but the degree to which predation is a factor in this replacement has not been well studied (Peterson and Fausch 2002). We find that there is insufficient information to conclude that predation by nonnative fishes is a significant threat to CRCT.

### D. The Inadequacy of Existing Regulatory Mechanisms

With respect to factor D, the petition asserted that currently there are no regulations protecting the species from take or habitat degradation. The petition and subsequent correspondence failed to recognize all of the ongoing efforts of the signatories of the 2001 Conservation Agreement. The States of Utah, Wyoming, and Colorado, and the Federal land management agencies all have ongoing programs to conserve the CRCT.

### Colorado Division of Wildlife

The CDOW includes the CRCT on a list of species of special concern. Colorado fishing regulations provide restrictive regulations for some CRCT waters. These restrictions include angling limited to artificial flies and lures and immediate return of all trout alive to the water. A recent report outlines conservation activities conducted by the CDOW during 1999–2002 (Brauch and Hebein 2003). The CDOW reported that, during this period, 311 streams and lakes were targeted for conservation activities. Statewide conservation activities included restrictive tackle and catch-and-release regulations, regulations prohibiting nonnative stocking into conservation populations, and stocking CRCT for recreation into high lakes. Other conservation activities included development of subbasin brood stocks, removal of nonnative trout, protection of populations with barrier construction, genetic testing, and population monitoring. The Colorado Water Quality Control Division and Commission regulate water quality and set water quality standards to protect aquatic life in coldwater environments.

### Utah Division of Wildlife Resources

Utah lists CRCT as a conservation species, which is defined as currently receiving sufficient special management under a conservation agreement to preclude listing as endangered, threatened, or species of special concern in Utah. Utah's stocking practices have changed in recent years to protect CRCT. Stocking of nonnative fishes no longer occurs near core conservation populations or conservation populations. In 2002, Utah discontinued

stocking rainbow trout in most streams and now only stocks sterile rainbow trout. Sterile rainbow trout are stocked only in areas that have no connection to CRCT habitat. All stocking of nonnative cutthroats was discontinued by 2000. Utah fishing regulations restrict harvest of CRCT and implement fishing closures during restoration activities.

#### Wyoming Game and Fish Department

Wyoming protects CRCT through fishing regulations and stocking procedures. Restrictions on angling include reduced bag limits, catch-and-release fishing, seasonal closures, and complete closures. The WGFD has filed for water rights on a total of 30 stream segments of CRCT habitat, for a total of 187 km (116 mi). Priority dates for these filings range from 1989 to 2002. To date, two instream flow rights have been approved. The Wyoming State Division of Environmental Quality implements water quality regulations and controls that apply to CRCT waters.

#### U.S. Forest Service

The USFS has designated CRCT as a sensitive species. According to the USFS, the petition misrepresented their aquatic habitat management program and land-use coordination by taking statements in reports out of context (USFS 2003). The U.S. Department of Agriculture policy directs the USFS to manage "habitat for all existing native and desired nonnative \* \* \* species in order to maintain at least viable populations of such species and to avoid actions that may cause a species to become threatened or endangered." While specific population viability criteria have not been established by the CRCT Coordination Team, this policy requires the USFS to make a judgment on the viability of each individual population where authorized activities may impact CRCT.

The 2001 CAS was used as a basis for recovery and conservation strategies for Standards and Guidelines within individual Forest Plans, in combination with the Fisheries and Aquatic Ecology section of the Forest Planning Desk Guide. For example, the standards for the White River National Forest Plan in Colorado include provisions to: maintain or enhance existing CRCT habitat; reduce sediment from existing roads and trails; maintain pool depths; maintain riparian vegetation; and retain large woody debris in streams. Guidelines to implement these standards include restriction on new roads, rerouting existing roads, decommissioning old roads, altering timing of grazing, excluding sensitive or problem areas from grazing, and

controlling livestock crossings. In the past 5 years, the USFS has completed 200 biological evaluations that address CRCT.

The USFS (2002) reported that the Rocky Mountain Region in 2002 implemented 51 conservation actions that positively influenced 64 lake ha (158 lake ac) and 727 stream km (452 stream mi) of CRCT habitat. Projects included inventory of existing and potential habitat, drought salvage, fencing to exclude cattle, stream assessment and monitoring, nonnative trout removal, building and maintaining barriers, moving dispersed campsites, and genetic analysis. Over the last 4 years the USFS has provided \$2,097,100 for the implementation of 112 conservation actions.

