www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler of the Air Regulatory Management Section at the Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is 404–562–9992. She can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: March 25, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–07816 Filed 4–4–16; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List Island Marble Butterfly, San Bernardino Flying Squirrel, Spotless Crake, and Sprague's Pipit as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list the island marble butterfly, the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit as endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the island marble butterfly as an endangered or threatened species is warranted. Currently, however, listing the island marble butterfly is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the island marble butterfly to our candidate species list. We will develop a proposed rule to list the island marble butterfly as our priorities allow. After review of the best available scientific and commercial information, we find that listing the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the stressors to the San Bernardino flying squirrel, the American Samoa population of the spotless crake, the Sprague's pipit, or their habitats at any time.

DATES: The findings announced in this document were made on April 5, 2016.

ADDRESSES: These findings are available on the Internet at *http://www.regulations.gov* at the following docket numbers:

Species	Docket No.
Island marble butterfly	FWS–R1–ES–2014–0025.
San Bernardino flying squirrel	FWS–R8–ES–2016–0046.
American Samoa population of the spotless crake	FWS–HQ–ES–2016–0048.
Sprague's pipit	FWS–R6–ES–2009–0081.

Supporting information used in preparing these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Island marble butterfly	Eric V. Rickerson, State Supervisor, Washington Fish and Wildlife Office, 360–753–9440; *eric_rickerson@fws.gov.*
San Bernardino flying squirrel	Mendel Stewart, Field Supervisor, Carlsbad Fish and Wildlife Office, 760–731–9440; *mendel_stewart@fws.gov.*
American Samoa population of the Spotless crake.	Mary Abrams, Project Leader, Pacific Islands Fish and Wildlife Office, 808–792–9400; *mary_abrams@fws.gov.*

Species	Contact information
Sprague's pipit	Kevin Shelley, State Supervisor, North Dakota Ecological Services Field Office, 701–250–4402; *kevin_shelley@fws.gov.*

If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information indicating that listing an animal or plant species may be warranted, we make a finding within 12 months of the date of receipt of the petition (''12-month finding''). In this finding, we determine whether listing the island marble butterfly, the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit is: (1) Not warranted; (2) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants (warranted but precluded). Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species based on any of the following five 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.

We summarize below the information on which we based our evaluation of the five factors provided in section 4(a)(1) of the Act in determining whether the island marble butterfly, the San Bernardino flying squirrel, the American Samoa population of the spotless crake, and the Sprague's pipit are endangered species or threatened species. More detailed information about these species is presented in the species-specific assessment forms found on *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**). In considering what stressors under the five factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat. In that case, we determine if that stressor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely affected could suffice. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these stressors are operative threats that act on the species to the point that the species meets the definition of an endangered species or a threatened species under the Act.

In making our 12-month findings, we considered and evaluated the best available scientific and commercial information.

Island Marble Butterfly (*Euchloe ausonides insulanus*)

Previous Federal Actions

On December 11, 2002, we received a petition dated December 10, 2002, from the Xerces Society for Invertebrate Conservation (Xerces), Center for Biological Diversity, Friends of the San Juans, and Northwest Ecosystem Alliance, requesting that we emergency list the island marble butterfly as an endangered species, and that we designate critical habitat concurrently with the listing. The petition clearly identified itself as such and included the requisite identification information from the petitioner, required at 50 CFR 424.14(a). Because the Act does not provide for petitions to emergency list species, we treat emergency listing petitions as petitions to list the species. On February 13, 2006, we published a 90-day finding in the **Federal Register** (71 FR 7497) concluding that the petition presented substantial scientific information indicating that listing the island marble butterfly may be warranted. On November 14, 2006, we published a notice of 12-month petition finding, concluding that the island marble butterfly did not warrant listing (71 FR 66292). Please see that 12-month finding for a complete summary of all previous Federal actions for this subspecies.

On August 24, 2012, we received a second petition from Xerces dated August 22, 2012, requesting that we emergency list the island marble butterfly as an endangered species and that we designate critical habitat concurrently with the listing. The petition clearly identified itself as such and included the requisite identification information from the petitioner, required at 50 CFR 424.14(a). Included in the petition was supporting information regarding the subspecies' taxonomy, ecology, historical and current distribution, current status, and what the petitioner identified as actual and potential causes of decline. We acknowledged the receipt of the petition in a letter to Xerces, dated September 27, 2012. In that letter we also stated that we would, to the maximum extent practicable, issue a finding within 90 days stating whether the petition presented substantial information indicating that listing may be warranted.

On March 6, 2013, we received a notice of intent to sue from Xerces for failure to complete the finding on the petition within 90 days. On January 28, 2014, we entered into a settlement agreement with Xerces stipulating that

we would complete the 90-day finding before September 30, 2014. We published our 90-day finding in the **Federal Register** on August 19, 2014 (79 FR 49045). In that finding, we concluded that the petition presented substantial scientific information indicating that listing the island marble butterfly may be warranted. The settlement agreement did not specifically stipulate a deadline for a subsequent 12-month finding.

