

has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 1, 2005 through April 30, 2006, § 117.618(b) is suspended and a new paragraph (d) is added to read as follows:

§ 117.618 Saugus River.

* * * * *

(d) The draw of the General Edwards SR1A Bridge at mile 1.7, need not open for the passage of vessel traffic from November 1, 2005 through April 30, 2006.

Dated: September 18, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–19583 Filed 9–27–05; 12:13 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[RO4–OAR–2005–NC–0003–200532(b); FRL–7976–6]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Clean Air Act (CAA) section 111(d)/129 State Plan submitted by the North Carolina Department of Environment and Natural Resources (North Carolina DENR) for the State of North Carolina on August 7, 2002, and subsequently revised on December 14, 2004, for implementing and enforcing the Emissions Guidelines applicable to existing Commercial and Industrial Solid Waste Incinerators. The State Plan was submitted by North Carolina DENR to satisfy CAA requirements. In the final rules section of this **Federal Register**, EPA is approving the North Carolina State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial plan and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by October 31, 2005.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: September 19, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–19351 Filed 9–28–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised 12-Month Finding for the Southern Rocky Mountain Distinct Population Segment of the Boreal Toad (*Bufo boreas boreas*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of revised 12-month finding for the Southern Rocky Mountain Distinct Population Segment of the Boreal Toad.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our revised 12-month finding for a petition to list the Southern Rocky Mountain population (SRMP) of the boreal toad (*Bufo boreas boreas*) as endangered under the Endangered Species Act (ESA). After a review of the best available scientific and commercial information, we find that listing is not warranted at this time because the SRMP of the boreal toad does not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. Therefore, we withdraw the SRMP from the candidate list. The Service will continue to seek new information on the taxonomy, biology, and ecology of these toads, as well as potential threats to their continued existence.

DATES: This finding was made on September 20, 2005. Although no further action will result from this finding, we request that you submit new

information concerning the taxonomy, biology, ecology, and status of the SRMP or other populations of the subspecies, as well as potential threats to their continued existence, whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Ecological Services Field Office, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506-3946. Submit new information, materials, comments, or questions concerning this species to us at the above address.

FOR FURTHER INFORMATION CONTACT:

Allan Pfister, Western Colorado Supervisor, at the address listed above, by telephone at 970-243-2778, extension 29, by facsimile at 970-245-6933, or by e-mail al_pfister@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the ESA requires that within 12 months after receiving a petition to revise the List of Endangered and Threatened Wildlife that contains substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings: the petitioned action is not warranted, the petitioned action is warranted, or the petitioned action is warranted but precluded by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**. The ESA also requires that when a warranted but precluded finding is made, a petition is treated as resubmitted and the Service is required to publish a new petition finding on an annual basis.

On September 30, 1993, the Service received a petition from the Biodiversity Legal Foundation, Boulder, Colorado, and Dr. Peter Hovingh, a researcher at the University of Utah, Salt Lake City, Utah. The petitioners requested that the Service list the SRMP of the "western boreal toad" (*Bufo boreas boreas*) as endangered throughout its range in northern New Mexico, Colorado, and southern Wyoming, as well as designate critical habitat in all occupied areas and in the key unoccupied areas where restoration is necessary. A notice of a 90-day finding for the petition was published in the **Federal Register** on July 22, 1994 (59 FR 37439), indicating that the petition and other readily available scientific and commercial information presented substantial information that the petitioned action may be warranted.

