

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2012–0097]

[FXES11130900000C2-123-FF09E32000]

**Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to
Delist the Southern Selkirk Mountains Population of Woodland Caribou**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) from the Federal List of Endangered and Threatened Wildlife and Plants as determined under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial

information indicating that delisting this population of the woodland caribou subspecies may be warranted. Therefore, with the publication of this notice, we initiate a review of the status of the subspecies to determine if delisting the southern Selkirk Mountains population of woodland caribou is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the status of the woodland caribou subspecies (*Rangifer tarandus caribou*), the southern Selkirk Mountains population of woodland caribou, the mountain ecotype of the woodland caribou, and other possible woodland caribou distinct population segment configurations. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: We request that we receive scientific and commercial data and other information pertinent to the petitioned action and the rangewide status review of the subspecies on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The deadline for submitting information using the Federal eRulemaking Portal (see the **ADDRESSES** section below) is 11:59 p.m. Eastern Time on this date. After [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], you must submit information directly to the **Division of Policy and Directives Management** (see the **ADDRESSES** section below). Please note that we might not be able to consider information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for FWS–R1–ES–2012–0097, which is the docket number for this action. You may submit information for the status review by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0097; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept emails or faxes. We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Request for Information** section below for more details).

FOR FURTHER INFORMATION CONTACT: Brian Kelly, State Supervisor, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho, 83709; by telephone at 208–378–5243; or by facsimile at 208–378–5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing, delisting, or reclassifying a species may be warranted, we are required to promptly initiate review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the woodland caribou subspecies (*Rangifer tarandus caribou*), including the southern Selkirk Mountains population and the mountain ecotype to which this population belongs, from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

- (1) The subspecies' biology, range, and population trends, including:
 - (a) Habitat requirements for feeding, breeding, and sheltering;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range, including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Information relevant to whether the southern Selkirk Mountains population of woodland caribou is in need of protections from the Act and can be considered discrete and significant to the woodland subspecies.

(3) Information relevant to whether some other subset of the woodland caribou subspecies (for example, the mountain ecotype) is in need of protections under the Act, and can be considered discrete and significant to the subspecies.

Please include sufficient supporting documentation with your submission (such as maps, scientific journal articles, or other publications) to allow us to verify any scientific or commercial information you provide.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy

that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we received and used in preparing this finding is available for review at <http://www.regulations.gov> at Docket No. FWS–R1–ES–2012–0097 or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service’s Idaho Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section above).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On May 14, 2012, we received a petition dated May 9, 2012, from the Pacific Legal Foundation, representing Bonner County, Idaho, and the Idaho State Snowmobile Association, requesting that the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) be removed from the Federal List of Endangered and Threatened Wildlife and Plants. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a).

The petition asserted that we did not correctly apply the 1996 distinct population segment (DPS) policy in our 2008 5-year status review of the southern Selkirk Mountains population. Specifically, the petition questioned the analysis of discreteness and significance of this population to the mountain ecotype of woodland caribou, not the woodland caribou subspecies (i.e., the taxon to which it belongs), which the petitioners

assert would be the appropriate interpretation of the DPS policy. As such, the petition asserted that the southern Selkirk Mountains DPS is not a listable entity, and therefore our listing of the population violates the Act. We acknowledge that information provided in the petition on the appropriateness of our DPS analysis in our 2008 status review warrants a more thorough review.

Distinct Population Segment Policy

Section 3(15) of the Act defines a “species” to include “...any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” The National Marine Fisheries Service (NMFS) and the Service published a joint policy defining the phrase “distinct population segment” on February 7, 1996 (61 FR 4722) (DPS policy). According to the DPS policy, two elements must be satisfied in order for a population segment to qualify as a DPS: discreteness and significance. If a population segment qualifies as a DPS, the conservation status of that DPS is evaluated to determine whether it is threatened or endangered.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within

which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a population is found to be discrete, then it is evaluated for significance under the DPS policy on the basis of its importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, (3) evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historical range, or (4) evidence that the population differs markedly from other populations of the species in its genetic characteristics.

If a population segment is both discrete and significant (i.e., it is a DPS) its evaluation for endangered or threatened status is based on the Act's definitions of those terms and a review of the factors listed in section 4(a) of the Act. According to our DPS policy, it may be appropriate to assign different classifications to different DPSs of the same vertebrate taxon.

Previous Federal Actions

The southern Selkirk Mountains population of woodland caribou was emergency listed as endangered in northeastern Washington, northern Idaho, and southeastern British Columbia under the Act on January 14, 1983 (48 FR 1722). A second emergency rule to extend emergency protection was published in the **Federal Register** on October 25, 1983 (48 FR 49245). Final listing as endangered occurred on February 29, 1984 (49 FR 7390).

Notices of 90-day findings on two previous petitions to delist the southern Selkirk Mountains population of woodland caribou were published in the **Federal Register** on November 29, 1993 (58 FR 62623), and November 1, 2000 (65 FR 65287). Our response to both petitions stated that the petitions did not present substantial scientific or commercial information indicating that delisting of the population may be warranted.

Based on a stipulated settlement agreement resulting from a complaint on a petition we received to designate critical habitat for the endangered southern Selkirk Mountains population of woodland caribou (*Defenders of Wildlife et al., v. Salazar*, CV-09-15-EFS), we proposed critical habitat on November 30, 2011 (76 FR 74018). Our substantial 90-day finding on the current petition to delist the southern Selkirk Mountains population of woodland caribou does not affect the current listing status or our current process underway to determine critical habitat for the species at this time.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition presents substantial information that the currently listed southern Selkirk Mountains population of woodland caribou may not be a listable entity under our 1996 DPS policy. We will reevaluate the significance of the southern Selkirk Mountains population to the taxon as a whole (i.e., the woodland caribou subspecies), and if necessary, the configuration and status of any distinct population segments.

The “substantial information” standard for a 90-day finding, under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations, differs from the Act’s “best scientific and commercial data” standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act’s standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will conclude that the petitioned action is warranted. In other words, we might determine that the southern Selkirk Mountains population is a valid DPS. However, if the 12-month finding concludes that the petitioned action is warranted, we would then need to publish a proposed rule, subject to peer review and public comment, to initiate any change in the Federal listing status of the current DPS. In summary, the outcome of our status review could result in: (1) no change in the species’ listing status; (2) a recommendation to delist

the southern Selkirk Mountains population; or (3) a recommendation to list some different configuration of the woodland caribou subspecies.

With this substantial 90-day finding, we initiate a status review of the woodland caribou subspecies, and once it is completed, we will make a finding on whether delisting the southern Selkirk Mountains population of woodland caribou is warranted. Our review will also evaluate the status of the subspecies throughout its range and assess whether alternative DPS configurations of the subspecies are warranted. This finding fulfills any obligation under 16 U.S.C. 1533(b)(3)(A) and the regulations at 50 CFR 424.14(b).

Author

The primary authors of this notice are staff of the Idaho Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section above).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 10, 2012

Daniel M. Ashe

Director, U.S. Fish and Wildlife Service

Billing Code 4310-55

[FR Doc. 2012-30554 Filed 12/18/2012 at 8:45 am; Publication Date: 12/19/2012]