

comply with the "viewability" provisions by either: (1) Carrying the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. Small cable operators will need engineering and legal analysis to comply with this proposal. The *Second FNPRM* seeks comment on the cost of compliance to small cable operators and solicits alternative approaches that would reduce the burden on small cable operators while still complying with statutory requirements. Small broadcast stations will also be affected by the proposed rules and other issues raised in the *Second FNPRM*, but we do not have any reason to expect that the compliance burden will be any greater than under the existing rules, except that initially, broadcasters may need additional legal services.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We seek comment on the applicability of any of these alternatives to affected small entities.

40. The requirements proposed in the *Second FNPRM* are the result of statutory requirements that do not expressly provide exceptions for small entities. Broadcast stations, including small entity stations, are afforded the flexibility to elect mandatory carriage of their digital signal or elect to negotiate carriage with cable systems. The proposals do not contemplate imposing any significant burdens on small television stations, but station licensees and other parties are encouraged to submit comment on the proposals' impact on small television stations. Every effort will be made to minimize the impact of any adopted proposals on cable operators. In this IRFA, we seek

comment on whether there is a specific legal basis for affording operators that qualify as small systems special consideration in this regard. We anticipate that more and more cable systems will become all-digital cable systems, thereby minimizing any potential impact that our proposals, if adopted, might have. Finally, we are mindful of the potential concerns of small entities and will, therefore, continue to carefully scrutinize our policy determinations going forward. We invite small entities to submit comment on how the Commission could further minimize potential burdens on small entities if the proposals provided in the *Second FNPRM*, or those submitted into the record, are ultimately adopted.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

41. None.

#### **V. Ordering Clauses**

42. *It is ordered* that, pursuant to authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this *Second Further Notice of Proposed Rulemaking* is hereby adopted.

43. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7-10962 Filed 6-5-07; 8:45 am]

**BILLING CODE 6712-01-P**

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Bliss Rapids Snail (*Taylorconcha serpenticola*) From the List of Endangered and Threatened Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Bliss Rapids snail (*Taylorconcha serpenticola*) from the Federal List of Endangered and Threatened Wildlife (List) pursuant to the Endangered Species Act (Act). We find that the petition presents substantial scientific information that delisting the Bliss Rapids snail may be warranted, and are initiating a status review. We plan to conduct this review concurrent with the ongoing status review initiated on July 27, 2004, which we are required to make every 5 years under section 4(c)(2)(A) of the Act. We are requesting submission of any new information on the Bliss Rapids snail since its original listing as a threatened species in 1992. At the conclusion of our status review, we will make the requisite recommendation under section 4(c)(2)(B) of the Act and issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

**DATES:** The finding announced in this document was made on June 6, 2007. To be considered in the 12-month finding on this petition or the 5-year review, comments and information must be submitted to us by September 4, 2007.

**ADDRESSES:** You may submit new information, materials, comments, or questions concerning this species by any one of the following methods:

1. You may submit comments and information to the Field Supervisor, *Attention:* Bliss Rapids Snail Comments, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709.

2. You may hand-deliver written comments and information to the above address.

3. You may fax your comments to 208-378-5262.

4. You may go to the Federal rulemaking internet portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

5. You may e-mail your comments to [fw1srbocomment@fws.gov](mailto:fw1srbocomment@fws.gov).

Please include "Bliss Rapids Snail Comments" in the subject line for faxes and e-mails. Please submit electronic comments in unformatted text, and avoid the use of special characters and encryption.

**FOR FURTHER INFORMATION CONTACT:** Susan Burch, Fish and Wildlife Biologist, Snake River Fish and Wildlife Office (see **ADDRESSES**); telephone: 208-378-5243; or e-mail: [susan\\_burch@fws.gov](mailto:susan_burch@fws.gov).

**SUPPLEMENTARY INFORMATION:**

## Public Information Solicited

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on the Bliss Rapids snail from the public, State and Federal agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species or its habitat, and threats to the species or its habitat. We also request information regarding the adequacy of existing regulatory mechanisms.

Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*).

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES**) by the date listing in the **DATES** section.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Comments and materials received will be available for public inspection, by appointment, during normal business

hours at the address listed in the **ADDRESSES** section.

## Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is based on information contained in the petition and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make the finding within 90 days of receiving the petition, and publish our notice of the finding in the **Federal Register**.

