

and any Distinct Population Segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature. If the petition contains substantial information, the Act requires that we initiate a status review for the species and publish a 12-month finding indicating that the petitioned action is either: (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. A notice of such 12-month findings is to be published promptly in the **Federal Register**.

On June 6, 1997, we received a petition to list the WCT (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies of fish pursuant to the Act. The petitioners were American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited's Madison-Gallatin Chapter, and Mr. Bud Lilly.

The WCT is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992, 2002). Cutthroat trout owe their common name to the distinctive red or orange slash mark that occurs just below both sides of the lower jaw. Adult WCT typically exhibit bright yellow, orange, and red colors, especially among males during the spawning season. Characteristics of WCT that distinguish this fish from the other subspecies of cutthroat trout include a pattern of irregularly shaped spots on the body, with few spots below the lateral line except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct evolutionary lineage (Behnke 1992).

Although its extent is not precisely known, the historic (*i.e.*, native) range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992). West of the Continental Divide, the subspecies is believed to be native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Washington-British Columbia border; the Spokane River above Spokane Falls and into Idaho's Coeur d'Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho's Snake River basin. The historic

distribution of WCT also includes disjunct areas draining the east slope of the Cascade Mountains in Washington (Methow River and Lake Chelan drainages, and perhaps the Wenatchee and Entiat River drainages), the John Day River drainage in northeastern Oregon, and the headwaters of the Kootenai River and several other disjunct regions in British Columbia. East of the Continental Divide, the historic distribution of WCT is believed to include the headwaters of the South Saskatchewan River drainage (United States and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton.

Previous Federal Actions

On July 2, 1997, we notified the petitioners that our Final Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as being of lower priority than were the completion of emergency listings and processing of pending proposed listings. A backlog of listing actions, as well as personnel and budget restrictions in our Region 6 (Mountain-Prairie Region), which had been assigned primary responsibility for the WCT petition, prevented our staff from working on a 90-day finding for the petition.

On January 25, 1998, the petitioners submitted an amended petition to list the WCT as threatened throughout its range and designate critical habitat for the subspecies. The amended petition contained additional new information in support of the requested action. Consequently, we treated the amended petition as a new petition.

On June 10, 1998, we published a notice (63 FR 31691) of a 90-day finding that the amended WCT petition provided substantial information indicating that the requested action may be warranted and immediately began a comprehensive status review for WCT. In the notice, we asked for data, information, technical critiques, comments, and questions relevant to the amended petition.

In response to that notice, we received information on WCT from State fish and wildlife agencies, the U.S. Forest Service, National Park Service, tribal governments, and private corporations, as well as private citizens, organizations, and other entities. That information, subsequently compiled in a comprehensive status review document (U.S. Fish and Wildlife Service 1999),

indicated that WCT then occurred in about 4,275 tributaries or stream reaches that collectively encompassed more than 37,015 kilometers (km) (23,000 miles [mi]) of stream habitat. Those WCT were distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins. In addition, WCT were determined to naturally occur in 6 lakes totaling about 72,843 hectares (ha) (180,000 acres [ac]) in Idaho and Washington and in at least 20 lakes totaling 2,164 ha (5,347 ac) in Glacier National Park in Montana. That status review also revealed that most of the habitat for extant WCT was on lands administered by Federal agencies, particularly the U.S. Forest Service. Moreover, most of the strongholds for WCT were within roadless or wilderness areas or national parks, all of which afforded considerable protection to WCT. Finally, the status review indicated that there were numerous Federal and State regulatory mechanisms that protected WCT and their habitats throughout the subspecies' range.

On April 14, 2000, we published a notice (65 FR 20120) of our finding that the WCT is not likely to become either a threatened or an endangered species within the foreseeable future. We also found that, although the abundance of the WCT subspecies had been reduced from historic levels and its extant populations faced threats in several areas of the historic range, the magnitude and imminence of those threats were small when considered in the context of the overall status and widespread distribution of the WCT subspecies. Therefore, we concluded that listing the WCT as either a threatened or an endangered species under the Act was not warranted at that time.

On October 23, 2000, plaintiffs filed, in the U.S. District Court for the District of Columbia, a suit alleging four claims. They alleged that our consideration of existing regulatory mechanisms was arbitrary. Plaintiffs further claimed that our consideration of hybridization as a threat to WCT was arbitrary because, while identifying hybridization as a threat to WCT, we relied on a draft Intercross policy (61 FR 4710) to include hybridized WCT in the WCT subspecies that we considered for listing under the Act. Their third claim averred that we arbitrarily considered the threats to WCT posed by the geographic isolation of some WCT populations and the loss of some WCT life-history forms. Finally, plaintiffs claimed that we failed to account for the threat of whirling disease and other important factors, and