(b) NASA Form 1680, entitled, "Evaluation of Performance," shall be used to document evaluations. This provides for a five-tiered rating (using the definitions for award fee evaluation scoring found in 1816.405–275) covering the following attributes: quality, timeliness, price or control of costs (not required for firm-fixed-price contracts or firm-fixed-price contracts with economic price adjustment), and other considerations. Evaluations used in determining award fee payments satisfy the requirements of this subpart and do not require completion of NASA Form 1680. In addition, hybrid contracts containing both award fee and non-award fee portions do not require completion of NASA Form 1680. Contracting Officers shall ensure that the Government discusses all evaluations with contractors and shall record the date and the participants on the evaluation form. Contracting officers shall sign and date the evaluation after considering any comments received from the contractor within 30 days of the contractor's receipt of the evaluation. If a contractor in its timely comments disagrees with an evaluation and requests a review at a level above the contracting officer, it shall be provided within 30 days. While the FAR forbids use of the evaluations for source selections more than three years after contract completion, they shall nevertheless be retained in the contract file as provided in FAR 4.8, Government Contract Files.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1080–AF01

Endangered and Threatened Wildlife and Plants: Emergency Listing of the Jarbidge River Population Segment of Bull Trout as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Jarbidge River population segment of bull trout (*Salvelinus confluentus*) from the Jarbidge River basin in southern Idaho and northern Nevada to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The Jarbidge River population segment, composed of a single subpopulation, is threatened by habitat degradation from past and ongoing land management activities such as mining, road construction and maintenance, and grazing. Recently initiated river channel alteration associated with unauthorized road construction on the West Fork of the Jarbidge River is believed to imminently threaten the survival of the Jarbidge River bull trout population. Because of the need to make the protective measures afforded by the Act immediately available to the Jarbidge River population of bull trout and its habitat, the Service finds that an emergency rule action is justified. This emergency rule provides Federal protection pursuant to the Act for the Jarbidge River population of bull trout for a period of 240 days. A proposed rule to list the Jarbidge River population of bull trout as threatened, which requested data and comment from the public, was published in the **Federal Register** on June 10, 1998. The comment period on the proposed rule closes on October 8, 1998.

DATES: This emergency rule is effective on August 11, 1998, and expires on April 8, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U. S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section; telephone: 702/861–6300).

SUPPLEMENTARY INFORMATION:

Background

A complete discussion of this section is contained in the proposed rule published on June 10, 1998 (63 FR 31693).

Distinct Population Segments

The best available scientific and commercial information supports designating five distinct population segments (DPSs) of bull trout in the coterminous United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. A final listing determination for the Klamath River and Columbia River DPSs was published in the **Federal Register** on June 10, 1998 (63 FR 31647), and includes a detailed description of the rationale behind the DPS delineation. A proposed rule to list the Coastal Puget Sound, Jarbidge River, and St. Mary-Belly River population segments as threatened was also published in the **Federal Register** on June 10, 1998 (63 FR 31693). The approach is consistent with the joint National Marine Fisheries Service (NMFS) and Service's policy for recognizing distinct vertebrate population segments under the Act (February 7, 1996; 61 FR 4722). This emergency rule addresses only the Jarbidge River bull trout DPS.

The Jarbidge River, located in southwest Idaho and northern Nevada, is a tributary in the Snake River basin and contains the southernmost habitat occupied by bull trout. This population segment is discrete because it is segregated from other bull trout in the Snake River basin by a large gap (greater than 240 kilometers (km) (150 miles (mi)) in suitable habitat and several impassable dams on the mainstem Snake River. The occurrence of a species at the extremities of its range is not necessarily sufficient evidence of significance to the species as a whole. However, because the Jarbidge River possesses bull trout habitat that is disjunct from other patches of suitable habitat, the population segment is considered significant because it occupies a unique or unusual ecological setting, and its loss would result in a substantial modification of the species' range.