In 1994, a Boreal Toad Recovery Team (Team) was formed of agency representatives from the Service, Colorado Division of Wildlife, Wyoming Game and Fish Department, New Mexico Department of Game and Fish, National Park Service, U.S. Geological Survey, U.S. Environmental Protection Agency, U.S. Forest Service, and U.S. Bureau of Land Management, along with technical advisors from several universities and other interested parties. The Team produced a recovery plan for the boreal toad in Colorado, a draft Conservation Strategy, and a draft Conservation Agreement; in 1998, components of these documents were combined in the production of the Boreal Toad Conservation Plan, which has since been revised (Loeffler 2001). Management activities guided by the Team include annual monitoring of known breeding populations; research of factors limiting toad survival; research of toad habitat, biology, and ecology; captive breeding and rearing techniques and protocols; experimental reintroductions of toads to vacant historic habitat; coordination with land management agencies, land use planners, and developers to protect the boreal toad and its habitats; and efforts to increase public education and awareness of the subspecies.

On March 23, 1995, the Service announced a 12-month finding that listing the SRMP of the boreal toad (*Bufo boreas boreas*) as an endangered species was warranted but precluded by other higher priority actions (60 FR 15281). When we find that a petition to list a species is warranted but precluded, we refer to it as a candidate for listing. Section 4(b)(3)(B) of the ESA directs that, when we make a "warranted but precluded" finding on a petition, we are to treat the petition as being one that is resubmitted annually on the date of the finding; thus the ESA requires us to reassess the petitioned actions and to publish a finding on the resubmitted petition on an annual basis. Several candidate assessments for the boreal toad have been completed; these are available for viewing online at <http://www.fws.gov/endangered/candidates/index.html>. The most recent assessment was published in the **Federal Register** May 11, 2005 (70 FR 24870).

In our most recent Notice of Findings on Resubmitted Petitions, we noted that a proposed listing determination for the boreal toad would be funded in Fiscal Year 2005 (70 FR 24870, May 11, 2005). This resubmitted 12-month finding evaluates new information and re-evaluates previously acquired information. In accordance with section 4(b)(3)(B) of the ESA, we have now

completed a status review of the best available scientific and commercial information on the species, and have reached a determination regarding the petitioned action.

Species Information

The western toad (*Bufo boreas*) is an amphibian that occurs throughout much of the western United States. The species was first described by Baird and Girard (1852). Camp (1917) considered two forms as subspecies, the boreal toad (*B. b. boreas*) and the California toad (*B. b. halophilus*). Stebbins (1985) recognizes these two subspecies. Crother et al. (2003) note the general recognition of two nominal subspecies (*B. b. boreas* and *B. b. halophilus*), with the Amargosa toad (*B. b. nelsoni*) sometimes recognized as a third subspecies. Stebbins (1985) considers the Amargosa toad (*Bufo nelsoni*) to be a distinct species. The geographic variation within *Bufo boreas* is poorly studied and may mask a number of cryptic species (Crother et al. 2003). Recent DNA (deoxyribonucleic acid) analyses suggest a taxonomic change to the complex may be warranted (Goebel 1996).

The range of the boreal toad subspecies (*B. b. boreas*) is coastal Alaska south through British Columbia, western Alberta, Washington, Oregon, northern California, western and central Nevada, Idaho, western Montana, western and south central Wyoming, the mountains of Utah and Colorado, and extreme northern New Mexico. The range of the California toad subspecies (*B. b. halophilus*) is northern California south to the Baja peninsula of Mexico, and east to western Nevada. The ranges of the California toad and the boreal toad overlap in northern California (Stebbins 1985). The SRMP of the boreal toad (*B. b. boreas*) is the segment of the subspecies that is the focus of this finding, and refers to the toads occurring within the southern Rocky Mountain physiographic province. This region extends from south central Wyoming, throughout the mountainous portions of Colorado, and into extreme northern New Mexico.

Boreal toads in the SRMP may reach a length (snout to vent) of 11 centimeters (4 inches) (Hammerson 1999). They possess warty skin, oval parotid glands, and often have a distinctive light mid-dorsal stripe. During the breeding season, males develop a dark patch on the inner surface of the innermost digit. Unlike other *Bufo* species, the boreal toad has no vocal sac and, therefore, no mating call (Hammerson 1999). Tadpoles are black or dark brown. The eggs are black

and are deposited in long double layer jelly strings with one to three rows of eggs (Hammerson 1999).

