

Flooding source(s)	Location of referenced elevation	Elevation in feet		Communities affected
		* (NGVD)	+ (NAVD)	
		Effective	Modified	

#### City of Steamboat Springs

Maps are available for inspection at City Hall, 124 Tenth Street, Steamboat Springs, Colorado 80477.

Send comments to the Honorable Paul Strong, Council President, City of Steamboat Springs, P.O. Box 775088.

#### Town of Hayden

Maps are available for inspection at the Town Hall, 178 West Jefferson, Hayden, Colorado 81639.

Send comments to the Honorable Chuck Grobe, Mayor, Town of Hayden, P.O. Box 190, Hayden, Colorado 81639.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 24, 2004.

**Anthony S. Lowe,**

Mitigation Division Director, Emergency Preparedness and Response Directorate.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AT35

### Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To Reclassify the Pahrump Poolfish (*Empetrichthys latos*) From Endangered to Threatened Status

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on September 22, 1993 (58 FR 49279), to reclassify the Pahrump poolfish (*Empetrichthys latos*) from endangered to threatened status. We have determined that reclassification of this species at this time is not appropriate.

**ADDRESSES:** The complete file for this action is available for inspection, by appointment, during normal business hours at our Southern Nevada Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Williams, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502 (telephone: 775/861-6300; facsimile: 775/861-6301).

#### SUPPLEMENTARY INFORMATION:

#### Background

The Pahrump poolfish, family Goodeidae, was discovered by Gilbert in 1893, but was incorrectly identified as the Ash Meadows killifish (*Empetrichthys merriami*). Miller (1948) later described the Pahrump poolfish as the Pahrump killifish (*Empetrichthys latos latos*), which historically occupied an isolated spring (Manse Spring) on private property known as Manse Ranch in the Pahrump Valley of southern Nye County, Nevada.

When describing the Pahrump killifish, Miller also identified two other subspecies occurring in isolated springs in Nye County, the Pahrump Ranch killifish (*Empetrichthys latos pahrump*) inhabiting Pahrump Spring, and the Raycraft Ranch killifish (*E. l. concavus*) occurring in Raycraft Spring. Both of these subspecies became extinct in the late 1950s as a result of introduced carp (*Cyprinus* spp.) and desiccation of the springs from groundwater pumping (Miller 1948; Deacon and Williams 1984; Miller *et al.* 1989).

The only congener (member of the same genus) to these three subspecies, the Ash Meadows killifish, was documented by Gilbert (1893) and historically occupied numerous springs in nearby Ash Meadows, Nye County, Nevada. This species was last seen in 1948 and is believed to have gone extinct in the early 1950s, likely as a result of habitat alteration, and competition with and predation by, introduced nonnative crayfish (*Procambarus clarkii*), mosquitofish (*Gambusia affinis*), black mollies (*Mollienesia shenops*), and bullfrogs (*Rana catesbiana*) (Deacon and Nappé 1968; Soltz and Naiman 1978; Miller *et al.* 1989).

The common name of the genus *Empetrichthys* has since been changed from killifish to poolfish (Robins *et al.* 1991). Also, because the Pahrump poolfish (*Empetrichthys latos latos*) is now the only remaining representative of the species *E. latos*, the subspecies designation has been dropped; thus, the fish is currently known as the Pahrump

poolfish (*E. latos*) (Robins *et al.* 1991; Eschmeyer 1998; Integrated Taxonomic Information System 2002).

The Pahrump poolfish (poolfish) is a small fish that obtains an average maximum length of 3 inches (76.2 millimeters), with females generally larger than males (Service 1980; Deacon 1984a, 1984b, 1984c). The poolfish has a slender, elongate body with dorsal and anal fins placed far back, a broad upturned mouth, a dark longitudinal streak (which tends to disappear in older, larger individuals), and an orange ring around the eyes. On average, there are 30 to 32 scales in the lateral series (scales found along the lateral line, which is a series of porelike openings along the sides of a fish), but the number may vary from as low as 29 to a high of 33 scales (Sigler and Sigler 1987; La Rivers 1994). Poolfish lack pelvic fins, but the dorsal, anal, and caudal fins are bright orange-yellow when the fish are in an environment of optimal temperature and dissolved oxygen (Selby 1977; Soltz and Naiman 1978). The pectoral fins of the species typically have 16 to 18 rays (Sigler and Sigler 1987). The body of the poolfish is generally greenish-brown with black mottling, but males may be silver-blue without mottling during the spawning season (Soltz and Naiman 1978; Service 1980).