Status and Distribution

To facilitate evaluation of current bull trout distribution and abundance for the Jarbidge River population segment, the Service analyzed data on a subpopulation basis within the segment because fragmentation and barriers have isolated bull trout. A subpopulation is considered a reproductively isolated bull trout group that spawns within a particular area(s) of a river system.

The Jarbidge River DPS consists of one bull trout subpopulation occurring primarily in Nevada (Service 1998b). Resident fish inhabit the headwaters of the East Fork and West Fork of the Jarbidge River and several tributary streams, and low numbers of migratory (fluvial) fish are present (Zoellick et al. 1996; L. McLelland, Nevada Division of Wildlife (NDOW), *in litt.* 1998; K. Ramsey, Humboldt National Forest (HNF), *in litt.* 1997). Bull trout were not observed during surveys in the Idaho portion of the Jarbidge River basin in 1992 and 1995 (Warren and Partridge 1993; Allen et al. 1997), however, a single, small bull trout was captured when traps were operated on the lower East Fork and West Fork Jarbidge River during August through October 1997 (F. Partridge, Idaho Department of Fish and

Game (IDFG), pers. comm. 1998). A loss of range likely has occurred for migratory bull trout (fluvial) in the lower Jarbidge and Bruneau rivers and perhaps downstream to the Snake River (Johnson and Weller 1994; Zoellick et al. 1996). Low numbers of migratory (fluvial) bull trout have been documented in the West Fork Jarbidge River from the 1970's through the mid-1980's (Johnson and Weller 1994).

The distribution of bull trout in Nevada includes at least six headwater streams above 2,200 meters (m) (7,200 feet (ft)), primarily in wilderness areas—East Fork and West Fork Jarbidge River and Slide, Dave, Pine, and Jack creeks (Johnson and Weller 1994). Zoellick et al. (1996) compiled data from 1954 through 1993 and estimated bull trout population size in the middle and upper headwater areas of the West Fork and East Fork of the Jarbidge River. In each stream, sampled areas were located at elevations above 1,792 m (5,880 ft), and population estimates were less than 150 fish/km (240 fish/mi) (Zoellick et al. 1996).

In general, bull trout represent a minor proportion of the fish fauna downstream of the headwater reaches; native redband trout are the most abundant salmonid and sculpin the most abundant fish (Johnson and Weller 1994). Although accounts of bull trout distribution in the Jarbidge River basin date to the 1930's, historic abundance is not well documented. In 1934, bull trout were collected in the East Fork Jarbidge River drainage downstream of the Idaho-Nevada border (Miller and Morton 1952). In 1985, 292 bull trout ranging from 73 to 266 millimeters (mm) (2.9 to 10.5 inches (in)) in total length, were estimated to reside in the West Fork Jarbidge River (Johnson and Weller 1994). In 1992, the abundance of bull trout in the East Fork Jarbidge River was estimated to be 314 fish ranging from 115 to 165 mm (4.5 to 6.5 in) in total length (Johnson and Weller 1994). In 1993, bull trout numbers in Slide and Dave creeks were estimated at 361 and 251 fish, respectively (Johnson and Weller 1994). During snorkel surveys conducted in October 1997, no bull trout were observed in 40 pools of the West Fork Jarbidge River or in four 30-m (100-ft) transects in Jack Creek (G. Johnson, NDOW, pers. comm. 1998). Only one bull trout had been observed at the four transects in 1992 (Johnson, pers. comm. 1998). However, it is premature to consider bull trout extirpated in Jack Creek (Service 1998b). There is no information on whether bull trout have been extirpated from other Jarbidge River headwater tributaries.

It is estimated that between 50 and 125 bull trout spawn throughout the Jarbidge River basin annually (Johnson, pers. comm. 1998). However, exact spawning sites and timing are uncertain (Johnson, pers. comm. 1998) and only two redds have been observed in the basin (Ramsey, *in litt.* 1997; Ramsey, pers. comm. 1998a). Presumed spawning streams have been identified by records of one or more small bull trout (about 76 mm (3 in)).