We received a notice of intent to sue from Xerces dated September 5, 2014, stating the organization's intent to file suit to compel the Service to issue a 12-month finding as to whether listing the island marble butterfly is warranted, not warranted, or warranted but precluded. We entered into a settlement agreement with Xerces on April 6, 2015, stipulating that we would submit a 12-month finding to the **Federal Register** on or before March 31, 2016. This document constitutes the 12-month finding on the August 22, 2012, petition to list the island marble butterfly as an endangered species.

To ensure the status review was based on the best scientific and commercial information available, the Service requested any new or updated information available for the island marble butterfly when we published our 90-day finding on August 19, 2014. On February 13, 2016, we published a correction to our 90-day finding (80 FR 5719) to address a clerical error affecting the closing date for the initial public comment period; the comment period on the 90-day finding closed on April 6, 2015.

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including Federal, State, tribal, academic, and private entities and the public. However, because we completed a status review for the subspecies in 2006, we started our evaluation for this 2016 status review and 12-month finding by considering the November 14, 2006, 12-month finding (71 FR 66292) on the island marble butterfly.

We then considered studies and information that have become available since that finding. A supporting document entitled ''Notice of 12-month petition finding on a petition to list the Island marble butterfly'' provides a summary of the current (post 2006) literature and information regarding the island marble butterfly's distribution, habitat requirements, life history, and stressors, as well as a detailed account of our five-factor threat analysis. The assessment is available as a supplemental document at Docket No. FWS–R1–ES–2014–0025.

The island marble butterfly is an early-flying Pierid butterfly (meaning that it is in the family of butterflies that includes ''whites'' and ''sulfurs'') and only produces a single brood a year. The island marble butterfly is now only found on San Juan Island in a single population centered on American Camp. There are three known plants that can serve as larval host plants for the island marble butterfly, all in the mustard family (Brassicaceae): *Lepidium virginicum* var. *menziesii* (Menzies' pepperweed), a native species; *Brassica rapa* (field mustard), a nonnative species; and *Sisymbrium altissimum* L. (tumble mustard), a nonnative species. Each larval host plant is associated with a specific habitat type, and each is subject to different stressors; for example, Menzies' pepperweed grows in coastal, nearshore habitat and is subject to inundation and storm surge damage, whereas tumble mustard grows primarily in higher elevation sand-dune habitat where dune stabilization and competition with weedy species degrade habitat quality. The island marble butterfly primarily nectars on its larval host plants, but also nectars on a wide variety of additional native and nonnative species.

The island marble butterfly progresses from egg to chrysalis over the course of 38 days, on average, and may spend greater than 330 days in diapause before emerging as adults in late April or early May. Males generally emerge a few days before females and adults live between 6 and 9 days. The adult flight season generally begins in late April to early May and may extend into late June or early July.

Our 2006 12-month finding and the status review conducted for our 2016 12-month finding both considered a number of stressors (natural or human-induced negative pressures affecting individuals or subpopulations of a species) on the island marble butterfly. These include habitat loss attributed to: Development; road construction; road maintenance activities; grassland restoration; agricultural practices; herbivory by black-tailed deer, livestock, European rabbits, and brown garden snails; storm surges; recreation; plant succession; and competition with invasive species. We also evaluated the stressors of over-collection; disease and predation; inadequacy of regulatory mechanisms; small population size and vulnerability to stochastic events; vehicular collisions; insecticide application; and the cumulative effects of these stressors, including small population size and restricted range combined with any stressor that removes individuals from the population or decreases the island marble butterfly's reproductive success.

Habitat loss for the island marble butterfly is extensive and ongoing, and has resulted in the extirpation of the island marble butterfly from much of its former range due, in large part, to: (1) Development; (2) road maintenance activities; (3) agricultural practices; and (4) herbivory by black-tailed deer and livestock. The last known population of the island marble butterfly is centered on American Camp, a unit of the San Juan Island National Historical Park that is managed by the National Park Service, and we evaluated stressors to habitat within the current range of the subspecies. We conclude that herbivory by black-tailed deer and European rabbits, plant succession and competition with invasive species, and a projected increased frequency in storm surges reduce or destroy habitat for the island marble butterfly at American Camp and constitute a threat to the subspecies.

We did not find substantive evidence to conclude that habitat loss attributable to development, road construction, road maintenance activities, agricultural practices, herbivory by livestock and brown garden snails, or recreation are threats at this time. The island marble butterfly occurs almost entirely in National Park Service land. The National Park Service constructed deer exclusion fencing around virtually all suitable island marble butterfly habitat in the park. The fencing has the additional benefit of discouraging park visitors from inadvertently walking through areas potentially occupied by the island marble butterfly. While it is possible that recreation may cause a loss of larval habitat and trampling of individuals in some small portions of the park, we find that the effects of recreation alone do not rise to the level of a threat to the island marble butterfly at this time.

We further considered whether predation is a threat to the island marble butterfly. Direct predation by spiders (on larvae and adults) and wasps (on larvae) accounts for a significant proportion of mortality for the island marble butterfly where grazers are excluded. Where grazers cannot be excluded, incidental predation by browsing black-tailed deer accounts for a high proportion of mortality for eggs and larvae of the island marble butterfly, as deer preferentially eat the flowering heads of the larval host plants where the island marble butterflies lay

their eggs. We conclude that direct and incidental predation is a threat to the island marble butterfly.