In the southern Rocky Mountains, adult boreal toads emerge from winter refugia when snowmelt has cleared an opening from their burrows and daily temperatures remain above freezing (Campbell 1970a, b). Breeding occurs during a 2- to 4-week period from mid-May to mid-June at lower elevations, and as late as mid-July at higher elevations (Hammerson 1999). Suitable breeding sites are large bodies of water or small pools, beaver ponds, glacial kettle ponds, roadside ditches, human-made ponds, and slow-moving streams (Campbell 1970a; Hammerson 1999).

Females lay up to 16,500 eggs in 2 strings, which ordinarily are deposited in shallow water (Stebbins 1954). Carey et al. (2005) reported an overall mean clutch size of 6,661 eggs for 3 populations studied in Colorado. Eggs hatch 1 to 2 weeks after being laid. Egg and tadpole development is temperature-dependent, and reproductive efforts may fail if tadpoles do not have sufficient time to metamorphose before the onset of winter. Persistent, shallow bodies of water are critical to breeding success, and if the breeding site dries before metamorphosis is complete, desiccation of the tadpoles or eggs will occur. Tadpoles typically metamorphose by late July to late August, but at higher elevations metamorphosis may not be complete until late September (Loeffler 2001). Recently metamorphosed toadlets aggregate within a few meters of the water, and move into nearby moist habitats later in summer. After mating, adults often disperse to upland, terrestrial habitats, where they are mostly diurnally active in early and late summer (Mullally 1958; Campbell 1970a; Carey 1978), foraging primarily on ants, beetles, spiders, and other invertebrates (Schonberger 1945; Campbell 1970a). Late in the summer home ranges will expand, generally in the direction of wintering habitats (Campbell 1970a), which include cavities among streamside boulders, ground squirrel burrows, and beaver lodges and dams (Hammerson 1999).

Survival of embryos from laying to hatching is normally high but catastrophic mortality has been observed (Blaustein and Olson 1991). Survival of tadpoles and juveniles is very low, with predation and adverse environmental conditions primarily responsible for mortality at these life stages (Campbell 1970a). Samollow (1980) estimated that 95 to 99 percent die before reaching their second year of life. The minimum age of breeding

boreal toads in Colorado is about 4 years in males and 6 years in females (Hammerson 1999). Olson (1991) found that females may skip 1 to 3 years between breeding attempts. Individuals may live approximately 11 or 12 years (Olson 1991).

Distinct Vertebrate Population Segment

Pursuant to the ESA, we must consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. To interpret and implement the DPS provision of the ESA and congressional guidance, the Service and the National Marine Fisheries Service published, on December 21, 1994, a draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the ESA and invited public comments on it (59 FR 65885). After review of comments and further consideration, the Services adopted the interagency policy as issued in draft form, and published it in the **Federal Register** on February 7, 1996 (61 FR 4722). This policy addresses the recognition of DPSs for potential listing actions. The policy allows for more refined application of the ESA that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the ESA. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are: discreteness of the population segment in relation to the remainder of the taxon; the significance of the population segment to the taxon to which it belongs; and the population segment's conservation status in relation to the ESA's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?). Discreteness refers to the isolation of a population from other members of the species and we evaluate this based on specific criteria. If a population segment is considered discrete, the Service must consider whether the discrete segment is "significant" to the taxon to which it belongs. We determine significance by using the best available scientific information to determine the DPS's importance to the taxon to which it belongs. If we determine that a population segment is discrete and significant, we then evaluate it for

endangered or threatened status based on the ESA's standards. The DPS evaluation in this finding concerns the SRMP segment of the boreal toad subspecies (*B. b. boreas*), occurring within the southern Rocky Mountain physiographic province extending from south central Wyoming through the mountainous portions of Colorado and into extreme northern New Mexico.