This finding summarizes the information included in the petition and information available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations in 50 CFR 424.14(b), our review of a 90-day finding is limited to a determination of whether the information in the petition meets the "substantial scientific or commercial information" threshold. Our standard for substantial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

## Species Information

The Bliss Rapids snail (*Taylorconcha serpenticola*) is found primarily on rocky surfaces in riverine and coldwater spring habitats along a 65-mile (mi) (105 kilometer (km)) stretch of the Snake River in the Hagerman area of southern Idaho (Richards *et al.* 2006, pp. 34–35). They can be locally abundant in springs and spring habitats (Richards *et al.* 2006, pp. 37, 99), but when they occur in non spring influenced riverine habitats, it is in low densities (Richards *et al.* 2006, p 37). They are not known to occur in reservoirs or on organic, fine sediments (Richards *et al.* 2006, pp. 21, 23–24). The Bliss Rapids snail appears to be a univoltine, meaning it has a 1-year life cycle and the adult population is replaced yearly (Hershler *et al.* 1994, pp. 239–240); however, they may have more than one reproductive event within a year (Richards 2004, p. 119).

We listed the Bliss Rapids snail as threatened on December 14, 1992 (57 FR

59244). At that time, we determined that the Bliss rapids snail was threatened by construction of new hydropower dams, the operation of existing hydropower dams, degraded water quality, water diversions, the introduced New Zealand mudsnail (*Potamopyrgus antipodarum*), and the lack of existing regulatory protections (57 FR 59244). The Bliss Rapids snail was described as existing in discontinuously distributed populations along 204 river miles (328 river km) in the middle Snake River, being primarily concentrated in the Hagerman reach in tailwaters of Bliss and Lower Salmon Dams and several unpolluted springs (i.e., Thousands Springs, Minnie Miller Springs, Banbury Springs, Niagara Springs, and Box Canyon Springs). We finalized the Snake River Aquatic Species Recovery Plan, which included the Bliss Rapids snail, in 1995 (Service 1995). Critical habitat has not been designated for this species.

## Review of Petition

On December 26, 2006, we received a petition from the Governor of Idaho and the Idaho Power Company (IPC) requesting that the Bliss Rapids snail be removed from the List. The delisting petition cites a recent status review conducted by Richards *et al.* (2006), a review of Bliss Rapids snail sampling methodology prepared by Steward & Associates (2006), and information and data submitted to the Service at an August 24, 2006, informational meeting as support for their petition (Idaho 2006 in litt.). The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). The petition cited information on the natural history of the Bliss Rapids snail, its population status, and advances in our understanding of the species' ecology and threats since listing. The petition states that many of the threats identified in the 1992 listing rule are no longer viable or have been attenuated by subsequent actions. It also states that the Bliss Rapids snail is more abundant, is more continuously distributed, and exists in more diverse habitats than previously recorded.

## Threats Analysis

The factors for listing, delisting, or reclassifying a species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, and/or (3) a determination that the original data used for classification

of the species as endangered or threatened were in error.

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information presented in the December 2006 petition, when considered along with information in our files, constitutes substantial scientific or commercial information such that delisting may be warranted. Our evaluation of this information is presented below.

#### *A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

##### Habitat Use

Petitioners claim that Bliss Rapids snails are able to live in a variety of habitats previously thought to be unsuitable for the species, including reservoirs, based primarily on a status report by Richards *et al.* (2006). Richards *et al.* (2006, p. 3) reviewed the available information on Bliss Rapids snail collections and reported that the species has been found in areas of the Snake River that do not have known spring influence. However, the likelihood of Bliss Rapids snail occurrence decreased with increasing temperature in riverine habitats (Richards *et al.* 2006, p. 42), and the highest mean density for the spring-influenced habitat in the Snake River was 307.2 snails per meter-squared (m<sup>2</sup>), compared to the highest mean density in non spring influenced habitat of 11.7 snails per m<sup>2</sup> (Richards *et al.* 2006, p. 37). Richards *et al.* (2006, p. 54) also reported that more Bliss Rapids snails were found in shallow depths than in deeper ones. Of 607 samples taken in the 3 reservoirs within the range of the Bliss Rapids snail, none contained Bliss Rapids snails (Richards *et al.* 2006, pp. 38–39), and, therefore, the Richards *et al.* (2006) study does not support the petitioners' claim that reservoirs are suitable habitat. Their absence from reservoirs and areas of organic, fine sediments suggests that this species may be limited to aerobic substrates flushed by moving water (Richards *et al.* 2006, p. 23).