#### Bureau of Land Management

The CRCT is on the BLM's Sensitive Species List. The BLM prepares Work Plans and Accomplishment Reports for conservation efforts on BLM lands in Colorado, Utah, and Wyoming. Conservation actions are either planned or have been implemented on approximately 40 CRCT streams.

#### National Park Service

The current fisheries management objectives in Rocky Mountain National Park were established in 1969, when the stocking of nonnative and hybrid fishes was no longer permitted. Lakes that did not maintain reproducing populations of fish became fishless (Rosenlund *et al.* 2001). Five sites that contain core conservation populations within Rocky Mountain National Park are open to catch-and-release fishing, and four other sites have a two-fish limit. Most CRCT waters within the Park are in high-elevation remote locations, where angling pressure is very light. Livestock grazing, timber harvest, mining, or other development does not occur in Rocky Mountain National Park.

The scientific and commercial information available does not support the petition's assertion that there are no regulations protecting the species from take or habitat degradation. We conclude that take of the subspecies can be controlled by State regulations and that the Federal land management agencies have policies to manage sensitive species habitat.

#### E. Other Natural or Manmade Mechanisms

With respect to factor E, the petition asserted that a major threat to CRCT is competition and hybridization from nonnative trout species occurring in the same habitat as CRCT. It also asserted that small isolated populations of CRCT

are vulnerable to stochastic events, such as fire or drought. Hybridization with nonnative fish species has been recognized as one of the most significant threats to CRCT (Behnke 1992; Young *et al.* 1996; CRCT Task Force 2001). Hybridization occurs when nonnative species interbreed with CRCT, and the offspring survive. The nonnative species that hybridize with CRCT are primarily rainbow trout and other subspecies of cutthroat trout. If the hybrids survive and interbreed with one or both of the parental species, it is called introgressive hybridization. This can lead to loss of genetic purity in the population and result in a population that consists entirely of individuals that contain genetic material from both species (*i.e.*, a hybrid swarm). Nonnative salmonids have been stocked in CRCT habitat since the late 1800s throughout CRCT historic range. The State agencies have spent considerable time and money in recent years testing populations to determine their genetic purity.

Determining genetic purity is a complex issue and a single standard has not been established. Methods used by the States to determine genetic purity have changed over the years. Analysis by meristics (counts of body parts) was used for many years, but now various molecular genetic techniques (*i.e.*, mitochondrial deoxyribonucleic acid (DNA), nuclear DNA, allozymes) are available and can detect very small amounts of introgression. Many of the core conservation populations have been confirmed to be pure (<1 percent introgression) with these molecular genetic techniques. Many other test results are pending. In general, scientists have found that genetic testing confirms the results of the earlier meristic techniques (Brauch and Hebein 2003; Hepworth *et al.* in press). All three States continue the process of genetic testing, using the latest techniques. An evaluation of known stocking history and genetic and meristic information is considered in determining core conservation populations.

Current policies preclude stocking of nonnative trout in CRCT habitat, and recent genetics work has added significantly to the number of core conservation populations (>99 percent pure). As of July 2003, 221 core conservation populations are known to exist in Colorado, Utah, and Wyoming. There are varying amounts of information available regarding the genetic purity of these core conservation populations. Since 1999, Wyoming has added 20 core conservation populations and Colorado has added 25 core

conservation populations as the result of genetic testing. Some populations are added to the list of core conservation populations, and others are dropped from the list as genetic testing continues. Far more populations have been added to the list of core conservation populations through genetic testing than have been removed (Brauch and Hebein 2003; Conway 2003; Stone 2003). In addition to the core conservation populations, there are 106 conservation populations that are classified as 90 to 99 percent pure.

Hybridization continues to be a threat where nonnative species, particularly rainbow trout (*Oncorhynchus mykiss*) and nonnative cutthroat trout, occur in the same habitat as CRCT. The most recent data show that only 8 of the 221 core conservation populations coexist with rainbow trout or another subspecies of nonnative cutthroat trout (although information on presence of nonnative salmonids is not available for 22 of the populations). Because core conservation populations are defined as >99 percent pure, one would expect a very low occurrence of other species or subspecies that are known to interbreed with CRCT in the core conservation population waters.

Competition from nonnative trout, especially brook trout, also has been recognized as a major threat to CRCT (Behnke 1992). Studies have shown CRCT are displaced when brook trout occur in the same habitat. A recent study conducted by Colorado State University found survival of young CRCT was greatly impacted by the presence of brook trout, while adult CRCT survival was not impacted (Peterson and Fausch 2002). Since 2001, four conservation populations in Colorado (Corral Creek, Cub Creek, Express Creek, and Nolan Creek) have been completely displaced by brook trout (Brauch and Hebein 2003).