Discreteness

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or 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 ESA. The SRMP meets the first condition for the following reasons:

Based on evidence of feasible dispersal distances, the SRMP is geographically (physically) separated from other populations of the boreal toad (Keinath and McGee 2005). The greatest recorded distance of movement for a boreal toad in the southern Rocky Mountains is 8 kilometers (5 miles) (Lambert 2003) and most movements are smaller (Bartelt 2000; Jones 2000; Muths 2003). Southern Wyoming toads (within the SRMP) are separated from the northern Wyoming populations (outside the SRMP) by approximately 160 kilometers (100 miles) of dry, non-forested valleys and basins of the Red Desert (Keinath and McGee 2005). The boreal toad has never been observed in the Red Desert, and its highest elevations (2,000 m (6,562 ft)) are below the lowest elevation (2,300 m (7,546 ft)) of boreal toad occurrences in Wyoming. The habitat in riparian areas along rivers at these lower elevations is warmer, drier, and composed of much different vegetation, creating a barrier to migrating boreal toads (Keinath and McGee 2005). The large size and arid, inhospitable habitat make the Red Desert impassible for migrating toads. The SRMP also is geographically separated from other boreal toad populations to the west. Over 250 kilometers (155 miles) of arid habitat exists in eastern Utah and northwestern Colorado, physically separating the

SRMP from the Utah populations in the Wasatch and Uinta Mountains.

Morphological differences between toads of the SRMP and other boreal toad populations provide evidence of the geographic separation of the SRMP. Burger and Bragg (1947) noted several morphological differences between adults collected in Colorado and the Pacific Northwest, including differences in body length, skin coloration and texture, head proportion, and parotid gland shape and position. In the former, the dorsal coloration is darker and the skin between the warts is smoother and less pronounced. In the Colorado toads, the parotid gland is more oblong and less elevated, ventral markings are more numerous and irregular, and the head is proportionately larger and broader. The maximum length of the Colorado toads was 8.3 centimeters (3.3 inches) compared with 12.5 centimeters (4.9 inches) in the Pacific Northwest toads (Burger and Bragg 1947). However, these observations were based on cursory examination of a few specimens from one Colorado geographic area, and many more specimens and observations of the boreal toad throughout its range were deemed necessary to clarify the status of the Colorado toads (Burger and Bragg 1947). Hubbard (1972) also noted morphological differences between boreal toads in Colorado and British Columbia, Canada, as well as behavioral and biochemical differences. British Columbia toads were observed to possess much brighter and more variable coloration, and a smaller parotid gland than Colorado specimens; the distress call of toads in Colorado did not have a decrease in frequency of terminal segments of harmonics, which toads in British Columbia possess; and a serum protein analysis indicated toads from British Columbia have greater proportions of alpha-2 globulin and albumin and less alpha-1 globulin than those from Colorado (Hubbard 1972). However, comparisons of these characters within and between several additional boreal toad populations would be necessary to further substantiate the distinctiveness of toads in Colorado and the remainder of the SRMP.

Based on its current geographic (physical) separation from other boreal toad populations, and some morphological and genetic differences, we conclude the SRMP meets the definition of discreteness under our DPS policy.

Significance

If a population segment is determined to be discrete, the Service considers the available scientific evidence of its

significance to the taxon to which it belongs. Our policy states that 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 for the taxon;
- (2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;
- (3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or
- (4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these criteria to be considered significant. Furthermore, the list of criteria is not exhaustive; other criteria may be used, as appropriate.

Persistence of the Discrete Population Segment in an Ecological Setting Unusual or Unique for the Taxon—The boreal toad occurs from the Rocky Mountains to the Pacific Coast.

Throughout its range, the subspecies shows an unusual plasticity in its choice of habitats (Campbell 1970a). In the SRMP, toads inhabit montane wetland habitats and adjacent uplands near suitable breeding habitats. These are ecological settings similar to those used by populations of the boreal toad outside the SRMP, in the montane regions of northern Wyoming, Idaho, Utah, Montana, and other western states. Generally speaking, in the higher latitudes of its range suitable boreal toad habitats may be found at lower elevations. We do not find that the SRMP persists in an ecological setting unusual or unique for the subspecies.