We reviewed all Federal, State, and local laws, regulations, and other regulatory mechanisms, as well as any conservation efforts, that could reduce or minimize the threats we have identified to the subspecies; we found that existing regulatory mechanisms are being implemented within their scope and provide some benefit to the island marble butterfly.

American Camp, as part of San Juan Island National Historic Park, is managed under the National Park Service's Organic Act and implementing regulations, which promote natural resource conservation in the park and prohibit the collection of the island marble butterfly on lands managed by the park In addition, under the General Management Plan for the park, the National Park Service is required to follow the 2006 Conservation Agreement and Strategy for the Island Marble Butterfly. Conservation actions for the island marble butterfly include restoring native grassland ecosystem components at American Camp; avoiding management actions that would destroy host plants; avoiding vegetation treatments in island marble butterfly habitat when early life-stages are likely to be present; and implementing a monitoring plan for the subspecies.

The island marble butterfly is currently classified as a candidate species by the State of Washington. The Washington Department of Natural Resources owns the Cattle Point Natural Resources Conservation Area consisting of 112 acres directly to the east of American Camp, a portion of which provides potentially suitable habitat for island marble butterflies. Natural Resource Conservation Areas are managed to protect outstanding examples of native ecosystems; habitat for endangered, threatened, and sensitive plants and animals; and scenic landscapes. Removal of any plants or soil is prohibited unless written permission is obtained from Washington Department of Natural Resources. In addition, state- and county-level regulatory mechanisms that influence development and zoning on San Juan and Lopez islands are generally beneficial to suitable habitat that could be occupied by the island marble butterfly in the future.

Given that the very small population at American Camp is likely the only remaining population of the subspecies, we conclude that small population size makes it particularly vulnerable to a number of likely stochastic events that remove individuals from the population or decrease its reproductive success. We further find that the increased frequency and strength of storm surges associated with climate change is a threat to the island marble butterfly.

The scope of the regulatory mechanisms that are currently in place is not sufficient to ameliorate these threats to the subspecies, including habitat loss from herbivory, plant succession, competition with invasive species, and increased frequency and strength of storm surges; predation; and small population size. Therefore, the habitat loss and mortality due to these stressors, when considered in conjunction with small population size and the restricted range of the subspecies, results in cumulative effects that pose a threat to the island marble butterfly.

There is no substantiated evidence that overutilization, either scientific or commercial, is a threat to the island marble butterfly. Similarly, there is no evidence that disease is a threat to the subspecies. Vehicle collisions are a likely stressor, but there is significant uncertainty regarding the extent of negative impacts on the island marble butterfly attributable to vehicular collisions. The best available information does not indicate that vehicular collisions pose a threat to the subspecies at this time. Insecticide application could negatively affect the island marble butterfly, if it were to take place in occupied habitat, but the best available information does not indicate that insecticide use is a threat at this time.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we identified the following threats: (1) Habitat loss attributable to plant succession and competition with invasive species, herbivory by deer and European rabbits, and storm surges; (2) direct predation by spiders and wasps, and incidental predation by deer; (3) small population size and vulnerability to stochastic events; and (4) the cumulative effects of small population size and restricted range combined with any other stressor that removes individuals from the population or decreases the island marble butterfly's reproductive success. These threats have affected the island marble butterfly throughout the entirety of its range, are ongoing, and are likely to persist into the foreseeable future. When considered individually and cumulatively, these threats are of a high magnitude. Despite existing regulatory mechanisms and other conservation efforts, the threats to the subspecies remain sufficient to put the subspecies is in danger of extinction or likely to become so in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the island marble butterfly as an endangered or a threatened species is warranted. We will make a determination on the status of the subspecies as an endangered or threatened species when we publish a proposed listing determination. However, the immediate proposal of a regulation implementing this action is precluded by higher-priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the subspecies at risk of extinction now such that issuing an emergency regulation temporarily listing the subspecies under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the island marble butterfly is not warranted for this subspecies at this time because there are no imminent threats that immediate Federal protection would feasibly ameliorate. However, if at any time we determine that issuing an emergency regulation temporarily listing the island marble butterfly is warranted, we will initiate emergency listing at that time.

We assigned the island marble butterfly a listing priority number (LPN) of 3 based on our finding that the subspecies faces threats that are imminent and of high magnitude. These threats include: (1) Habitat loss attributable to plant succession and competition with invasive species, herbivory by deer and European rabbits, and storm surges; (2) direct predation by spiders and wasps, and incidental predation by deer; (3) small population size and vulnerability to stochastic events; and (4) the cumulative effects of small population size and restricted range combined with any other stressor that removes individuals from the population or decreases the island marble butterfly's reproductive success. This is the highest priority that can be provided to a subspecies under our guidance.

The island marble butterfly will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate this subspecies as new information becomes available. Continuing review

will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing determination for the island marble butterfly will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

Preclusion and Expeditious Progress

To make a finding that a particular action is warranted-but-precluded, the Service must make two findings: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending listing proposals; and (2) that expeditious progress is being made to add qualified species to either of the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)).

