

TESTIMONY OF ROBERT D. WILLIAMS, FIELD SUPERVISOR, NEVADA FISH AND WILDLIFE OFFICE, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON RESOURCES, FIELD HEARING IN ELKO, NEVADA ON THE LISTING OF THE JARBIDGE POPULATION OF BULL TROUT

July 27, 2002

Mr. Chairman, thank you for the opportunity to appear before you today to discuss the listing of the Jarbidge River population of bull trout. My name is Bob Williams, Field Supervisor for the U.S. Fish and Wildlife Service's (Service) Nevada Fish and Wildlife Office in Reno.

For the past several months, there has been much discussion about the use of good science in the Service's decision-making. Given the impact that our resource management decisions can have on communities and individuals, the species conservation decisions we make must be based on the best available science. Our data and scientific information must meet the highest possible ethical and professional standards. This is something I have taken very seriously throughout my 26 year career, and I know that FWS Director Steve Williams continues to improve the use of sound science within the Fish and Wildlife Service.

Craig Manson, Assistant Secretary for Fish and Wildlife and Parks, testified in March 2002 before this Committee about issues related to the use of good science by the Service as it carries out its responsibilities. His comments are worth reiterating here: there is no monopoly on good science. The Department must cast a broad net to take advantage of independent scientific expertise. We believe that this will ensure that our decisions are based on the best available science, not just one group's, or another's, interpretation of the science. We must also acknowledge that science is not exact, and that even expert opinions can differ. Where there are differing interpretations of the science behind our decisions, we must provide opportunities for both Department scientists and stakeholders to air those differences and, wherever possible, resolve them. It must be an open process.

In your invitation to appear today, you asked us to ponder several questions. Was the listing of the Jarbidge River bull trout population based solely on the best available scientific and commercial data? How does the Jarbidge bull trout listing meet (or not meet) Endangered Species Act listing criteria? And, what information would be needed to delist? I would like to provide the Service's response to those questions.

Bull trout listing: science

We believe that the addition of the Jarbidge River bull trout population to the Endangered Species list was based solely on the best available scientific and commercial data. Section 4(b) of the Endangered Species

Act of 1973, as amended (ESA), requires that determinations of endangered and threatened species be based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts by states or foreign countries to protect the species. The ESA also requires that consideration be given to listing species which have been identified as in danger of extinction, or likely to become so within the foreseeable future, by any state or foreign country's conservation agency.

In 1985, the Service first included bull trout in a public Notice of Review (50 *Federal Register* 37958) identifying possible candidates for future listings under the ESA. These candidate species were typically added to the Service's public notices based upon concerns expressed by biologists from State and Federal agencies, universities, and other knowledgeable individuals from all over the country, and data in local Service office files. The Service maintained bull trout on a list of potential candidate species until 1997.

During this time period, the Service was also petitioned to list the bull trout as endangered. The Service's findings in response to the petition initiated a long series of legal actions and court decisions. As a result of a court order, the Service proposed to list the Klamath and Columbia river populations of bull trout on June 13, 1997 (62 *Federal Register* 32268), and the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River populations on June 10, 1998 (63 *Federal Register* 31693).

The amount of research, surveys, and reports on bull trout increased greatly during the 1990s, most likely due to all the bull trout-related legal actions and the increasing potential for a listing of the species. For example in 1990, the Nevada Division of Wildlife (NDOW) gathered historical agency survey data and proposed future species management activities in a draft bull trout management plan report (Federal Aid Project No. F-20-26, Job No. 207.4). The Service also funded NDOW to perform a survey in 1993 to gather additional data on the Jarbidge River bull trout population, which was documented in a 1994 NDOW report. In 1999, NDOW organized a new Jarbidge River bull trout survey.

Using data from the 1990 and 1994 NDOW reports and other scientific information available at the time, including the 1999 survey data, the Service determined that the Jarbidge River population was small, isolated, and vulnerable to extinction. We also identified numerous potential threats to the population including habitat degradation from past and ongoing activities including mining, road construction and maintenance, grazing, angling, competition with stocked fish, and unpredictable natural events such as the debris torrents that occurred in the 1995 flood in the Jarbidge River Canyon. Based on these data, the Service listed the species as threatened on April 8, 1999 (64 *Federal Register* 17111).

Bull trout listing: listing criteria and threats to the species

Section 4(a) of the ESA sets forth the five factors upon which endangered or threatened status is conferred. The five factors are: 1) the present or threatened destruction, modification, or curtailment of its habitat or

range; 2) overutilization for commercial, recreational, scientific, or educational purposes; 3) disease and predation; 4) the inadequacy of existing regulatory mechanisms; and 5) other natural or manmade factors affecting its continued existence. Based on the best available information, the Service determined that the Jarbidge River bull trout listing was warranted given the current threats to its population.