**Transplant History:** In 1975, poolfish were extirpated from their only known natural habitat, Manse Spring, as a result of desiccation of the spring from groundwater pumping and competition from nonnative goldfish (Deacon *et al.* 1964; J. Deacon, in litt. 1970). Anticipating the demise of the spring at Manse Ranch (Minckley and Deacon 1968), personnel from Federal and State agencies and academic institutions removed poolfish from Manse Spring during the early 1970s and transplanted poolfish to three locations in Nevada:

1. Los Latos Pool along the Colorado River, near Lake Mohave in June 1970 (J. Deacon in litt. 1970);
2. Corn Creek Springs on the Desert National Wildlife Refuge (DNWR), Clark

County in August 1971 (D. Lockard, Service, in litt. 1971); and

3. Shoshone Ponds Natural Area, White Pine County, a Bureau of Land Management (BLM) native fish sanctuary in March 1972 (D. Lockard in litt. 1972; Mark Barber, BLM, in litt. 1987).

Transplanted poolfish at Los Latos Pool were lost during floods in the late 1970s, and individuals were never replaced at this location. Poolfish at Shoshone Ponds Natural Area were lost to vandalism in 1974 when the water source was intentionally turned off. Modifications were made to the ponds' water system to try to prevent future vandalism, and the poolfish were replaced in August 1976 with fish from Corn Creek Springs (after a 1-year stay at a University of Nevada, Las Vegas holding facility) (Leroy McLelland, Nevada Division of Fish and Game (NDFG), in litt. 1976; Logan 1977; M. Barber in litt. 1987). In order to replace the lost Los Latos Pool population, a third population of poolfish was established in the irrigation reservoir at the State of Nevada's Spring Mountain Ranch State Park (State Park) in western Clark County. Poolfish from Corn Creek Springs were transplanted to the State Park location in June 1983 (Richard Haskins, NDFG, in litt. 1983).

We approved the Pahrump Killifish Recovery Plan (Recovery Plan) on March 17, 1980 (Service 1980). The Recovery Plan recommended the establishment of at least three populations of poolfish as the primary objective for the species' recovery efforts, preferably including a population at Manse Spring. The species is less likely to be threatened simultaneously at three or more separate sites than at a single location. The Recovery Plan also stated that the species could be considered for reclassification to threatened status when each of the three populations contained at least 500 adults for 3 years, and each habitat was free of immediate and potential threats. Poolfish could be considered for delisting if the three populations continued to exceed 500 individuals for an additional 3 years after reclassification.

All three transplanted populations of poolfish reproduced successfully and thrived in their new habitats, and data indicated that these transplanted populations had maintained a minimum of 500 individuals between 1986 and 1993 (Nevada Department of Wildlife, NDOW, 1988a, 1988b; Sjoberg 1989; Heinrich 1991a, 1991b, 1993). With the three populations stable and secure on Federal and State lands, we published a proposed rule to downlist the poolfish

from endangered to threatened status on September 22, 1993 (58 FR 49279).

However, soon after the publication of the proposed rule, we learned that the Nevada Division of State Parks (NDSP) would receive funding for a project to drain and dredge accumulated sediment from the irrigation reservoir at the State Park to restore the reservoir's water storage capacity. We informed the NDSP of the proposed project's potential to adversely affect the poolfish population residing in the reservoir, and that the NDSP must obtain an incidental take permit from us, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Further action on the proposed rule was halted as the NDSP developed a habitat conservation plan (HCP) to apply for the permit.

In 1995, the NDSP acquired a section 10(a)(1)(B) permit from us for the proposed modifications and future operation and maintenance of the irrigation reservoir at the State Park as described in the HCP. The permit remains in effect until the year 2025. Modifications to the reservoir in 1995 were completed without adversely affecting the poolfish population. Based on information from annual surveys utilizing mark and recapture methods, as well as informal visual surveys, the population remains stable at the State Park, and is currently the largest population of poolfish, estimated at 16,775 individuals (95 percent confidence interval) in 2003 (NDOW in litt. 1997, 2001b, 2001c, 2002a, 2002b; NDOW 1999, 2000, 2001; B. Hobbs, NDOW, pers. comm. 2002; B. Hobbs, NDOW, pers. comm. 2003).