Preclusion

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions: (1) The amount of resources available for completing the proposed listing; (2) the estimated cost of completing the proposed listing; and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

Available Resources

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program. This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the Act (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual ''resubmitted'' petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating or revising critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

We cannot spend more for the Listing Program than the amount of funds within the spending cap without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, since FY 2002, the Service's budget has included a subcap for critical habitat to ensure that some funds within the spending cap for listing are available for completing Listing Program actions other than critical habitat designations for already-listed species (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session. June 19, 2001)). In FY 2002 and each year until FY 2006, the Service had to use virtually all of the funds within the critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the funds within the critical habitat subcap were available for other listing activities. In some FYs since 2006, we have not needed to use all of the funds within the critical habitat subcap to comply with court orders, and we therefore could use the remaining funds within the subcap towards additional proposed listing determinations for high-priority candidate species. In other FYs, while we did not need to use all of the funds within the critical habitat subcap to comply with court orders, we did not use the remaining funds towards additional proposed listing determinations, and instead used the remaining funds towards completing critical habitat determinations concurrently with proposed listing determinations; this allowed us to combine the proposed listing determination and proposed critical habitat designation into one rule, thereby being more efficient in our work. In FY 2014, based on the Service's workload, we were able to use some of the funds within the critical habitat subcap to fund proposed listing determinations.

For FY 2012, Congress also put in place two additional subcaps within the listing cap: One for listing actions for foreign species and one for petition findings. As with the critical habitat subcap, if the Service does not need to use all of the funds within either subcap, we are able to use the remaining funds for completing proposed or final listing determinations. In FY 2016, based on the Service's workload and available funding, we may use some of the funds within the critical habitat subcap, foreign species subcap, and/or the petitions subcap to fund proposed listing determinations if necessary.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the three subcaps, and the amount of funds needed to complete court-mandated actions within those subcaps, Congress and the courts have in effect determined the amount of money available for listing activities nationwide. Therefore, the funds in the listing cap—other than those within the subcaps needed to comply with court orders or court-approved settlement agreements requiring critical habitat actions for already-listed species, listing actions for foreign species, and petition findings—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2016, on December 18, 2015, Congress passed a Consolidated Appropriations Act (Pub. L. 114–113), which provides funding through September 30, 2016. In particular, it includes an overall spending cap of $20,515,000 for the listing program. Of that, no more than $4,605,000 can be used for critical habitat determinations; no more than $1,504,000 can be used for listing actions for foreign species; and no more than $1,501,000 can be used to make 90-day or 12-month findings on petitions. The Service thus has $12,905,000 available to work on proposed and final listing determinations for domestic species. In addition, if the Service has funding available within the critical habitat, foreign species, or petition subcaps after those workloads have been completed, it can use those funds to work on listing actions other than critical habitat designations or foreign species.

Costs of Listing Actions. The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis

for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information from those comments into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with proposed critical habitat, $345,000; and for a final listing rule with final critical habitat, $305,000.

Prioritizing Listing Actions. The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) section 4 (of the Act) listing and critical habitat actions with absolute statutory deadlines; (3) essential litigation-related, administrative, and listing program-management functions; and (4) section 4 listing actions that do not have absolute statutory deadlines. In FY 2010, the Service received many new petitions and a single petition to list 404 species, significantly increasing the number of actions within the second category of our workload—actions that have absolute statutory deadlines. As a result of the petitions to list hundreds of species, we currently have over 460 12-month petition findings yet to be initiated and completed.

To prioritize within each of the four types of actions, we developed guidelines for assigning a listing priority number (LPN) for each candidate species (48 FR 43098, September 21, 1983). Under these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); a species; or a part of a species (subspecies or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species. This is not the case for the island marble butterfly. Thus, in addition to being precluded by the lack of available resources, the island marble butterfly, with an LPN of 3, is also precluded by work on proposed listing determinations for those candidate species with a higher listing priority.

Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. It is therefore important that we be as efficient as possible in our listing process. Therefore, as we implement our listing work plan and work on proposed rules for the highest-priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest priority species. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

Listing Program Workload. Each FY we determine, based on the amount of funding Congress has made available within the Listing Program spending cap, specifically which actions we will have the resources to work on in that FY. We then prepare Allocation Tables that identify the actions that we are funding for that FY, and how much we estimate it will cost to complete each action; these Allocation Tables are part of our record for this notice document and the listing program. Our Allocation Table for FY 2012, which incorporated the Service's approach to prioritizing its workload, was adopted as part of a settlement agreement in a case before the U.S. District Court for the District of Columbia (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (''MDL Litigation''), Document 31–1 (D. DC May 10, 2011) (''MDL Settlement Agreement'')). The requirements of paragraphs 1 through 7 of that settlement agreement, combined with the work plan attached to the agreement as Exhibit B, reflected the Service's Allocation Tables for FY 2011 and FY 2012. In addition, paragraphs 2 through 7 of the agreement require the Service to take numerous other actions through FY 2017—in particular, complete either a proposed listing rule or a not-warranted finding for all 251 species designated as ''candidates'' in the 2010 candidate notice of review (''CNOR'') before the end of FY 2016, and complete final listing determinations within one year of proposing to list any of those species. Paragraph 10 of that settlement agreement sets forth the Service's conclusion that ''fulfilling the commitments set forth in this Agreement, along with other commitments required by court orders or court-approved settlement agreements already in existence at the signing of this Settlement Agreement (listed in Exhibit A), will require substantially all of the resources in the Listing Program.'' As part of the same lawsuit, the court also approved a separate settlement agreement with the other plaintiff in the case; that settlement agreement requires the Service to complete additional actions in specific fiscal years—including 12-month petition findings for 11 species, 90-day petition findings for 477 species, and proposed listing determinations or not-warranted findings for 39 species.

