

### How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the ESA establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors— (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the ESA requires that our determination be made on the basis of the best scientific and commercial data available.

### What Could Happen as a Result of This Review?

If we find that there is new information concerning Holmgren milk-vetch, Kanab ambersnail, Maguire daisy, Shivwits milk-vetch, Virgin River chub, and woundfin indicating a change in classification may be warranted, we may propose a new rule that could do one of the following—(a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) remove the species from the List. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

### Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 20, 2006.

### Casey Stemler,

Acting Deputy Regional Director, Denver, Colorado.

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## DEPARTMENT OF INTERIOR

### Fish and Wildlife Service

#### Application From the Nevada Department of Wildlife; Elko, Eureka, Lander, and Nye Counties, NV, for an Enhancement of Survival Permit

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

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** In response to an application from the Nevada Department of Wildlife (Applicant), the Fish and Wildlife

Service (we, the Service) is considering issuance of an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed programmatic Safe Harbor Agreement (SHA) between the Applicant and the Service. The proposed SHA provides for voluntary habitat restoration, maintenance, enhancement, or creation activities to enhance the reintroduction and recovery of Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) within the Humboldt River Distinct Population Segment and the Interior Basin areas in Nevada. The proposed duration of both the SHA and permit is 50 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

**DATES:** Written comments must be received by 5 p.m. on May 8, 2006.

**ADDRESSES:** Please address comments to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, facsimile number (775) 861-6301.

**FOR FURTHER INFORMATION CONTACT:** David Potter, Fish and Wildlife Biologist, (see **ADDRESSES**), telephone (775) 861-6300.

### SUPPLEMENTARY INFORMATION:

#### Document Availability

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the proposed SHA, including a map of the proposed permit area, references, and description of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our Environmental Action Statement. Further, we specifically solicit information regarding the adequacy of the SHA as measured against our permit issuance criteria found in 50 CFR 17.22(c).

Our practice is to make comments, including names and home addresses of

respondents, available for public review during regular business hours. Individual respondents may request that we withhold their identity from the administrative record. We will honor such requests to the extent allowed by law. Respondents wishing us to withhold their identity (e.g., individual name, home address and home phone number) must state this prominently at the beginning of their comments. We will make all submissions from organizations, agencies or businesses, and from individuals identifying themselves as representatives of officials of such entities, available for public inspection in their entirety.

### Background

The primary objective of this proposed SHA is to encourage voluntary habitat restoration, maintenance or enhancement activities to benefit Lahontan cutthroat trout by relieving a landowner who enters into the provisions of a Cooperative Agreement with the Applicant from any additional section 9 liability under the Endangered Species Act beyond that which exists at the time the Cooperative Agreement is signed and Certificate of Inclusion issued ("regulatory baseline"). A SHA encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased listed species populations. Application requirements and issuance criteria for enhancement of survival permits and SHAs are found in 50 CFR 17.22(c). As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the Cooperative Agreement, even if such use results in the take of individual Lahontan cutthroat trout or harm to this species' habitat.

As proposed in the SHA, landowners within the Humboldt River Distinct Population Segment, as identified by the Lahontan Cutthroat Trout Recovery Plan, and the Interior Basin in Nevada, may be enrolled by the Applicant under the SHA. Landowners, as Cooperators, would receive a Certificate of Inclusion when they sign a Cooperative Agreement. The Cooperative Agreement would include: (1) A map of the property; (2) delineation of the portion of the property to be enrolled and its stream mileage/feet; (3) the property's baseline and biological assessment which would include a thorough stream analysis (with photos) of the enrolled

stream miles/feet; (4) a description of the specific conservation measures to be completed; and (5) the responsibilities of the Cooperator and the Applicant.

The Applicant would provide draft copies of the Cooperative Agreement to the Service for an opportunity to review and concur with the recommended management activities and conservation measures. The Service would have a period of 15 business days in which to make comments on the Cooperative Agreement. If no comments were made within 15 business days, the Applicant would proceed to finalize the Cooperative Agreement. The Applicant, as the Permittee, would be responsible for annual monitoring and reporting related to implementation of the SHA and Cooperative Agreements and fulfillment of provisions by the Cooperators. As specified in the proposed SHA, the Applicant would issue yearly reports to the Service related to implementation of the program.

Each Cooperative Agreement would cover conservation activities to create, maintain, restore, or enhance habitat for Lahontan cutthroat trout and achieve species' recovery goals. These actions, where appropriate, could include (but are not limited to): (1) Restoration of riparian habitat and stream form and function; (2) control of stocking rates for livestock (number/density of animals per unit area); (3) repair or installation of fences to protect existing or created habitat from human disturbance; (4) establishment of riparian buffers; and (5) installation of screens on irrigation diversions as well as facilitation of the implementation of other objectives recommended by the Lahontan Cutthroat Trout Recovery Plan. The overall goal of Cooperative Agreements entered into under the proposed SHA is to produce conservation measures that are mutually beneficial to the Cooperators and the long-term existence of Lahontan cutthroat trout.

Based upon the probable species' response time for Lahontan cutthroat trout to reach a net conservation benefit, the Service estimates it will take 5 years of implementing the planned conservation measures to fully reach a net conservation benefit; some level of benefit would likely occur within a shorter time period. Most Cooperative Agreements under the proposed SHA are expected to have at least 10 years' duration.

After maintenance of the restored/created/enhanced Lahontan cutthroat trout habitat on the property for the agreed-upon term, Cooperators may then conduct otherwise lawful activities on their property that result in the

partial or total elimination of the habitat improvements and the taking of Lahontan cutthroat trout. However, the restrictions on returning a property to its original baseline condition include: (1) The Cooperator must demonstrate that baseline conditions were maintained during the term of the Cooperative Agreement and the conservation measures necessary for achieving a net conservation benefit were carried out; (2) the Applicant and the Service will be notified a minimum of 30 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any Lahontan cutthroat trout; and (3) return to baseline conditions must be completed within the term of the Certificate of Inclusion issued to the Applicant. Cooperative Agreements could be extended if the Applicant's permit is renewed and that renewal allows for such an extension.

The Service has made a preliminary determination that approval of the proposed SHA qualifies for a categorical exclusion under NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

#### Decision

The Service provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, the proposed SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the

ESA to the Applicant for take of the Lahontan cutthroat trout incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: March 22, 2006.

**Robert D. Williams,**  
Field Supervisor, Nevada Fish and Wildlife  
Office, Reno, Nevada.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Pueblo of Santa Ana Liquor Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Pueblo of Santa Ana Liquor Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Pueblo of Santa Ana Indian Reservation. The Reservation is located on trust land and this Ordinance allows for possession and sale of alcoholic beverages within the exterior boundaries of the Pueblo of Santa Ana Indian Reservation. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

**DATES:** *Effective Date:* This Ordinance is effective on April 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Iris A. Drew, Tribal Government Services Officer, Southwest Regional Office, 1001 Indian School Road, NW., Albuquerque, New Mexico 87104, Telephone: (505) 563-3530; Fax: (505) 563-3060; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 320-SIB, Washington, DC 20240, Telephone: (202) 513-7629.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Santa Ana Tribal Council approved amendments to its Liquor Ordinance by