Population trend information for bull trout in the Jarbidge River subpopulation is not available, although the current characteristics of bull trout in the basin (i.e., low numbers and disjunct distribution) have been described as similar to that observed in the 1950's (Johnson and Weller 1994). Based on recent surveys, the subpopulation is considered "depressed" (less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost). Past and present activities within the basin are likely restricting bull trout migration in the Jarbidge River, thus reducing opportunities for bull trout reestablishment in areas where the fish are no longer found (Service 1998b).

Previous Federal Action

A complete discussion of this section is contained in the proposed rule published on June 10, 1998 (63 FR 31693).

Summary of Factors Affecting The Species

Procedures found in section 4 of the Act and regulations (50 CFR part 424) promulgated to implement 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 the five factors described in section 4(a)(1). These factors and their application to the Jarbidge River population segment of bull trout (*Salvelinus confluentus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Land and water management activities that degrade and continue to threaten all of the bull trout distinct population segments, including the Jarbidge River population segment, in the coterminous United States include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Beschta et al. 1987; Chamberlain et al. 1991; Furniss et al. 1991; Meehan 1991; Nehlsen et al. 1991; Sedell and Everest 1991; Craig and Wissmar 1993; Frissell 1993; Henjum et al. 1994; McIntosh et al. 1994; Wissmar et al. 1994; U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1995, 1996, 1997; Light et al. 1996; MBTSG 1995a–e, 1996a–h).

Although timber was historically removed from the Jarbidge River basin, forest management is not thought to be a major factor currently affecting bull trout habitat. The steep terrain of the Jarbidge River basin has been a deterrent to grazing (J. Frederick, HNF, *in litt.* 1998a); and grazing does not occur in approximately 60 percent of the watershed. Although much of the remaining 40 percent of public and private lands are grazed, the effects are localized and considered of relatively minor importance to bull trout habitat in the Jarbidge River basin. For example, livestock grazing is affecting about 3.2 km (2 mi) of the East Fork Jarbidge River and portions of Dave Creek and Jack Creek (Frederick, pers. comm. 1998; Johnson, pers. comm. 1998).

Ongoing threats affecting bull trout habitat have created degraded conditions in the West Fork Jarbidge River (McNeill et al. 1997; Frederick, pers. comm. 1998; Ramsey, pers. comm. 1998a). At least 11.2 km (7 mi) of the West Fork Jarbidge River has been affected by over a century of human activities such as road development and maintenance, historic mining and mine (adit) drainage, channelization and removal of large woody debris, residential development, road and campground development on U.S. Forest Service lands (McNeill et al. 1997). As a result of these activities, the riparian canopy and much of the upland forest has been removed, recruitment of large woody debris reduced, and channel stability has decreased (McNeill et al. 1997; Ramsey, *in litt.* 1997; Frederick, *in litt.* 1998a). These activities reduce habitat complexity and likely elevate water temperatures seasonally. For example, water temperatures recorded near Bluster Bridge were 15 to 17°C (59 to 63° F) for 24 days in 1997.

Culverts installed at road crossings may act as barriers to bull trout movement in the Jarbidge River basin. For example, an Elko County road culvert had prevented upstream movement of bull trout in Jack Creek, a West Fork Jarbidge River tributary, for approximately 17 years. Private and public funding was used to replace the culvert with a bridge in the fall of 1997 (Frederick, *in litt.* 1998b); however, a rock structure approximately 300 m

(1,000 ft) upstream the bridge in Jack Creek may still impede bull trout movement, at least seasonally during low flows.