These settlement agreements have led to a number of results that affect our preclusion analysis. First, the Service has been, and will continue to be, limited in the extent to which it can undertake additional actions within the Listing Program through FY 2017, beyond what is required by the MDL settlement agreements. Second, because the settlement is court-approved, two broad categories of actions now fall within the Service's highest priority (compliance with a court order): (1) The Service's entire prioritized workload for FY 2012, as reflected in its Allocation Table; and (2) completion, before the end of FY 2016, of proposed listings or not-warranted findings for the candidate species identified in the 2010 CNOR for which we have not yet proposed listing or made a not-warranted finding. Therefore, each year, one of the Service's highest priorities is to make steady progress towards completing by the end of 2017 proposed and final listing determinations for the 2010 candidate species—based on its LPN prioritization system, preparing multi-species actions when appropriate, and taking into consideration the availability of staff resources.

The island marble butterfly was not listed as a candidate in the 2010 CNOR, nor was the proposed listing for the island marble butterfly included in the Allocation Tables that were reflected in the MDL settlement agreement. As we have discussed above, we have assigned an LPN of 3 to the island marble butterfly. Therefore, even if the Service has some additional funding after completing all of the work required by court orders and court-approved settlement agreements, we would first fund actions with absolute statutory deadlines for species that have LPNs of 1 or 2. In light of all of these factors, funding a proposed listing for the island marble butterfly is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a lower LPN.

Expeditious Progress

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resources available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. Thus far, during FY 2016, we have completed four delisting rules.) As discussed below, given the limited resources available for listing, we find that we are making expeditious progress in adding qualified species to the Lists in FY 2016.

We provide below tables cataloguing the work of the Service's Listing Program in FY 2016. Making progress towards adding qualified species to the lists includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that warrant listing; (2) undertaking the evaluation of the best available scientific information about those species and the threats they face, and preparing proposed and final listing rules; and (3) adding species to the Lists by publishing proposed and final listing rules that include a summary of the data on which the rule is based and show the relationship of that data to the rule. After taking into consideration the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress to add qualified species to the Lists in FY 2016.

Our accomplishments this year should also be considered in the broader context of our commitment to reduce the number of candidate species in the 2010 CNOR for which we have not made final determinations whether or not to list. The MDL Settlement Agreement, which the court approved on May 10, 2011, required, among other things, that for all 251 species that were included as candidates in the 2010 CNOR, the Service submit to the **Federal Register** proposed listing rules or not-warranted findings by the end of FY 2016, and that for any proposed listing rules, the Service complete final listing determinations within the statutory time frame. Paragraph 6 of the agreement provided indicators that the Service is making adequate progress towards meeting that requirement. To date, the Service has completed proposed listing rules or not-warranted findings for 200 of the 2010 candidate species, as well as final listing rules for 143 of those proposed rules, and is therefore is making adequate progress towards meeting all of the requirements of the MDL settlement agreement. Both by entering into the settlement agreement and by implementing the settlement agreement—including making adequate progress towards making final listing determinations for the 251 species on the 2010 candidate list—the Service is making expeditious progress to add qualified species to the lists.

The Service's progress in FY 2016 included completing and publishing the following determinations:

FY 2016 Completed Listing Actions

Publication date	Title	Actions	FR Pages
12/22/2015	90-day and 12-month Findings on a Petition to List the Miami Tiger Beetle as an Endangered or Threatened Species; Proposed Endangered Species Status for the Miami Tiger Beetle.	90-day and 12-month petition findings—substantial and warranted. Proposed listing Endangered	80 FR 79533–79554.
1/6/2016	12-Month Finding on a Petition to List the Alexander Archipelago Wolf as an Endangered or Threatened Species.	12 month petition finding Not warranted	81 FR 435–458.
1/12/2016	90-Day Findings on 17 Petitions	90-day petition findings Substantial and not substantial	81 FR 1368–1375.
3/16/2016	90-Day Findings on 29 Petitions	90-day petition findings Substantial and not substantial	81 FR 14058–14072.

Our expeditious progress also included work on listing actions that we funded in previous fiscal years, and in FY 2016, but have not yet been completed to date. For these species, we have completed the first step, and have been working on the second step, necessary for adding species to the Lists. These actions are listed below. Actions in the table are being conducted under a deadline set by a court through a court order or settlement agreement.

Actions Funded in Previous FYs and FY 2016 But Not Yet Completed

Species	Action
Actions Subject to Court Order/Settlement Agreement:.	
Fisher (West Coast DPS)	Final listing.
Washington ground squirrel	Proposed listing.