I will now review the application of these factors to the Jarbidge River bull trout population, which were discussed in detail in the April 1999 Federal Register listing decision.

1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* Bull trout historically occurred throughout much of the Snake River Basin. In addition to more subtle habitat changes such as increasing stream temperatures and sedimentation, genetic connectivity among bull trout populations in the basin was gradually lost due to dam construction, water diversions for irrigation, and animal grazing. Water quality concerns were also associated with streamside mine tailings, piles, and mine shaft drainage. The remaining Jarbidge River population is now isolated and located over 150 river miles from other bull trout populations. Due to its current restricted distribution and low numbers of fish, the Jarbidge River population is susceptible to a variety of threats.

2) *Overutilization for commercial, recreational, scientific, or educational purposes.*

The Jarbidge River system has been heavily fished, dating back to the 1930s. Decades of

non-native trout stocking by both Idaho and Nevada encouraged increased angling pressure in bull trout habitat. Idaho stopped stocking trout in 1990, and Nevada's last stocking was in 1998. A 1990 NDOW report specifically stated concerns for the bull trout population because of angling pressure and the removal of larger bull trout (6-12 inches) from the system, possibly before they were old enough to reproduce for the first time. Angler harvest was considered by NDOW to be a likely "primary factor in the low densities of bull trout in the East and West forks of the Jarbidge River."

Harvest is considered a threat to both resident and migratory forms of bull trout. Migratory fish are at greater risk because of their lower numbers, desirable larger size and higher visibility to anglers. Anglers are known to have difficulty identifying bull trout, so unintentional harvest of bull trout is likely still occurring despite angler education efforts. Nevada bull trout fishing regulations were changed in 1998, and it is now a catch and release program. Limits on other trout (native redbands and residual stocked rainbows) and mountain whitefish are now 5 and 10 fish, respectively, which still allows for substantial fishing pressure and potential repeated bull trout captures. To date, bull trout monitoring has not been conducted long enough to allow for detection of improvements in the population. Idaho established a two trout limit for the

Jarbidge River watershed in 1992, and prohibited harvest of bull trout entirely in 1995.

3) *Disease and predation.*

Disease and predation have not been documented as factors affecting the survival of bull trout in the Jarbidge River watershed.

4) *The inadequacy of existing regulatory mechanisms.*

Existing regulatory mechanisms protecting streams, stream channels, riparian areas, and floodplains are either inadequate to protect bull trout habitat or are not sufficiently enforced. Activities that damage habitat are frequently undetected because the Jarbidge River watershed is relatively remote and access is difficult for much of the year. Examples of such activities might include road construction and maintenance practices, river channelization, riparian vegetation removal, firewood collection, stream bank stabilization, instream large woody debris removal, and unsustainable grazing practices, among others.

5) *Other natural or manmade factors affecting its continued existence.*

Natural and manmade factors affecting the continued existence of bull trout include introductions of non-native species (catchable-size rainbow trout) that compete with and may prey upon bull trout, drought, and debris torrents (such as the 1995 event on the West Fork of the Jarbidge River).

These five listing factors were discussed at length in our proposed rule to list the bull trout as an endangered species. The Service requested input on these factors from the public, agencies, scientific community, industry, and other interested parties. We notified over 800 individuals about our proposed rule, including private citizens; State and Federal agencies; Federal, State, county and city elected officials; and local media. We also published announcements of the proposed rule in local newspapers, including the *Elko Daily Free Press* here in Nevada. The Service held four public hearings, including one in Jackpot, Nevada, during July 1998. The public comment period was open for 4 months. We received 52 public comments on the proposed rule, and of these, 23 pertained to the Jarbidge River population. The majority of the comments supported the listing, with seven comments opposing listing. In the Service's view, few comments provided meaningful new data to consider with respect to the threats discussed in the proposed listing decision.

During the public comment period, we also solicited formal scientific peer review of our proposed rule in

accordance with our *Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities* (July 1, 1994; 59 *FR* 34270). We solicited six individuals with expertise in bull trout biology and salmonid ecology whose affiliations included academia and Federal, State, and Canadian Provincial agencies to review the proposed rule within the public comment period. Only one of the six peer reviewers responded to our official request. That reviewer stated that listing was the "conservative and appropriate decision." Another recognized bull trout expert from academia (not an official peer reviewer) submitted public comments strongly supporting the Jarbidge River bull trout listing.

As part of the administrative record we provided the results of an independent peer review of Jarbidge River bull trout data and population status presented in the 1999 NDOW Report. The peer review was performed by two fisheries scientists selected by the Western Division of the American Fisheries Society (AFS). The AFS peer review (reviewers remained anonymous to ensure impartiality) substantially supported the decision to list the species. The conclusion of our official peer review of the listing decision and the AFS peer review of the NDOW report were consistent with our decision to move forward with the listing.