Loss Would Represent a Significant Gap in the Range of the Taxon—Loss of the SRMP would reduce the range of *B. b. boreas* at its southeastern-most extension, from south central Wyoming, through the mountainous regions of Colorado, and into extreme northern New Mexico. The remaining range would extend from coastal Alaska south through British Columbia, western Alberta, Washington, Oregon, northern California, western and central Nevada, Idaho, western Montana, Utah, and western Wyoming. Due to the broad geographic range of *B. b. boreas* across the western United States, the gap resulting from loss of the SRMP would be a relatively small proportion of the overall subspecies range and not significant.

Our analysis used the currently accepted taxonomy and range

determinations for the parent taxon (the *B. b. boreas* subspecies) and the population segment under consideration (the SRMP). At this time, uncertainty exists with regard to the taxonomy of the *Bufo boreas* complex, including the designation of a single boreal toad subspecies, the distinctness of the SRMP segment, and the taxonomic status of other population segments in the Rocky Mountains. The geographic variation within *Bufo boreas* is poorly studied, and this lack of information is thought to mask the existence of other species (Crother *et al.* 2003). The results from phylogenetic analyses of the *Bufo boreas* group confirm this uncertainty, as they suggest the existence of evolutionary lineages inconsistent with the current taxonomy (Goebel 1996, 2005).

If new taxonomic information becomes available that could change our analysis, we will reconsider our decision. However, based on the best available information, we cannot conclude at this time that loss of the SRMP would represent a significant gap in the range of the subspecies.

The Only Surviving Natural Occurrence of a Taxon—This criterion from the DPS policy does not apply because the SRMP of the boreal toad is clearly not a “population segment representing the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range.” If this situation changes or new information becomes available, we will reconsider our decision.

Evidence that the SRMP Differs Markedly from Other Populations in Genetic Characteristics—In our consideration of “significance,” the Service must evaluate evidence to determine whether the SRMP differs markedly from other populations belonging to the currently recognized subspecies, *B. b. boreas*. Information from mitochondrial DNA data (Goebel 1996, 1999, 2000, 2003, 2005) and nuclear DNA data (Goebel 1999, 2000, 2003) suggests that boreal toads of the SRMP differ genetically from other populations, but the differences between the SRMP and toads in central and northern Utah, southeastern Idaho, and western Wyoming are small, not well resolved, and based on small sample sizes.

A notable result of the mitochondrial DNA studies is that, in each study, specimens sampled from the SRMP cluster within the same phylogeographic clade, which is a group considered to be of common evolutionary origin. However, the specimens from the SRMP did not form

a monophyletic clade; depending on the study or analysis method, specimens from northern Utah, central Utah, and western Wyoming group with the SRMP (Goebel 1996, 1999, 2000, 2003, 2005). The lack of observed monophyly may be due to poor resolution that additional samples and sequence data might improve (Goebel 1999, 2000). It may also suggest that toads in the SRMP are very closely related to nearby populations due to recent (in geologic time) geographic isolation of the SRMP (Goebel 1999). While the current mitochondrial DNA data suggest the existence of diverging evolutionary lineages in the *Bufo boreas* group, the toads appear to be so closely related that interbreeding would likely produce viable offspring (Goebel 2003).

The close relationships between the SRMP and nearby populations may also be due to the retention of "old" haplotypes from lineage sorting (Goebel 1999, 2000). From a phylogenetic viewpoint the entire mitochondrial DNA genome constitutes a single locus inherited as a linked unit (Avice 2000). Therefore, analyses based on the mitochondrial genome could produce patterns that represent the gene's lineage, but not necessarily the true evolutionary direction of the species. For this reason, when analyzing the historical relationships among taxa it is prudent to compare phylogenetic hypotheses from both mitochondrial data and nuclear data (which represent a large number of loci).