ACTIONS FUNDED IN PREVIOUS FYS AND FY 2016 BUT NOT YET COMPLETED—Continued

Species	Action
Xantus's murrelet	Proposed listing.
4 Florida plants (Florida pineland crabgrass, Florida prairie clover, pineland sandmat, and Everglades bully).	Proposed listing.
Black warrior waterdog	Proposed listing.
Black mudalia	Proposed listing.
Highlands tiger beetle	Proposed listing.
Sicklefin redhorse	Proposed listing.
Texas hornshell	Proposed listing.
Guadalupe fescue	Proposed listing.
Stephan's riffle beetle	Proposed listing.
Huachuca springsnail	Proposed listing.
Actions Subject to Statutory Deadline:.	
11 DPSs of green sea turtle	Final listing.
Big Sandy and Guyandotte River crayfishes	Final listing.
Virgin Islands coqui	12-month petition finding.

Another way that we have been expeditious in making progress to add qualified species to the Lists is that we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these efforts also contribute towards finding that we are making expeditious progress to add qualified species to the Lists.

San Bernardino Flying Squirrel (*Glaucomys sabrinus californicus*)

Previous Federal Actions

We recognized in four notices of review published in the **Federal Register** that listing the San Bernardino flying squirrel was potentially warranted. On September 18, 1985, the Service issued the first notice identifying vertebrate animal taxa native to the United States being considered for possible addition to the List of Endangered and Threatened Wildlife (List), including the San Bernardino flying squirrel (50 FR 37958). Subsequently, we issued three additional notices, dated January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), that presented an updated compilation of vertebrate and invertebrate animal taxa native to the United States, including the San Bernardino flying squirrel, that we were reviewing for possible addition to the List. This subspecies was categorized in these reviews as a category 2 (C2) taxon, meaning that listing was possibly appropriate but more information was needed before a final decision to list could be made. In the February 28, 1996, notice of review (61 FR 7596), we discontinued the designation of C2 species. Most C2 species were removed from the candidate list, including the San Bernardino flying squirrel.

On August 25, 2010, we received a petition dated August 24, 2010, from the Center for Biological Diversity (CBD), requesting that we list the San Bernardino flying squirrel as endangered or threatened and designate critical habitat concurrent with listing under the Act. The petition clearly identified itself as a petition, was dated, and included the requisite identification information required at 50 CFR 424.14(a). On October 5, 2010, we sent the petitioner a letter acknowledging our receipt of the petition, and responded that we had reviewed the information presented in the petition and had not identified any emergency posing a significant risk to the well-being of the species that would make immediate listing of the species under section 4(b)(7) of the Act necessary. We also stated that, due to court orders and court-approved settlement agreements for other listing and critical habitat determinations under the Act, our listing and critical habitat funding for Fiscal Year 2011 was committed to other projects. We said that we would be unable to make an initial finding on the petition at that time, but would complete the action when workload and funding allowed. On February 1, 2012, we published in the **Federal Register** a 90-day finding (77 FR 4973) that the petition presented substantial information indicating that listing may be warranted and initiated a status review.

On June 17, 2014, CBD sent a notice of intent to sue on our failure to complete a 12-month finding on the San Bernardino flying squirrel. On September 22, 2014, we reached a settlement with CBD (*Center for Biological Diversity* v. *Jewell et al.,* No. 1:14-cv-01021–EGS). The settlement stipulated that we would submit our 12-month finding to the **Federal Register** by April 29, 2016. This document constitutes the 12-month finding on the August 24, 2010, petition to list the San Bernardino flying squirrel as an endangered or threatened species and fulfills our settlement obligation.

This finding is based upon the Species Status Assessment titled ''Final Species Status Assessment for San Bernardino Flying Squirrel *(Glaucomys sabrinus californicus)*'' (Service 2016) (Species Status Assessment), a scientific analysis of available information prepared by a team of Service biologists from the Service's Carlsbad Fish and Wildlife Office, Pacific Southwest Regional Office, and National Headquarters Office. The purpose of the Species Status Assessment is to provide the best available scientific and commercial information about San Bernardino flying squirrel so that we can evaluate whether or not the subspecies warrants protection under the Act. In the Species Status Assessment, we present the best scientific and commercial data available concerning the status of the subspecies, including past, present, and future stressors. As such, the Species Status Assessment provides the scientific basis that informs our regulatory decision in this document. In this 12-month finding, we apply the standards of the Act and its regulations and policies. The Species Status Assessment can be found on the Internet at *http://www.regulations.gov,* under Docket No. FWS–R8–ES–2016–0046.

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and

commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public.

The San Bernardino flying squirrel is 1 of 25 recognized subspecies of the northern flying squirrel. It is currently only known from the San Bernardino Mountains region. It was previously known to occur in the San Jacinto Mountains. The San Bernardino flying squirrel has not been observed in the San Jacinto Mountain since the 1990s; however, extensive surveys have not been conducted in this area. The habits and population biology of the San Bernardino flying squirrel have not been extensively studied throughout its presumed range.