At the time of listing, in 1992, we stated that: "Bliss Rapids snails occur

on stable, cobble-boulder substratum only in flowing waters in the unimpounded reaches of [the] mainstem Snake River and also in a few spring alcove habitats in the Hagerman Valley. The species does not burrow in sediments and normally avoids surfaces with attached plants. Known river populations (or colonies) of the Bliss Rapids snail occur only in areas associated with spring influences or rapids edge environments and tend to flank shorelines. They are found at varying depths if dissolved oxygen and temperature requirements persist and are found in shallow (< 1 cm (.4 in)) permanent cold springs (Frest and Johannes 1992a)" (57 FR 59245).

Information in our files suggests that populations are consistently larger, at least in terms of density and relative abundance, in coldwater springs and spring-fed tributaries compared to mainstem Snake River locations (Stephenson and Bean 2003, p. 12; Stephenson *et al.* 2004, pp. 14, 24; Clark *et al.* 2005, pp. 7, 46–47; Richards *et al.* 2006, pp. 37–38, 97–99), and the likelihood of Bliss Rapids snail occurrence decreases with increasing water temperature in riverine habitats (Richards *et al.* 2006, p. 42).

Based on information presented by the petitioner, along with information in our files, most of the basic habitat requirements for Bliss Rapids snails are reaffirmed. Current information documents the occurrence of low densities of Bliss Rapids snails in Snake River reaches without obvious spring influence (based on visual inspection). The petitioners' claim that Bliss Rapids snails can live in reservoirs is not supported by the information provided. In fact, data provided by the petitioner strongly suggest that reservoirs do not provide suitable habitat for the species and likely impede metapopulation connectivity (Richards *et al.* 2006, pp. 38–39, p. 119).

##### Range

The petitioners claim that the species is more widely distributed than previously known. They provided a status report by Richards *et al.* (2006) as the primary source of information to support their claim. Richards *et al.* (2006, pp. 33–34) found that, as of 2006, the Bliss Rapids snail was documented at 837 collection points in the free-flowing mid-Snake River, as compared with less than 15 collection points at the time of listing. Richards *et al.* (2006, pp. 119, 123) also state that Bliss Rapids snails exist as possibly 27 discontinuous populations along the Snake River, including 5 within river habitats and 22 in spring or spring-influenced habitats.

Richards *et al.* (2006, pp. 34–35) state that Bliss Rapids snails were recorded in every one of the 22 non-reservoir miles (35 km) from River Mile (RM) 547.7, upstream to the head of Upper Salmon Falls Reservoir at RM 589.2 (a distance of 41.5 river miles (66.8 river km)). A total of 19.5 of those 41.5 river miles (31.4 of those 66.8 river km) are in-reservoir habitat, and therefore are not suitable for Bliss Rapids snails.

At the time of listing we stated that: "Based on live collections, the species currently exists as discontinuously distributed populations over 204 river miles within its historic range. These populations are primarily concentrated in the Hagerman reach in tailwaters of Bliss and Lower Salmon Dams and several unpolluted springs (i.e., Thousand Springs, Minnie Miller Springs, Banbury Springs, Niagara Springs, and Box Canyon Springs)" (57 FR 59245).

Information in our files now suggests that the farthest upstream population noted in the listing rule (i.e., the observation above American Falls at RM 749.8 (57 FR 59243)) may have been in error. Several factors, when considered together, support this conclusion: (1) The reported observation is 151 river miles (243 river km) away from the nearest confirmed location of the Bliss Rapids snail (i.e., Niagara Springs at RM 599), (2) the vouchered specimen cannot be located, and (3) hundreds of samples for snails have been collected in and above American Falls Reservoir since the reported collection without further evidence of the species at that location.

Given the information provided by the petitioner and other information in our files, we now know the Bliss Rapids snail to be distributed discontinuously over approximately 65 river miles (105 river km), rather than over 204 river miles (328 river km), as we stated in the listing rule (57 FR 59243). However, if we discount the observation above American Falls, which we now believe to be unreliable, the species is more widely and more continuously distributed than previously thought (Richards *et al.* 2006, p. 28).