In the late 1990s, the population of poolfish at Corn Creek Springs was lost to illegally introduced nonnative crayfish (NDOW 1999). The last three poolfish were found at Corn Creek Springs during summer surveys in 1998 and no other poolfish were captured during surveys in subsequent years (NDOW 1999, 2000). A new, isolated refugium for the poolfish was built at Corn Creek Springs in 2002. Thirty adult poolfish from the State Park population were introduced into the refugium in June 2003, with visual surveys in July 2003 revealing eight young in the refugium (NDOW in litt. 2003a). Another 30 adult poolfish were added to the refugium from the State Park population in August 2003, with additional introductions to the refugium planned for the near future (NDOW in litt. 2003a). The third poolfish population at the Shoshone Ponds Natural Area has historically remained stable since the 1980s with only natural population fluctuations affecting its

status (NDOW in litt. 2003b). However, surveys in 2003 indicated a significant decrease in the population to less than 1,000 individuals. The cause for the decline is unknown and is currently being investigated (NDOW, in litt. 2003b).

#### Previous Federal Action

On March 11, 1967, the Pahrump poolfish (as the Pahrump killifish) was listed as endangered under the Endangered Species Preservation Act of 1966 (16 U.S.C. 668aa(c)). The species retained its endangered status with the passage of the Act. The Recovery Plan for this species was completed in 1980. On September 22, 1993, we proposed to reclassify the Pahrump poolfish from endangered to threatened status (58 FR 49279).

Other Federal actions include section 7 consultations with the DNWR and the BLM regarding the potential effects of various actions on the poolfish populations within their respective jurisdictions. Consultations with the DNWR have included projects with actions having short-term adverse effects to the poolfish population at Corn Creek Springs, but with long-term benefits. These include chemical eradication of competing mosquitofish, and mechanical and chemical removal of emergent vegetation to preserve pond integrity. The BLM has consulted with us on the management of the Shoshone Ponds Natural Area, as well as prior to authorizing transfer of public lands in adjacent areas into private ownership under the Desert Land Entry Act. This act allows individuals to reclaim, irrigate, and cultivate arid and semiarid public lands. We have also issued several recovery permits under section 10(a)(1)(A) of the Act to the NDOW and various academic institutions, authorizing take of the species for tasks identified in the Recovery Plan. Finally, we have previously allocated funds to the NDOW for conducting surveys of each poolfish population and may continue to do so in the future as funds are available, under section 6 of the Act.

#### Summary of Comments

With publication of the proposed rule on September 22, 1993, we requested that all interested parties submit factual reports, information, and comments that might contribute to the development of the final downlisting decision. We contacted appropriate State and Federal agencies, County and city governments, scientific organizations and authorities, and other interested parties, and requested them to comment. Following the publication of the proposed rule, we received two comments: one from the

NDOW and the other from an individual, both supporting the reclassification, and neither raised any additional concerns.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424), promulgated to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of five factors described in section 4(a)(1). These factors, and their application to the Pahrump poolfish, are as follows:

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

*Current Range:* Three separate populations of poolfish currently exist; however, only one is considered stable. Additionally, none of these populations currently occurs at Manse Spring, its native habitat. Establishing a population of poolfish at Manse Spring was identified as a high-priority objective of the Recovery Plan. However, recent residential development in and around Manse Ranch continues to modify the native habitat, and future residential and commercial development in the Pahrump Valley may limit the available water resources and preclude the opportunity to re-establish a poolfish population in this location.

*Excessive Groundwater Withdrawals:* The most critical threat to the poolfish has historically been the destruction of habitat through groundwater withdrawals, as demonstrated by the desiccation of the only native habitat of the species. Adequate, reliable water sources are necessary to ensure that currently occupied ponds provide suitable habitat for the poolfish. Thus, long-term declines in spring flows due to groundwater pumping from areas surrounding existing poolfish habitat remain a threat to all the populations. Threats to water sources necessary for poolfish habitat have been minimized to the extent possible by the managing Federal and State agencies. For example, we filed for, and received, vested water rights at Corn Creek Springs from the State of Nevada that will ensure the water supply for the poolfish population at that location. In addition, the NDOW and the NDSP hold State appropriative water rights to the springs supporting the habitats at Shoshone Ponds Natural Area and the State Park, respectively.

In the past, groundwater withdrawals were mainly done for agricultural

activities. However, the present demand on limited water sources is to accommodate the growing human population and development in the arid desert of southern Nevada. The annual population growth in southern Nevada has been 7 percent per year since 1910, whereas growth in the United States during the same period has averaged only 1 percent per year (Southern Nevada Water Authority (SNWA) 2002). Southern Nevada is primarily reliant on the Colorado River for most of its water; however, groundwater is a critical component of the area's water resources, mainly to meet peak water demands during the hot summer (SNWA 2002). Secured water rights at poolfish habitats currently provide available groundwater resources to support the species. However, all of the groundwater rights held by local water agencies are currently not being utilized, and these agencies are exploring use of these rights as future options to meet continued demand (SNWA 2002). It is likely that the threat of significantly reduced, and limited, water sources caused by pressures exerted on the groundwater system to accommodate extensive population growth and development in southern Nevada could threaten the future existence of the poolfish.