The San Bernardino flying squirrel is an arboreal (lives in trees) rodent, active year-round, and primarily nocturnal. Individual characteristics of mature or older forested habitat indicate that large-diameter trees, large snags, coarse woody debris, and truffle abundance have been found to be directly related to population densities of the northern flying squirrel. The San Bernardino flying squirrel has been observed in many residential settings and appears to be adaptable to lower density development and residential-forest habitats, as reported in other flying squirrel populations, as long as habitat features such as den sites and canopy cover are available.

The potential threats (identified in the Species Status Assessment as ''stressors'' or ''potential stressors'') that may be acting upon the San Bernardino flying squirrel currently or in the future (and consistent with the five listing factors identified in section 4(a)(1) of the Act) were described in the Species Status Assessment (Service 2016, pp. 27–66) (available at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0046). Our 2016 Species Status Assessment included summary evaluations of six potential stressors to the San Bernardino flying squirrel that may have low or medium-level impacts on the subspecies or its habitat, including habitat loss from urban development (Factor A), habitat fragmentation (Factor A), wildland fire fuel treatment (Factor A), wildland fire (Factor A and Factor E), urban air pollution (Factor A), and climate change (Factor A). We evaluated potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C), but found that the subspecies has not been exposed to these stressors at a level sufficient to result in more than low or no impacts, overall, across the subspecies' range (see Service 2016, pp. 36–39).

Where possible, we analyzed whether potential stressors are acting upon the subspecies for both the San Bernardino Mountains and the San Jacinto Mountains, though the occupancy status of the San Jacinto Mountains is unconfirmed at this time. Given that detailed occupancy and life history data for the San Bernardino flying squirrel are unavailable, we estimated or modeled the extent of habitat suitable to support the San Bernardino flying squirrel using positive detections, vegetation data layers, elevation range, and potential home range size (Service 2016, pp. 27–28). A complete description of the analysis and our methodology is available in the Species Status Assessment (Service 2016, pp. 27–28) and in our GIS procedures summary document (Service 2015a), which are available on *http://www.regulations.gov* under docket number FWS–R8–ES–2016–0046.

Within our estimated suitable San Bernardino flying squirrel habitat in the San Bernardino Mountains we analyzed the effects of habitat loss and fragmentation. We found that 77 percent of land in the San Bernardino Mountains and 65 percent of land in the San Jacinto Mountains is owned by the U.S. Forest Service (USFS). In the San Jacinto Mountains region, approximately 22 percent of San Bernardino flying squirrel suitable habitat is under private ownership, but all but a very small portion of those lands are encompassed within the boundaries of two habitat conservation plans: the Western Riverside County Multi Species Habitat Conservation Plan (MSHCP) and the Coachella Valley MSHCP.

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional, 75-year habitat conservation plan approved in 2004 that addresses 146 listed and unlisted ''Covered Species'' including the San Bernardino flying squirrel within a 1,260,000 ac (599,904 ha) Plan Area in western Riverside County, California. Conservation objectives identified in the Western Riverside County MSHCP for the San Bernardino flying squirrel include the following: (1) Include within the Western Riverside County MSHCP Conservation Area at least 19,476 ac (7,882 ha) (67 percent) of suitable montane coniferous forest and deciduous woodland and forest habitats within the San Jacinto Mountains Bioregion for breeding, foraging, wintering, and dispersal movement, and (2) confirm occupation of 2,470 ac (1,000 ha) with a mean density of at least 2 individuals per 2.47 ac (2 individuals per ha) in the San Jacinto Mountains; and, in the San Bernardino Mountains, confirm occupation of 247.11 ac (100 ha) within the Western Riverside County MSHCP Conservation Area (Service 2016, pp. 73–74).

The Coachella Valley MSHCP is a large-scale, multijurisdictional, 75-year habitat conservation plan approved in 2008 encompassing about 1.1 million ac (445,156 ha) in the Coachella Valley of central Riverside County, California. The Coachella Valley MSHCP is also a Subregional Plan under the State of California's Natural Community Conservation Planning (NCCP) Act, as amended. The Coachella Valley MSHCP/NCCP addresses 27 listed and unlisted covered species; however, these species do not include the San Bernardino flying squirrel.

The Coachella Valley MSHCP/NCCP was designed to establish a multiple-species habitat conservation program that minimizes and mitigates the expected loss of habitat and incidental take of covered species. The associated permit covers incidental take resulting from habitat loss and disturbance associated with urban development and other proposed covered activities. These activities include public and private development within the plan area that requires discretionary and ministerial actions by permittees subject to consistency with the Coachella Valley MSHCP/NCCP policies. Though the San Bernardino flying squirrel is not a covered species, it will likely receive ancillary benefits from habitat protection measures included in the plan.

A review of applications for development projects in the San Bernardino Mountains found six planned activities; the total area for these projects covers only a small fraction of San Bernardino flying squirrel suitable habitat in this mountain region. Similar project data were not available for the San Jacinto Mountains. In order to analyze the potential impacts of fragmentation, we conducted a spatial analysis using life-history and the most important habitat features associated with northern flying squirrels. We found only 1.3 percent of our estimated suitable habitat in the San Bernardino Mountains and only 5 percent of our estimated suitable habitat in the San Jacinto Mountains to be fragmented due to residential development or other activities (Service 2015a, entire).