Brook trout are no longer stocked in CRCT waters in Colorado, Utah, or Wyoming. Recent data (CRCT Coordination Team, unpublished data) show that brook trout are absent from 139 of the 199 core conservation populations that have been surveyed for nonnative salmonids. Recognizing the threat posed by brook trout, the responsible agencies are actively implementing management techniques, such as the construction of barriers, the removal of brook trout, and the curtailment of stocking brook trout within CRCT waters. Between 1999 and 2002, Colorado, Utah, and Wyoming completed chemical treatments in 36 CRCT waters, for a total of 88 stream miles and 87 lake acres in 8 geographic management units (CRCT Coordination

Team, unpublished data). Colorado also removed brook trout by electrofishing in 20 waters.

Fish barriers have been constructed on CRCT streams to prevent the upstream movement of nonnative salmonids. The CAS identifies the construction of barriers as a strategy to protect and restore existing habitat. It also recognizes that natural barriers can be effective. Recent data show 117 (53 percent) of the existing core conservation populations are currently protected by a natural or artificial barrier (CRCT Coordination Team, unpublished data). However, the Service recognizes that barriers are not a guarantee that non-natives will not be present in CRCT habitat. Thirty-two percent of the core conservation populations with barriers have nonnative salmonids present.

Ultimately, a larger watershed approach may be necessary for the long-term persistence of CRCT populations (Hilderbrand and Kershner 2000).

The Service recognizes that stochastic events can be detrimental to individual populations of CRCT. The primary goal of the CAS is to establish metapopulations within each geographic management unit to assure the long-term prosperity of CRCT. While all the specific metapopulation goals of the CAS have not been met, metapopulations connecting 2 or more streams do occur in 14 out of the 15 geographic management units (Table 3). The Service agrees with the assertion in the petition that once an isolated population is lost, there are no natural means for these populations to recruit new members. However, management actions have been taken by the States to repopulate CRCT streams after stochastic events. For example, during the 2002 drought, Colorado salvaged fish from Trapper Creek and West Antelope Creek and held the fish in refugia for return to the wild when conditions improved and for the establishment of broodstock for supplying fish for stocking into the respective hydrologic subbasins (Brauch and Hebein 2003).

Although some CRCT populations are threatened by hybridization, we conclude that the threat of hybridization is not pervasive to the extent that it poses a risk to the continued survival of CRCT. The Service recognizes that nonnatives can outcompete CRCT. However, brook trout are absent from 139 of the 199 core conservation populations that have been surveyed for nonnative salmonids. Management techniques such as the construction of barriers, the removal of brook trout and the curtailment of stocking brook trout

within CRCT waters are currently being implemented by responsible agencies. Therefore, we conclude that the petition and other documents in our files do not provide evidence that competition with brook trout presents a significant threat to the subspecies within the foreseeable future. While stochastic events will always pose a threat to individual populations, the establishment of metapopulations and state management actions should minimize this impact.

### Finding

We conclude that the petition and other documents in our files do not present substantial information to lead a reasonable person to believe that listing the CRCT as threatened or endangered may be warranted. After reviewing recent data, we conclude that there are a significant number of core conservation populations of CRCT distributed throughout historic range and that agencies are implementing management actions to improve the status of these populations. Since 1998, 125 stream populations and 29 lake populations have been added to the list of conservation populations for a total of 286 stream populations and 41 lake populations. This increase in population numbers can be attributable to results of genetic testing, removal of nonnatives, and stocking. The total number of conservation populations and core conservation populations represents a relatively secure subspecies. The States and the Federal agencies report that there are currently 11 metapopulations with 5 or more interconnected subpopulations and 23 metapopulations with 2 to 4 interconnected subpopulations. Work is ongoing to establish additional metapopulations throughout the CRCT's historic range. The Federal land management agencies are currently implementing conservation actions in CRCT habitat such as grazing management, recreation management, weed control, and riparian plantings. The State and Federal agencies work cooperatively to construct and maintain barriers, remove nonnative fish, and monitor fish populations.

The petition asserted that overgrazing, water diversions, mining, dams and reservoirs, oil and gas development, road-building and logging are detrimental to CRCT. The Service finds the information in the petition was not adequate to assess the impacts rangewide. While limited habitat size, small population size, inappropriate water temperatures, and habitat fragmentation are a concern, it is unclear how these factors affect the long-term viability of the subspecies.