##### Construction of New Hydropower Dams

The petition states that threats to Bliss Rapids snail habitat from future hydropower development are not as they were perceived when the species was listed in 1992. The petitioners provided the following documents as evidence that hydropower permits are no longer moving forward: (1) A 2002 notice of surrender of preliminary permit for the River Side Project (Federal Energy Regulatory Commission (FERC) 2002), (2) 2002 Federal Energy Regulatory

Commission (FERC) orders denying application for preliminary permits for the Eagle Rock and Star Falls Hydroelectric Projects (FERC 2002a, 2002b), and (3) a 2003 notice of surrender of preliminary permit for the Auger Falls Project (FERC 2003). The petitioners also provided documents from the State of Idaho (Idaho 2006) and Richards *et al.* (2006) indicating that all recent permits for the construction of new dams along the Mid-Snake River reach where the Bliss Rapids snail occurs have either lapsed or have been denied by the FERC.

At the time of listing, there were six active proposals for new hydroelectric projects in the middle-Snake River. In our listing rule, we stated: "Six proposed hydroelectric projects, including two high dam facilities, would alter free flowing river reaches within the existing range of [the Bliss Rapids snail]. Dam construction threatens the [Bliss Rapids snail] through direct habitat modification and moderates the Snake River's ability to assimilate point and non-point pollution. Further hydroelectric development along the Snake River would inundate existing mollusk habitats through impoundment, reduce critical shallow, littoral shoreline habitats in tailwater areas due to operating water fluctuations, elevate water temperatures, reduce dissolved oxygen levels in impounded sediments, and further fragment remaining mainstem populations or colonies of these snails" (57 FR 59251).

We have no information in our files suggesting that future hydropower development in the middle-Snake River is likely to occur; therefore, we accept the petitioner's claim that the threats from hydropower development have dissipated since the time of listing.

#### Operation of Existing Hydropower Dams

The status report provided by the petitioner (Richards *et al.* 2006) states that threats to Bliss Rapids snail habitat from the operation of hydropower dams (i.e., peak loading) are not as they were perceived when the species was listed in 1992. Richards *et al.* (2006, p. 92) state that free-flowing Bliss Rapids snail habitat downstream of the dams is improved because fine sediments settle in the reservoirs above the dams, resulting in reduced fine sediments and increased rocky substrates, the preferred habitat of the Bliss Rapids snail, downstream of the dam. They also state that rapid changes in flow below hydropower dams have not eliminated Bliss Rapids snails from shallow shoreline areas; on the contrary, highest densities of riverine Bliss Rapids snail

populations directly below hydropower dams occurred in the zones of highest flow fluctuations (Richards *et al.* 2006, p. 92).

Richards *et al.* (2006) cite a laboratory exposure study (Richards 2006) that concluded Bliss Rapids snails could survive for many hours to several days in moist conditions (i.e., undersides of cobbles) when air temperatures were greater than 32 °F (0 °C). In an ongoing field study, Richards (unpublished data, cited in Richards *et al.* 2006, pp. 125–126) also found that Bliss Rapids snails could survive on the damp undersides of exposed cobbles alongside the mid-Snake River for up to several days. Because fluctuation of water levels due to load-following only occurred for several hours at a time (William H. Clark, Idaho Power Company, personal communication, cited in Richards *et al.* 2006, p. 126), Richards *et al.* (2006, pp. 125–126) concluded that direct mortality to Bliss Rapids snails from exposure due to load-following events should be minimal. The petitioners did not provide any data that assesses the sub-lethal effects (e.g., impacts to reproduction, food sources, etc.) of peak-loading.

At the time of listing, we stated: "Peak-loading, the practice of artificially raising and lowering river levels to meet short-term electrical needs by local run-of-the-river hydroelectric projects also threatens [the Bliss Rapids snail]. Peak-loading is a frequent and sporadic practice that results in dewatering mollusk habitats in shallow, littoral shoreline areas \* \* \* these diurnal water fluctuations prevent the [Bliss Rapids snail] from occupying the most favorable habitats."

Information in our files suggests that air temperatures within the range of Bliss Rapids snails regularly fall below 32 °F (0 °C) between November and March (Richards 2006, p. 28) and that the amount of time Bliss Rapids snails can survive while exposed to air temperatures below freezing is significantly less than at 32 °F (0 °C) (e.g., in less than an hour, half of the individuals in a laboratory trial subjected to a temperature of 19 °F (–7 °C) died) (Richards 2006, p. 12). Therefore, peak-loading during winter months may cause Bliss Rapids some snail mortality (Richards 2006, p. 15), but field studies have not been conducted to assess the likely impact on the population. Furthermore, we have no data in our files that assesses the sub-lethal effects of peak-loading on Bliss Rapids snails.