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

Declines in bull trout have prompted states to institute restrictive fishing regulations and eliminate the harvest of bull trout in most waters in Idaho and Nevada. Overutilization by angling was a concern in the past for the Jarbidge River DPS of bull trout. Although Idaho prohibited harvest of bull trout beginning in 1995, Nevada, until recently, allowed harvest of up to 10 trout per day, including bull trout, in the Jarbidge River basin. An estimated 100 to 400 bull trout were harvested annually in the Jarbidge River basin (Johnson 1990; P. Coffin, Service, pers. comm. 1994; Coffin, *in litt.* 1995). Nevada State regulations were recently amended to allow only catch-and-release of bull trout starting March 1, 1998 (G. Weller, NDOW, *in litt.* 1997; Johnson, pers. comm. 1998). The Service anticipates that this change in the regulations will have a positive effect on conservation of bull trout, however, the effects of the new harvest regulations may require five years to evaluate (Johnson, pers. comm. 1998).

C. Disease and Predation

Diseases affecting salmonids are present or likely present in the Jarbidge DPS, but are not thought to be a factor for listing bull trout. However, interspecific interactions, including predation, likely negatively affect bull trout where non-native salmonids have been introduced (J. Palmisano and V. Kaczynski, Northwest Forestry Resources Council (NFRC), *in litt.* 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

Although efforts are underway to assist in conserving bull trout throughout the coterminous U.S. (e.g., Batt 1996; R. Joslin, USFS, *in litt.* 1997; A. Thomas, BLM, *in litt.* 1997), the implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not been sufficient to prevent past and ongoing habitat degradation leading to bull trout declines and isolation. Regulatory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, Federal Power Act, State Endangered Species Acts and numerous State laws and regulations oversee an array of land and water management activities that affect bull trout and their habitat.

Regulatory mechanisms addressing alterations to stream channels, riparian areas, and floodplains from road construction and maintenance, and the effects associated with roads and past mining on water quality, have been inadequate to protect bull trout habitat in the Jarbidge River basin. For example, the Jarbidge Canyon Road parallels the West Fork Jarbidge River for much of its length and includes at least seven undersized bridges for the stream and floodplain. Maintenance of the road and bridges require frequent channel and floodplain modifications that affect bull trout habitat, such as channelization; removal of riparian trees and beaver dams; and placement of rock, sediment, and concrete (McNeill et al. 1997; Frederick, pers. comm. 1998; Frederick, *in litt.* 1998a). In 1995, debris torrents washed out a portion of the upper Jarbidge Canyon Road above Pine Creek. The Service has recommended that this road segment be closed to vehicular traffic and that a trail be maintained to reduce the effects of the road and its maintenance on the river (R. Williams, Service, *in litt.* 1998). Periodic channelization in the Jarbidge River by unknown parties has occurred without the oversight provided by the Corps of Engineers Clean Water Act section 404 regulatory program (M. Elpers, Service, pers. comm. 1998), and the HNF has been unable to control trespass (unauthorized road openings) on Federal lands. Several old mines (adits) are releasing small quantities of warm water and other contaminants into the West Fork Jarbidge River.

The Nevada water temperature standards throughout the Jarbidge River are 21°C (67°F) for May through October, and 7°C (45°F) for November through April, with less than 1°C (2°F) change for beneficial uses (Nevada Department of Environmental Protection (NDEP), *in litt.* 1998). Water temperature standards for May through October exceed temperatures conducive to bull trout spawning, incubation, and rearing (Rieman and McIntyre 1993; Buchanan and Gregory 1997).

In 1994, a local Bull Trout Task Force was formed to gather and share information on bull trout in the Jarbidge River. The task force is open to any representative from Elko and Owyhee counties, the towns of Jarbidge (Nevada) and Murphy Hot Springs (Idaho), road districts, private landowners, NDOW, IDFG, the Boise District of Bureau of Land Management, HNF, and the Service. The task force was successful in 1997 in obtaining nearly $150,000 for replacing the Jack Creek culvert with a concrete bridge to facilitate bull trout passage into Jack Creek. However, the task force has not yet developed a comprehensive conservation plan addressing all threats to bull trout in the Jarbidge River basin.