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

The Pahrump poolfish is a nongame fish, and no commercial or recreational use of the species has been documented, nor is it anticipated. Scientific interest in this species has been limited to activities associated with tasks identified in the Recovery Plan. Section 10 of the Act allows for the issuance of permits for research, rehabilitation, and propagation. We issue recovery permits authorizing activities identified in the Recovery Plan, provided these activities do not jeopardize the continued existence of the poolfish.

Since Corn Creek Springs and Shoshone Ponds Natural Area are open to the public without daily oversight by agency personnel, it is difficult for us and the BLM to protect the ponds from illegal human actions that may adversely affect the poolfish and their habitat. Most legal human activities in these areas, such as recreational fishing, have not been and are not a threat to the poolfish. Vandalism was historically a significant problem at Shoshone Ponds Natural Area. The initial introduction of poolfish to those ponds from Manse Spring was lost to vandalism in 1974 when the water source was intentionally turned off (M. Barber in litt. 1987).

Vandalism continues to be a minor threat to the poolfish in this location, given that public access to the site is not monitored on a daily basis (B. Hobbs, pers. comm., 2002).

##### *C. Disease or Predation*

The remaining populations of poolfish possess low numbers of common external fish parasites (Heckmann 1987, 1988); however, neither these parasites nor any diseases are currently a threat to the poolfish.

The effect of predation by the nonnative bullfrog on the poolfish population at Corn Creek Springs has been investigated. Analyses of bullfrog stomach contents indicated that bullfrog predation on poolfish is minimal (D. Withers, NDOW, in litt. 1985, 1986, 1988; J. Heinrich, NDOW, in litt. 1991). Bullfrogs also persist and predate on poolfish at the State Park, but do not represent a significant threat to the overall population (Heinrich 1991a; B. Hobbs, pers. comm., 2002).

In 1975, the population of poolfish at Corn Creek Springs experienced a rapid reduction as a result of unauthorized introduction of nonnative mosquitofish. Close coordination between our agency, State agencies, and academic institutions resulted in the eradication, by chemical means, of the mosquitofish to alleviate competitive pressures on the poolfish (Selby 1977). For years afterwards, the poolfish at Corn Creek Springs remained a healthy and stable population.

The stability of this population was again threatened when nonnative crayfish were illegally introduced into the ponds at Corn Creek Springs. Surveys first noted the presence of crayfish in 1993, and thereafter the poolfish population rapidly declined (NDOW 1999). Despite attempts to eliminate the crayfish, the poolfish population was extirpated by 1999. Nonnative common goldfish were first discovered in 1998 at Corn Creek Springs (NDOW 1999). The presence of the competing and predatory goldfish may have compounded the problem of an already depleted population of poolfish, possibly contributing to the demise of the population that year. Efforts by the DNWR, the NDOW, and volunteers to eradicate nonnative crayfish from Corn Creek Springs have been unsuccessful (NDOW in litt. 2001a). Thus, a new, isolated refugium for the poolfish was built at Corn Creek Springs in 2002 with introductions to the refugium from the State Park in June and July of 2003 (*see Transplant History* above) (NDOW in litt. 2003a).

Illegal introductions of nonnative aquatic species to the habitats of

poolfish have occurred historically and continue to pose the most significant current threat to the existence of this species. Currently, the populations at the State Park and Shoshone Ponds Natural Area have not been significantly affected by nonnative aquatic species. However, the recent loss of the population at Corn Creek Springs illustrates that the poolfish is vulnerable to extinction as a result of predation by aggressive, aquatic nonnative species. The introduction of nonnative species to the populations of poolfish at the State Park or Shoshone Ponds Natural Area could impose irreparable consequences.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

**Federal Protection:** Upon being listed under the Act, the poolfish immediately benefitted from a Federal regulatory framework. This framework includes prohibition of take, which is defined broadly under the Act to include killing, injuring, or attempting to kill or injure; prohibition of habitat destruction or degradation if such activities harm individuals of the species; the requirement that Federal agencies ensure their actions will not likely jeopardize the continued existence of the species; and the requirement that we develop and implement a recovery program for the species. Poolfish continue to be protected by the provisions of the Act.