Although there are some uncertainties regarding the actual effects of peak-loading on Bliss Rapids snails in the

wild, the petitioners have presented substantial information suggesting that the threats from peak-loading may be less than we perceived at the time of listing.

#### Water Quality

The status report provided by the petitioner (Richards *et al.* 2006, pp. 5–6) states that threats to Bliss Rapids snail habitat from water pollution are not as they were perceived when the species was listed in 1992. Richards *et al.* (2006, pp. 5–6, 86) state that significant nutrient and sediment reduction has occurred in the Snake River following implementation of the Idaho Nutrient Management Act and regulated Total Maximum Daily Load (TMDL) reductions from the mid-1990s to the present.

Hypereutrophy (planktonic algal blooms and nuisance rooted aquatic plant growths), prior to listing in 1992, was very severe during drought cycles when deposition of sediments and organic matter blanketed river substrate, often resulting in unsuitable habitat conditions for Bliss Rapids snails. Although some nutrient and sediment reduction has occurred since listing (Richards *et al.* 2006, p. 5), water quality of the river from RM 600 to 589 is subject to "very large inflows" of agriculture and aquaculture wastewater flowing to the river below Twin Falls to lower Salmon Falls dam at RM 572; as a result, nutrient and sediment concentrations increase during low summer flows (Richards *et al.* 2006, p. 91). Furthermore, the highest densities and occurrence frequencies of Bliss Rapids snails in riverine habitats were immediately downstream of the mid-Snake river reach considered to be the most seriously polluted reach of the river (from Shoshone Falls downstream to Upper Salmon Falls Dam (Richards *et al.* 2006, p. 33)).

Information in our files shows that phosphorus concentrations, the key nutrient leading to hypereutrophic conditions in the middle Snake River, exceeded Environmental Protection Agency (EPA) guidelines for the control of nuisance algae at numerous locations along the Snake River from 1989 to 2002, including areas immediately upstream of Bliss Rapids snail colonies (Hardy *et al.* 2005, p. 13). Several water quality assessments have been completed by the EPA, U.S. Bureau of Reclamation (USBR), and IPC, and all generally agree that water quality in the Snake River of southern Idaho meets Idaho water quality standards for aquatic life for some months of the year, but may not meet these standards when temperatures are high and flows are low

(Meitl 2002, p. 33). Idaho Department of Environmental Quality's (IDEQ) 2005 performance and progress report to the EPA states that projects are meeting the Idaho non-point source pollution program goals (IDEQ 2006, p. 8). However, others report that water quality has not improved appreciably between 1989 and 2002 (Hardy *et al.* 2005, pp. 19–21, 49, 51).

Although the highest densities and occurrence frequencies of Bliss Rapids snails in riverine habitat were recorded immediately downstream of the mid-Snake River reach considered to be the most seriously polluted reach of the river (from Shoshone Falls downstream to Upper Salmon Falls Dam), this reach also receives a large infusion of coldwater spring outflow. No riverine Bliss Rapids snails were detected upstream of Upper Salmon Falls Dam (Richards *et al.* 2006, pp. 31–32, 35–37).

Given the information provided by the petitioner and other information in our files, we find that there are some uncertainties regarding the effects of degraded water quality in the Snake River on Bliss Rapids snails; however, we believe the petitioners have presented substantial information suggesting that the threats from degraded water quality may be less than we perceived at the time of listing.

#### Water Diversions (Springs)

The status report provided by the petitioner (Richards *et al.* 2006, p. 6) states that some coldwater spring habitats within the range of the Bliss Rapids snail previously threatened by water development have been preserved in corporate or public trusteeship.

Information in our files shows that springs occupied by Bliss Rapids snails that are protected from further water development include Thousand Springs, Box Canyon Springs (Newcomer in litt. 2005), and Banbury Springs (Holmstead and Holthuijzen 2005). However, there are hundreds of other springs in the Hagerman Valley, and nearly all exist on private land in areas that have not been surveyed for Bliss Rapids snails due to lack of access. We do not know whether these springs are being protected or whether they have already been developed for aquaculture, hydropower, or irrigation water.

Based on information provided by the petitioner, along with other information in our files, some spring habitats occupied by Bliss Rapids snails are being protected in preserves. However, the status of coldwater springs on some private lands remains largely unknown.