Studies of the *Bufo boreas* group using nuclear DNA data have been performed, but the results were affected by small sample sizes from some localities and exclusion of samples due to missing data (Goebel 1999, 2000). When later analyses were performed with additional samples, a nuclear DNA clade containing the SRMP was identified, but it included specimens from western Wyoming localities geographically separated from the SRMP (Goebel 2003).

We believe that additional nuclear (e.g. micro satellite) DNA data and supplemental mitochondrial DNA sequence data are necessary to clarify the genetic relationships within and between boreal toad populations, including the SRMP segment and others in the Rocky Mountains. The multi-agency Team also recommends additional studies, on the grounds that genetic distinctions between SRMP toads and nearby toad populations are based on data from too few specimens (Loeffler 2001). After considering the best available information, we cannot conclude that the SRMP differs

markedly from other boreal toad populations in genetic characteristics.

In conclusion, we determine that the SRMP, as currently described, does not meet the significance criteria of our DPS policy. As such, the SRMP does not qualify as a distinct population segment. Therefore, it is not a listable entity under the ESA. Based on this determination, we withdraw the SRMP from the candidate list.

We will accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. We will reconsider this determination in the event that new information indicates that the SRMP is significant.

References

A complete list of all references cited herein is available upon request from the Grand Junction, Colorado Office, U.S. Fish and Wildlife Service (see ADDRESSES).

Author

The primary author of this finding is Larry Thompson, Grand Junction, Colorado Office, U.S. Fish and Wildlife Service (see ADDRESSES).

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

Dated: September 20, 2005.

Marshall P. Jones, Jr.,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 05-19488 Filed 9-28-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[I.D. 081605A]

Endangered and Threatened Species; Petition to Initiate Emergency Rulemaking to Prevent the Extinction of the North Atlantic Right Whale; Final Determination

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; response to petition; final determination.

SUMMARY: NMFS received a petition dated May 19, 2005 co-signed by Defenders of Wildlife, International Fund for Animal Welfare, International Wildlife Coalition, National Environmental Trust, Natural Resources

Defense Council, Oceana, The Humane Society of the United States, The Ocean Conservancy, and Whale and Dolphin Conservation Society, requesting that NMFS "promulgate emergency regulations, within sixty days, to slow and/or re-route vessels within right whale habitat, as a means of protecting the species until such time as permanent measures can be enacted. Such emergency regulations should require all ships entering and leaving all major East Coast ports to travel at speeds of 12 knots or less within 25 nautical miles of port entrances during expected right whale high-use periods." NMFS has determined that the petition is not warranted at this time.

ADDRESSES: Further information on the North Atlantic Right Whale program can be found on NMFS' internet websites at www.nmfs.noaa.gov/pr/shipstrike/ and at www.nero.noaa.gov/shipstrike/. Comments and requests for copies of this determination should be addressed to the Chief, Marine Mammal and Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: P. Michael Payne; Phone: 301-713-2322; Fax: 301-427-2522.

SUPPLEMENTARY INFORMATION:

Background

The North Atlantic right whale, *Eubalaena glacialis*, is considered one of the most endangered large whale populations in the world. Right whales have been listed as endangered under the Endangered Species Act (ESA) since its passage in 1973 (35 FR 8495, June 2, 1970). Although precise estimates of abundance are not available, it appears that the eastern North Atlantic population is nearly extinct and the western North Atlantic population numbers approximately 300 whales. The status of North Atlantic right whales is a very serious issue for NMFS. While calf production has increased somewhat in recent years, recovery is seriously affected by fatalities and serious injury resulting from human activities, primarily from entanglement in fishing gear and collisions with ships.

NMFS has been working with state and other Federal agencies, concerned citizens and citizen groups, environmental organizations, and the shipping industry to address the ongoing threat of ship strikes to North Atlantic right whales as part of its responsibilities related to right whale recovery. NMFS has established a right whale ship strike reduction program, that includes among other things, aerial