In 1995, the Humboldt National Forest plan was amended to include the Inland Native Fish Strategy. This fish and wildlife habitat policy sets a no net loss objective and is currently guiding Forest Service planning of possible reconstruction of a portion of the Jarbidge Canyon Road (Ramsey 1997). In June 1998, HNF issued the Jarbidge River Environmental Assessment for Access and Restoration between Pine Creek Campground and the Jarbidge Wilderness (HNF 1998).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Natural and manmade factors affecting the continued existence of bull trout include—previous introductions of non-native species that compete, hybridize, and prey on bull trout; fragmentation and isolation of bull trout subpopulations from habitat changes caused by human activities; and subpopulation extirpations due to naturally occurring events such as droughts, floods and other environmental events.

Previous introductions of non-native species by the Federal government, State fish and game departments and unauthorized private parties, across the range of bull trout has resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary et al. 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b,d, 1996g; Platts et al. 1995; Palmisano and Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993). In some lakes and rivers, introduced species, such as rainbow trout or kokanee, may benefit large adult bull trout by providing supplemental forage (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993; MBTSG 1996a). However, the same introductions of game fish can negatively affect bull trout due to increased angling and subsequent incidental catch, illegal harvest of bull trout, and competition for space (Rode 1990; Bond 1992; WDW 1992; MBTSG 1995d).

"The smaller and more isolated parts of the range [such as the bull trout

remaining in the Owyhee Uplands ecological reporting units or Jarbidge River basin] likely face a higher risk" of naturally occurring extirpation relative to other bull trout populations (Rieman et al. 1997). One such risk is fire. In 1992, a 4,900 hectare (ha) (12,000 acre (ac)) fire (Coffeepot Fire) occurred at lower elevations, up to 2,286 m (7,500 ft), in areas adjacent to the Bruneau River basin and a small portion of the Jarbidge River basin. Although the Coffeepot Fire did not affect areas currently occupied by bull trout, similar conditions likely exist in nearby areas where bull trout occur. Adverse effects of fire on bull trout habitat may include loss of riparian canopy, increased water temperature and sediment, loss of pools, mass wasting of soils, altered hydrologic regime and debris torrents. Fires large enough to eliminate one or two suspected spawning streams are more likely at higher elevations where bull trout are usually found in the Jarbidge River basin (Frederick, *in litt.* 1998a; Ramsey, pers. comm. 1998b).

Hybridization with introduced brook trout is also a potential threat. In the West Fork Jarbidge River, approximately one percent of the harvest from the 1960's through the 1980's was brook trout (Johnson 1990). Some brook trout may spill out of Emerald Lake into the East Fork Jarbidge River during peak runoff events, but the lake lacks a defined outlet so that the event appears unlikely (Johnson, pers. comm. 1994). Although low numbers of brook trout persist in the Jarbidge River basin, conditions are apparently not conducive to the expansion of a brook trout population.

Other naturally occurring risks have been recently documented. The Jarbidge River Watershed Analysis (McNeill et al. 1997) indicates that 65 percent of the upper West Fork Jarbidge River basin has a 45 percent or greater slope. Debris from high spring runoff flows in the various high gradient side drainages such as Snowslide, Gorge, and Bonanza gulches provide the West Fork Jarbidge River with large volumes of angular rock material. This material has moved down the gulches at regular intervals, altering the river channel and damaging the Jarbidge River Canyon road, culverts, and bridge crossings. Most of the river flows are derived from winter snowpack in the high mountain watershed, with peak flows corresponding with spring snowmelt, typically in May and June (McNeill et al. 1997). Rain on snow events earlier in the year (January and February) can cause extensive flooding problems and has the potential for mass-wasting, debris torrents, and earth slumps, which could threaten the existence of bull trout in the upper Jarbidge River and tributary streams. In June, 1995, a rain on snow event triggered debris torrents from three of the high gradient tributaries to the Jarbidge River in the upper watershed (McNeill et al. 1997). The relationship between these catastrophic events and the history of intensive livestock grazing, burning to promote livestock forage, timber harvest and recent fire control in the Jarbidge River basin is unclear. However, debris torrents may potentially affect the long-term viability of the Jarbidge River bull trout subpopulation.