#### Water Diversions (Snake River)

The status report provided by the petitioner (Richards *et al.* 2006, p. 5) states that threats to Bliss Rapids snail habitat from diversion of water from the Snake River for irrigation and aquaculture are not as they were perceived when the species was listed in 1992. According to Richards *et al.* (2006, p. 83), over the past 35 years, the river has experienced higher energy flushing cycles than in the prior 60 years. High mean annual flows reached approximately 18,000 cubic feet per second (cfs) in 1984 and 1997. In 2006, flushing flows had again occurred with sustained mean daily flows at King Hill in excess of 20,000 cfs (Richards *et al.* 2006, pp. 83–84).

At the time of listing, we stated: “Water quality continues to degrade in the middle Snake River from increased water use and withdrawal, aggravated by recent drought-induced low flows. This 121 mile (195 kilometer) stretch of the Snake River [i.e., the middle Snake River] is impacted by agricultural return flows; runoff from between 500 and 600 dairies and feedlots; effluent from over 140 private, state, and Federal fish culture facilities; and point source (e.g., municipal sewage) discharges (Idaho Department of Health and Welfare (IDHW) 1991a). These factors contribute to increased nutrient loads and concentrations which in turn adversely impact the lotic species. Nutrient loading contributes to dense blooms of free-living and attached filamentous algae, which the species cannot utilize. This algae will often cover rock surfaces, effectively displacing suitable snail habitats and food resources. Stream sediments also become anoxic as high biochemical oxygen demand during the aquatic growing season and seasonal algae die offs occur.”

We accept the characterization of the flow data at King Hill provided by the petitioner. However, the petitioners have not explained how a few years of flushing flows reduces the threat of high concentrations of pollutants due to low Snake River flows in other years. Therefore, we find that the petition has not presented substantial information suggesting that threat of mainstem Snake River water diversions to Bliss Rapids snails has diminished.

#### Groundwater Mining

The status report provided by the petitioner (Richards *et al.* 2006, p. 5) states that threats to Bliss Rapids snail coldwater spring influenced habitats from groundwater mining for irrigation and aquaculture are not as they were perceived when the species was listed

in 1992. Average annual spring flows increased from about 4,400 cfs in 1910 to approximately 6,500 cfs in the early 1960s because of widespread flood irrigation causing artificial recharge of the aquifer (Richards *et al.* 2006, p. 84, 87). As a result of more efficient water practices from 1960 to the present (i.e., switching from flood irrigation to more efficient center-pivot irrigation systems) more water was pumped from the aquifer while water percolation into the aquifer declined, resulting in declines in average annual spring flows to about 5,000 cfs (Richards *et al.* 2006, pp. 84, 87).

The petitioners also provided a number of documents indicating that there is a moratorium on some groundwater development in the eastern Snake River plain (Idaho 2004) and that there are current efforts to artificially recharge the Snake River aquifer to stabilize or increase spring flows (Idaho 2005). These efforts have the potential to benefit the Bliss Rapids snails, but their effects have not yet been realized in terms of stable or increasing spring flows (Richards *et al.* 2006, p. 84).

Information in our files shows that there are several in-stream flow targets, set by the State of Idaho, which have the potential to conserve populations of Bliss Rapids snails (IDWR 2006a). However, water rights with earlier priority dates have the right to fill their needs before the minimum stream flow is considered. Senior diversions can legally dewater the stream in a drought year or when low flows occur, leaving no water for the minimum stream flow (IDWR 2006b). Therefore, the current and future conservation benefits of recently established in-stream flow targets for the Bliss Rapids snail are uncertain.

Information provided by the petitioner, along with other information in our files, indicates that the State of Idaho has taken steps to improve groundwater recharge, and limit new groundwater development with the eastern Snake River plain; however, the Snake River Plain aquifer level continues to decline and instream-flow targets and moratoriums on new groundwater development do not prevent those with senior water rights from diminishing flows in drought years or during low flows. Therefore, we find that the petitioners have not presented substantial information indicating that the threat of groundwater mining to the Bliss Rapids snail may be less than the best available information indicated at the time of listing in 1992.

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

The petitioners did not provide information regarding the overutilization of Bliss Rapids snails for commercial, recreational, scientific, or educational purposes, and we do not have information in our files suggesting that this factor is a threat to the species.