We do not agree with the petitioners' conclusion that none of the populations can be considered secure because every one is threatened by nonnative fishes, limited stream length, habitat limitations, or a combination of these factors.

Historically, overharvest of CRCT may have significantly reduced the numbers of CRCT in some areas, but we find that fishing regulations enacted by the States and the National Park Service provide measures that preclude excessive take by recreational angling. The petition did not present substantial information indicating funding to enforce or educate the public about these regulations was inadequate. Also, many CRCT waters are located in remote locations that experience very light fishing pressure.

Whirling disease is a significant concern for trout in general, but very few CRCT populations have tested positive for the disease and all three States are implementing management actions to protect CRCT from whirling disease. Also, much of the habitat for CRCT is unlikely to be conducive to the whirling disease pathogen. Therefore, we do not agree with the petition's assertions that overutilization or whirling disease present significant threats to CRCT. With regard to predation by nonnative fishes, we find that there is insufficient information to conclude that this issue is a significant threat to CRCT.

The Federal land management agencies all have programs in place to regulate land management activities. The petition did not provide evidence to support its allegation that these programs are not providing adequate protection, and why they are not effective in conserving CRCT. Service files do not contain adequate information on habitat conditions to make an informed determination as to whether Federal lands are being adequately protected or enhanced by existing regulations and policies. Thus, the Service has no reason to assume the programs in place for CRCT management are inadequate.

Although some CRCT populations are threatened by hybridization, we conclude that significant numbers of populations have been determined to be core conservation populations (>99 percent pure). Further, the States have implemented policies to protect the genetic purity of the core conservation populations. Competition from brook trout is recognized as a threat to CRCT and the State and Federal agencies are implementing management techniques to offset this threat. Many core conservation populations (53%) are protected by natural or artificial barriers

and the States have ongoing programs to remove brook trout from CRCT waters.

The petition failed to recognize the ongoing conservation efforts of the members of the CRCT Coordination Team. Numerous conservation efforts are ongoing in all three States and in general appear to be well funded. We conclude that the management programs currently in place for CRCT are improving the status of this subspecies and continued improvement is anticipated in the future. Therefore, as required by section 4(b)(3)(A) of the ESA, we conclude that the petition did not present substantial information to demonstrate that the listing may be warranted. This finding is based on all information available to us at this time.

*References Cited:* A complete list of all references cited herein is available upon request from the Grand Junction, Colorado Field Office (*see ADDRESSES*).

*Author:* The primary author of this document is Patty Schrader Gelatt, Colorado Field Office, Grand Junction, Colorado.

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

Dated: April 8, 2004.

**Elizabeth H. Stevens,**

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

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**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

NM-910-04-1020-PH

#### New Mexico Resource Advisory Council, Notice of Call for Nominations

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held on June 9-10, 2004, beginning at 8 a.m. at the Hilton Inn, 705 S. Telshor, Las Cruces, New Mexico, in the Soledad Room. The meeting will adjourn at approximately 5 p.m. on Wednesday, June 9, 2004, and 12 noon on Thursday, June 10, 2004. The two established RAC working groups may have a late afternoon or an evening meeting on Wednesday, June 9,

2004. An optional field trip is planned for Tuesday, June 8, 2004.

The public comment period is scheduled for Tuesday, June 8, 2004, from 6-7 p.m. The public may present written comments to the RAC. Depending on the number of persons wishing to comment and time available, individual oral comments may be limited.

**SUPPLEMENTARY INFORMATION:** The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include: Division of Resources' issues, Fluid Minerals' report, Otero Mesa update, Field Managers' reports, and feedback from the RAC Chairs meeting in Phoenix.

**FOR FURTHER INFORMATION CONTACT:** Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, (505) 438-7517.

Dated: April 14, 2004.

**Ron Dunton,**

*Acting State Director.*

[FR Doc. 04-8876 Filed 4-19-04; 8:45 am]

**BILLING CODE 4310-FB-M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection for 1029-0124

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for Revegetation: Standards for Success required for surface mining activities and underground mining activities at 30 CFR 816.116 and 817.116. OSM submitted an emergency request to the Office of Management and Budget to seek approval for OSM to continue collecting the information required by these sections. OMB approved the request and assigned them clearance number 1029-0124.

**DATES:** Comments on the proposed information collection must be received