The Jarbidge River population segment is composed of a single subpopulation, characterized by low numbers of resident fish. Activities such as road construction and maintenance, mining and grazing threaten bull trout in the Jarbidge River basin. Although some of these activities have been modified or discontinued in recent years, the lingering effects continue to alter water quality, contribute to channel and bank instability, and inhibit habitat recovery. Ongoing threats include channel and bank alterations associated with road construction and maintenance, a proposed stream rechannelization project, recreational fishing (intentional and unintentional harvest), and competition with brook trout.

Based on the above factors, the Service determined that it was appropriate to propose listing the Jarbidge River population of bull trout as threatened, and did so on June 10, 1998. Developments subsequent to publication of that proposed rule have led the Service to conclude that it is appropriate to use the Act's emergency provision to list the Jarbidge River bull trout population as endangered. This population is endangered by habitat destruction and degradation resulting from channel alteration associated with recently-initiated, unauthorized road construction along the West Fork Jarbidge River, and a substantial risk that this construction will continue. After carefully assessing the best scientific and commercial information available regarding the past, present, and future threats faced by the Jarbidge River population segment of bull trout, and based on the reasoning discussed below, the Service has concluded that this population is in imminent danger of extinction throughout all or a significant portion of its range within the distinct population segment. The Jarbidge River population segment is, therefore, endangered as defined in the Act.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by emergency rule that shall cease 240 days following publication in the **Federal Register**. The reasons for this rule are discussed below. If at any time after this rule has been published, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

An emergency posing a significant risk to the well-being and continued survival of the Jarbidge River bull trout population exists as a result of channel alteration associated with unauthorized road construction, and the substantial risk that such construction will continue. On July 22, 1998, the Elko County Road Department was actively working in and along the Jarbidge River to repair the Jarbidge Canyon Road (also referred to as South Canyon Road and Forest Development Road #064), as directed in a resolution passed by the Elko County Board of Commissioners on July 15, 1998. On July 22, 1998, a Forest Service employee reported a 5.6 km (3.5 mi) plume of sediment downstream from the construction site. Fish and Wildlife Service and Forest Service staff visited the area on July 23, 1998. They observed approximately 275 m (300 yards (yd)) of new road where the river had previously flowed. To create the road, sections of river were roughly filled with material from adjacent hillsides and debris left by the 1995 flood. The construction activity had completely destroyed all aquatic habitat in this area. The entire river flow was diverted into a newly created straight channel lacking pools and cover. All riparian vegetation, including mature trees, adjacent to the new channel had been removed. Impacts of resultant sedimentation in areas of the river downstream are being evaluated. The NDOW and HNF are currently evaluating the total extent of impacts from the construction. Water temperatures recorded on July 22, 1998, suggest that this portion of the river would have supported bull trout prior to the construction activity.

Elko County stopped the road work at all locations on July 24, 1998, after receiving cease and desist orders from the State of Nevada and the Corps of Engineers. At present, the Service is concerned that Elko County will resume the unauthorized road work. Continued unauthorized reconstruction of the 2.4 km (1.5 mi) of the Jarbidge Canyon Road damaged by the 1995 flood would result in the direct loss of 27 percent of the