### *C. Disease or Predation*

The petitioners did not provide information regarding the effects of disease or predation on Bliss Rapids snails. At the time of listing, we stated that changes in the fish fauna of the middle Snake River had been suggested as a potential threat to the Bliss Rapids snail (57 FR 59254). At that time, we had no data to support this suggestion, and we still have no information in our files suggesting that disease or predation are significant threats to the Bliss Rapids snail.

### *D. The Inadequacy of Existing Regulatory Mechanisms*

The petitioners provided numerous documents regarding water rights, aquifer recharge, and groundwater management in the Snake River and Snake River Plain aquifer (Idaho 2006 in litt.). These documents indicate that the State of Idaho has regulatory mechanisms to limit or exclude the development of new surface water or groundwater rights within the range of the Bliss Rapids snail. These documents also indicate that the State has regulatory mechanisms to prioritize existing water rights based on seniority.

At the time of listing, we found inadequate regulatory mechanisms to be a threat because (1) regulations were inadequate to curb further water withdrawal from groundwater spring outflows or tributary spring streams, (2) it was unlikely that pollution control regulations would reverse the trend in nutrient loading any time soon, (3) there was a lack of protections for invertebrate species in Idaho, and (4) regulations did not require FERC or the U.S. Army Corp of Engineers to address Service concerns regarding licensing hydroelectric projects or permitting projects under the Clean Water Act for unlisted snails.

Information provided by the petitioner, along with information in our files, suggests that the threat to Bliss Rapids snails from inadequate regulatory mechanisms may be less than we perceived at the time of listing. Although there are no regulatory mechanisms in place to prevent senior diversions under current water rights allocations from dewatering the stream

(see Groundwater Mining section above), there are now regulatory mechanisms to limit future surface water and groundwater development, and some pollution control regulations have been implemented (see Water Quality section above).

### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The status report provided by the petitioner (Richards *et al.* 2006, p. 5) states that threats to the Bliss Rapids snail from the New Zealand mudsnail (*Potamopyrgus antipodarum*) are not as they were perceived when the species was listed in 1992. Richards *et al.* (2006, p. 6) note that the New Zealand mudsnail has not caused any local extirpations of Bliss Rapids snails, and that they have not colonized headwater spring habitats. However, in areas where the species do coexist, Richards *et al.* (2006, pp. 61, 64, 68) found that Bliss Rapids snails may be competitively excluded by New Zealand mudsnails, and that Bliss Rapids snail densities would be higher in the absence of New Zealand mudsnails.

At the time of listing, we stated that New Zealand mudsnails were not abundant in coldwater springflows with colonies of Bliss Rapids snails, but that they did compete with the Bliss Rapids snail in the mainstem Snake River (57 FR 59254). We have no direct evidence that New Zealand mudsnails have displaced colonies of Bliss Rapids snails, but New Zealand mudsnails have been documented in dark mats at densities of nearly 400 individuals per square inch in free-flowing habitats within the range of the Bliss Rapids snail (57 FR 59254). Furthermore, New Zealand mudsnails have become established in every spring-fed creek or tributary to the Hagerman Reach that has been surveyed (USFWS 2007).

Based on information provided by the petitioner, along with information in our files, New Zealand mudsnails appear to limit Bliss Rapids snail densities, except in headwater spring habitats. Although the information provided by the petitioners clarifies our understanding of competitive interactions between New Zealand mudsnails and Bliss Rapids snails, the primary conclusions of their review are consistent with our analysis at the time of listing. Therefore, we find that the petitioners have not provided substantial information indicating that the threats to Bliss Rapids snails from New Zealand mudsnails may be less than the best available information indicated at the time of listing in 1992.

### **Finding**

We have reviewed the delisting petition and the supporting documents, as well as other information in our files. We find that the delisting petition and other information in our files presents substantial information that delisting the Bliss Rapids snail may be warranted, and we are initiating a status review. Petitioners have provided a detailed status report that updates the state of knowledge regarding Bliss Rapids snail habitat use, distribution, and threats. The status report provides substantial information indicating that the Bliss Rapids snail is more widely distributed in the Hagerman area of southern Idaho than previously recorded, that it has been documented in areas without obvious spring influence based on visual inspections, and that threats from hydropower development and ongoing operation of hydropower dams may not be what we perceived when we listed the species in 1992. The status report also provides substantial information indicating that additional regulatory mechanisms now exist that could limit water development and water pollution in Bliss Rapids snail habitat. Based on our review of the petition and information in our files, other threats to the species remain, but we will fully evaluate these and determine whether or not delisting is warranted, in our 12-month finding in accordance with section 4(b)(3)(B) of the Act.