Additionally, as previously discussed, the population of poolfish at the State Park will be conserved under the provisions of the section 10(a)(1)(B) permit issued by us to the State for its HCP. This permit remains in effect until the year 2025.

The sites where the poolfish currently resides have no connection to a navigable water. Therefore, it is unlikely that section 404 of the Clean Water Act of 1972, as amended, administered by the U.S. Army Corps of Engineers, will provide any regulatory protection for this species.

**State Regulations:** The State of Nevada classifies the poolfish as a fully protected fish species, further classified as endangered under Chapter 503.065 of the Nevada Administrative Code (2002). The State prohibits the capture, removal, or destruction of any protected species at any time, by any means, except under a special permit issued by the NDOW under Chapters 503.584–503.589 of the Nevada Revised Statutes (NRS) (2002). The Nevada Natural Heritage Program also ranks the poolfish as S1, meaning that in Nevada it is considered critically imperiled due to extreme rarity, imminent threats, and/or biological factors. However, this

designation provides no legal protection in Nevada.

A Nevada legislative finding in 1969 recognized the serious losses of native fish and wildlife in the State and provided a method for the State to conserve, protect, restore, and propagate selected species of native fish and wildlife and their habitats (NRS 2002). This finding and subsequent amendments included the authority for the State's Board of Wildlife Commissioners and State agencies it governs, specifically NDOW, to manage land in accomplishing the objectives of the program to conserve native fish and wildlife, including conserving, protecting, and assisting in propagating the poolfish.

The NDOW is a cooperating partner with us for the ongoing management efforts to conserve this native fish species. In light of the events that have occurred since we proposed to reclassify the poolfish, the NDOW fully supports the current action to withdraw the proposed rule (Jon Sjöberg, NDOW, pers. comm. 2003).

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The low numbers of poolfish in its isolated habitats naturally make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) Random demographic effects (*e.g.*, skewed sex ratios, high death rates, or low birth rates); (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); (3) natural catastrophes (floods, fires, droughts, etc.) at random intervals; and (4) deterioration in environmental quality (Shaffer 1987). However, the poolfish were believed to have been isolated for over 20,000 years in the Pahrump Valley (Soltz and Naiman 1978), and this natural evolutionary factor is currently an insignificant threat when compared with the historical modification of its natural habitat, introductions of nonnative, aquatic predators in its transplanted habitats, and reduced and limited water supplies.

#### **Summary of Findings**

In developing this notice, we carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Pahrump poolfish. Events subsequent to the proposed rule published in 1993 resulted in the extirpation of the poolfish population at Corn Creek Springs, although a small number of poolfish have recently been

successfully introduced back into a new isolated refugium at Corn Creek Springs. Surveys in 2003 showed a significant decline in the population at Shoshone Ponds Natural Area, with the cause currently unknown. Therefore, only the State Park poolfish population remains stable. Thus, one of the main objectives for downlisting the species in the Recovery Plan, which is to have three stable populations of poolfish, has not been met.

This species was historically threatened by habitat destruction and degradation, particularly from groundwater pumping which led to extirpation from its only known natural habitat. Currently, we remain concerned that this species is threatened by potential introductions of nonnative aquatic predators, and habitat destruction and loss due to reduced and limited water supply for the poolfish as a result of demands on limited water sources to accommodate extensive population growth and development in the arid desert of southern Nevada.

Because the Pahrump poolfish occurs in only one stable population, and because all the poolfish populations are subject to various immediate, ongoing, and future threats as outlined above, we find that this species continues to be in imminent danger of extinction. Therefore, the poolfish meets the Act's definition of endangered and warrants continued protection as endangered under the Act. Threatened status would not accurately reflect the diminished status and threats to this species. Based upon the findings documented in this notice, we are hereby withdrawing the proposed rule published on September 22, 1993 (58 FR 49279), that proposed to reclassify the Pahrump poolfish from endangered to threatened.

#### **References Cited**

A complete list of all references cited herein is available upon request from our Southern Nevada Field Office (see **ADDRESSES** section).

#### **Author**

The primary author of this notice is Amy LaVoie (*see* **ADDRESSES** section).

#### **Authority**

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

Dated: March 8, 2004.

**Marshall P. Jones, Jr.,**

*Deputy Director, Fish and Wildlife Service.*  
[FR Doc. 04–7412 Filed 4–1–04; 8:45 am]

**BILLING CODE 4310–55–P**