In July 1998, with the Jarbidge River bull trout already proposed for listing, Elko County began reconstructing the South Canyon Road in the midst of known bull trout habitat. Potential direct and indirect impacts in the West Fork of the Jarbidge River included the harm and harassment of juvenile and adult bull trout; disruption or prevention of bull trout migration and spawning; alteration of stream flow and temperature; loss of riparian vegetation; and increased sediment transport. This combination of activities had the potential to affect the future survival and recovery of the Jarbidge River population. For these reasons, the Service temporarily emergency listed the Jarbidge River population as endangered on August 11, 1998 (63 *Federal Register* 42757). The emergency listing lasted for 240 days.

On April 8, 1999, we published a final rule listing the Jarbidge River population as threatened, as we had originally proposed (64 *Federal Register* 17110). Listing the bull trout as threatened rather than endangered was possible due to habitat restoration in the South Canyon Road area and other beneficial projects that were implemented by Federal and State agencies, including habitat management improvements and the elimination of rainbow trout stocking in Nevada.

Along with conferring the threatened status on the bull trout, the final listing rule included a "special rule", under section 4(d) of the ESA. The rule allowed for incidental take of bull trout in the Jarbidge River population for educational, conservation or scientific purposes, as well as by recreational fishing for 2 years (until April 9, 2001). To extend the special rule beyond the original 2 years, the 4(d) rule required the States of Idaho and Nevada to develop a conservation and management plan for bull trout in the Jarbidge River. The extension would provide continued legal angling opportunities for the public in the Jarbidge River. The

Service has been advised by NDOW that the management plan is close to completion.

Bull trout: delisting

At present, the requirements for delisting have not been identified. Several years ago a Bull Trout Recovery Team was assembled. Representatives from the States of Idaho, Montana, Nevada, Oregon and Washington, Upper Columbia River United Tribes, and Service offices in five states were asked to participate. This recovery oversight team has prepared a range-wide draft bull trout recovery plan which will be published for public review this fall (November 2002).

Recovery and delisting of each of the five listed bull trout populations can occur independent of each other. A Recovery Unit Team has been established to develop a recovery plan specifically for the Jarbidge River population and to identify specific delisting criteria. Similar to the larger recovery oversight team, this local recovery team includes representatives from the States (including NDOW and Idaho Department of Fish and Game); Tribes (Duck Valley Paiute-Shoshone Tribes' Habitat, Parks, Fish and Game Division); and Federal agencies (Bureau of Land Management, U.S. Forest Service, and the Service). The Team met for the first time in December 2001 and should have a draft recovery plan by the end of this year (December 2002).

This local team is tasked with defining bull trout recovery for the Jarbidge River including specific objectives and recovery criteria for delisting, reviewing factors affecting the species, identifying site-specific recovery actions, and estimating recovery costs. NDOW has participated in the development of the recovery plan and is one of many stakeholders. Participation by the States and other local stakeholders is vital in order for the recovery effort to be successful. The draft recovery plan will be available for public review, and we hope to receive substantial public input from stakeholders, including the residents of Jarbidge and the Elko County Board of Commissioners. All comments received will be considered by the local recovery team in finalizing the recovery plan. Our goal is to have the final recovery plan for the Jarbidge River, Coastal Puget Sound, and St. Mary-Belly River populations by 2004. We hope to finalize the range-wide plan by 2003.

Delisting will occur when the Jarbidge River population meets the recovery criteria that are developed by the local recovery unit team and identified in the recovery plan. These recovery criteria will address the following population characteristics within the recovery unit: 1) the distribution of bull trout in existing and potential local populations (local populations are groups of bull trout that spawn within a particular stream or portion of a stream system); 2) the estimated abundance of adult bull trout, expressed as either a point

estimate or range of individuals; 3) the presence of stable or increasing trends for adult bull trout abundance; and 4) the restoration of fish passage at any barriers identified as inhibiting recovery. Consistent population monitoring using statistically sound techniques will be required to determine when the recovery criteria have been met and delisting can occur.

Since the 1999 listing, the Service has participated in conducting additional surveys of bull trout and bull trout habitat in the Jarbidge River system with NDOW, IDFG, BLM, and the USFS. This work has occurred throughout the watershed on the East and West forks of the Jarbidge River, Dave Creek, Deer Creek, Jack Creek, Pine Creek, and Slide Creek. Probably the most significant findings from this work is the documentation of bull trout spawning in Dave Creek in an area with substantial habitat restoration potential, and the capture of five potential migratory bull trout in fish traps on the lower East and West forks by IDFG. Both of these events are extremely encouraging for the future success of the species recovery efforts in the watershed.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions that you or other members of the Subcommittee may have. Again, I thank you for giving the Fish and Wildlife Service the opportunity to testify.