### **5-Year Review**

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. We initiated a 5-year review for the Bliss Rapids snail on July 27, 2004 (69 FR 44676). Because we are initiating a 12-month finding with this notice, and because the 12-month finding and 5-year review serve a similar purpose (i.e., to determine the appropriate classification of a species under the Act), the results of our 12-month finding will be adopted for our 5-year review.

### **References**

A complete list of all references cited in this finding is available, upon request, from the Snake River Fish and Wildlife Office (see **ADDRESSES** section).

### **Author**

The primary author of this document is Jesse D'Elia, Pacific Regional Office, Portland, Oregon.

**Authority**

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

Dated: May 25, 2007.

**Randall B. Luthi,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 07-2812 Filed 6-5-07; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Yellow-Billed Loon as Threatened or Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the yellow-billed loon (*Gavia adamsii*) as threatened or endangered, under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted. As a result of this action, the Service also announces the commencement of a thorough status review to determine if listing the yellow-billed loon may be warranted. We ask the public to submit to us any pertinent information concerning the status of or threats to this species. We will also be working with other agencies to gain additional data where gaps in our current information on this species exist. In addition, together with the Bureau of Land Management, the Alaska Departments of Fish and Game and Natural Resources, the U.S. Geological Survey, and the National Park Service, we have developed a Conservation Agreement for the yellow-billed loon, which addresses a subset of threats to the loon in a subset of the species' range. We invite comments on management strategies and research needs that should be considered in annual reviews of the Conservation Agreement.

**DATES:** The finding announced in this document was made on June 6, 2007. To be considered in the 12-month finding for this petition comments and information must be submitted to us by August 6, 2007.

**ADDRESSES:** Data, information, and comments concerning this finding may be submitted by any one of the following methods:

1. You may mail or hand-deliver written comments and information to: Yellow-billed Loon Comments, Endangered Species Branch, Fairbanks Fish and Wildlife Field Office, U.S. Fish and Wildlife Service, 101-12th Ave., Room 110, Fairbanks, AK 99701.

2. You may fax your comments to (907) 456-0208. Please clearly indicate that you are submitting comments for the Yellow-billed Loon finding on the cover sheet.

3. You may send your comments by electronic mail (e-mail) to [YBLoon@fws.gov](mailto:YBLoon@fws.gov). Please see the Public Information Solicited section of this document for information on submitting e-mail comments.

4. You may submit comments via the Internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

The petition, findings, and supporting information are available for public inspection, by appointment, during normal business hours, at the Fairbanks Fish and Wildlife Field Office at the address listed above. The Yellow-billed Loon Conservation Agreement, which addresses a subset of threats to the loon in a subset of the species' range, is available at or can be requested from the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ted Swem, Fairbanks Fish and Wildlife Field Office (see **ADDRESSES**) (telephone 907-456-0441; facsimile 907-456-0208).

**SUPPLEMENTARY INFORMATION:****Public Information Solicited**

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are particularly seeking the following information on the yellow-billed loon:

(1) Additional information on the life history, ecology, and distribution of the species;

(2) The status of the species and any trend information from the United States, Canada, Europe, and Asia;

(3) Potential threats to the species on its nesting grounds, wintering areas, or migration corridors;

(4) Ongoing management measures that may be important with regard to the

conservation of the yellow-billed loon throughout its range;

(5) The extent and nature of the use of the species for subsistence purposes;

(6) The species' tolerance for human interaction and studies documenting flushing distances;

(7) The incidence of mortality as a result of bycatch from fishing on lakes and at sea;

(8) Conservation and management strategies that should be considered for inclusion in annual reviews of the Yellow-billed Loon Conservation Agreement; and

(9) Whether the U.S. breeding population constitutes a distinct population segment.

If you wish to comment, you may submit your comments and materials concerning this finding to the Endangered Species Branch Chief (see **ADDRESSES**). If you wish to comment by e-mail, please include "Attn: Yellow-billed Loon" in the beginning of your message. Please include your name and return address in your e-mail message (anonymous comments will not be considered). If you do not receive a confirmation from the system that we have received your e-mail message, or in the event that our Internet connection is not functional, please submit your comments in writing using one of the alternate methods described above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.