known occupied bull trout habitat in the West Fork Jarbidge River (8.8 km (5.5 mi); Johnson and Weller 1994), which has among the highest reported densities of bull trout within the Jarbidge River DPS (85 fish/km; 53 fish/mi; Johnson and Weller 1994). The road construction would also indirectly impact an additional 21 km (13 mi) of bull trout habitat downstream of the construction site in the West Fork Jarbidge River, and potentially 45 km (28 mi) in the mainstem Jarbidge River. This construction activity has deposited additional sediment into the West Fork Jarbidge River; this sediment has been carried downstream causing further damage to bull trout habitat. Indirect impacts include alteration of stream flow and water temperature, increased sediment transport, decreased invertebrate production, disruption of migration and spawning during August through September caused by stream turbidity and sedimentation, and decreased survival of eggs and juveniles from deposition of fine sediment. The combination of direct and indirect impacts resulting from the unauthorized road construction, and the substantial risk that the construction will continue, constitutes an emergency posing a significant risk to the well-being and continued survival of the already depressed Jarbidge River bull trout population.

Critical Habitat

A complete discussion of this section is contained in the proposed rule published on June 10, 1998 (63 FR 31693).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities that they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Jarbidge bull trout population segment occurs on lands administered by the USFS, various State-owned properties, and private lands. Federal agency actions that may require conference or consultation as described in the preceding paragraph include COE involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 et seq.); USFS timber, recreational, mining, and grazing management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

The Act and its implementing regulations, found at 50 CFR 17.21 and 17.31, set forth a series of general trade prohibitions and exceptions that apply to all threatened and endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following would not be likely to result in a violation of section 9:

(1) Actions that may affect bull trout in the Jarbidge River population segment and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act.

The following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possession, sale, delivery, carriage, transportation, or shipment of illegally taken bull trout;

(3) Interstate and foreign commerce (commerce across state and international boundaries) and import/export of bull trout (as discussed earlier in this section);

(4) Introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian and adjoining uplands of waters supporting bull trout by recreational activities, timber harvest, grazing, mining, hydropower development, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors

used by the species for foraging, cover, migration, and spawning.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Nevada Fish and Wildlife Office (see ADDRESSES section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-6241; facsimile 503/231-6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.32.

References Cited

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

Author: The primary authors of this emergency rule include —Jeffery Chan, Western Washington Fishery Resource Office, Olympia, WA; Timothy Cummings, Columbia River Fisheries Program Office, Vancouver, WA; Stephen Duke, Snake River Basin Office, Boise, ID; Robert Hallock, Upper Columbia River Basin Office, Spokane, WA; Samuel Lohr, Snake River Basin Office, Boise, ID; Leslie Propp, Western Washington State Office, Olympia, WA; Selena Werdon, Nevada Fish and Wildlife Office .

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Trout, bull	Salvelinus confluentus.	U.S.A. (Pacific NW) Canada (NW Territories).	Jarbidge R. Basin (U.S.A.—ID, NV).	E	639E	NA	NA
*	*	*	*	*	*		*

Dated: August 6, 1998.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 98-21550 Filed 8-7-98; 10:09 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Docket No. 971229312-7312-01; I.D. 072798A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector

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

ACTION: Fishing restrictions; requests for comments.

SUMMARY: NMFS announces closure of the 1998 catcher/processor fishery for whiting at 3 p.m. local time (l.t.) August 7, 1998, because the allocation for the catcher/processor sector will be reached by that time. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting within the allocations NMFS announced on January 6, 1998.

DATES: Effective from 3 p.m. l.t. August 7, 1998, until the start of the 1999 primary season for the catcher/processor sector, unless modified, superseded or rescinded, which will be published in the **Federal Register**. Comments will be accepted through August 26, 1998.

ADDRESSES: Submit comment to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or William Hogarth, Regional Administrator, Southwest Region, 1 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206-526-6140 or Svein Fougner at 562-980-4040.

SUPPLEMENTARY INFORMATION: On January 6, 1998 (63 FR 419), NMFS published regulations announcing the annual management measures for Pacific Coast whiting. The regulations at 50 CFR 660.323(a) (4) (62 FR 27519, May 20, 1997) established separate