The San Bernardino flying squirrel relies on features in the landscape that may be modified or removed by fuel treatment activities; these activities may

result in loss or modification of habitat structure and removal of nest trees. However, fuel treatment can provide desirable results to understory plant diversity in forests where fire has been suppressed. We evaluated data from the USFS summarizing their thinning practices and found that the total area subject to this activity over the past 10 years represents only 6 percent of all USFS lands within the San Bernardino Mountains (or about 1,045 ac (423 ha) per year); we are unaware of any thinning activities by the USFS in the San Jacinto Mountains area.

San Bernardino flying squirrel habitat is downwind from California's densely populated South Coast Air Basin. Impacts from air pollution, such as nitrogen deposition and increased ozone, may result in habitat effects including soil acidification, loss of understory diversity, accelerated leaf turnover, and decreased allocation belowground and fine root biomass. Local air quality monitoring has recorded declines in ozone levels in the past 30 years, and local and State regulations on urban air pollution are expected to further reduce ozone levels and nitrogen deposition. However, additional analyses are needed to assess the effects of nitrogen and the combination of nitrogen emissions in combination with ozone level to San Bernardino flying squirrel habitat, as well as to the extent to which the subspecies will respond to any effects.

As a result of fire suppression activities since the early 20th century, forested habitat in the San Bernardino and San Jacinto Mountains is at moderate to high risk of wildland fire. However, this stressor is being reduced by ongoing fuel reduction management techniques. Furthermore, results from a study of habitat use of the San Bernardino flying squirrel following fire has found that they return to moderately burned areas within 7 years after a wildland fire. The subspecies has persisted in the region since its first detection in 1897, despite numerous, periodic, and often large fires.

Downscaled climate projections forecast an overall increase in temperature for the Southern California mountains region, which includes the San Bernardino and San Jacinto mountain ranges. Climate models for southern California also project a small annual mean decrease in precipitation for southern California; however, these models do not show consistent results for future precipitation patterns. Recent studies have shown that ongoing changes in precipitation and temperature have exacerbated the effects of the recent California drought. Given the projections of increased temperature and decreased precipitation, drought may in the future continue to be exacerbated by climate change. The effects of climate change may result in decrease of the forested habitat that supports the San Bernardino flying squirrel and of food resources utilized by the subspecies.

We reviewed all Federal, State, and local laws, regulations, and other regulatory mechanisms intended to minimize the threats to the subspecies and found that existing regulatory mechanisms are being implemented within their scope and provide some benefit to the San Bernardino flying squirrel. We conclude that the best available scientific and commercial information overall indicates that the existing regulatory mechanisms are adequate to address impacts to the San Bernardino flying squirrel from the stressors for which governments may have regulatory control (habitat loss, habitat fragmentation, wildland fire fuel treatment, and urban air pollution).

Cumulative impacts are currently occurring from the combined effects from wildland fire and climate-related changes. Studies have found that that the likelihood and frequency of large wildfires are expected to increase in southwestern California due to rising surface temperatures. The mixed conifer forests ecosystems in the San Bernardino and San Jacinto Mountains are likely currently experiencing the cumulative effects of wildland fire and the warming effects of climate change.

Finding

As required by the Act, we considered the five factors in assessing whether the San Bernardino flying squirrel is an endangered or threatened species throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future stressors faced by the San Bernardino flying squirrel. We reviewed the petition, information available in our files, and other available published and unpublished information, and we coordinated with recognized species and habitat experts and other Federal, State, tribal, and local agencies. Listing is warranted if, based on our review of the best available scientific and commercial data, we find that the stressors to the San Bernardino flying squirrel are so severe or broad in scope that the subspecies is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range.

We evaluated in the Species Status Assessment (Service 2016, pp. 27–66) whether each of the potential stressors is acting upon the subspecies, and we determined that the following are stressors that have acted upon the subspecies and have minimally or moderately affected, or in the future may potentially affect, individuals or portions of suitable habitat: Habitat loss from urban development (Factor A), habitat fragmentation (Factor A), wildland fire fuel treatment (Factor A), wildland fire (Factor A and Factor E), urban air pollution (Factor A), and climate change (Factor A). In our Species Status Assessment, we evaluated potential impacts associated with overutilization (Factor B), disease (Factor C), and predation (Factor C). We found that these potential stressors impacted individual San Bernardino flying squirrels, but that the subspecies has not been exposed to these stressors at a level sufficient to result in more than low or no impacts, overall, across the subspecies' range (see Service 2016, pp. 36–39); thus, we did not discuss them in this document.

Effects from urban development (Factor A) and habitat fragmentation (Factor A) are considered low at this time and are not expected to change in the future based on our assessment of the limited scope of proposed developments in the region, the large percentage of habitat that is owned and managed by the USFS, and our analysis of the small amount of fragmentation of current suitable habitat. Urban air pollution (Factor A) presents a low-level stressor to San Bernardino flying squirrel habitat, and existing regulatory mechanisms such as the California Global Warming Solutions Act of 2006 and the California Clean Air Act are helping to ameliorate any impacts and decrease the overall levels of nitrogen and ozone deposition within the San Bernardino and San Jacinto Mountains. Though impacts from these three stressors—urban development, habitat fragmentation, and urban air pollution—are ongoing and expected to continue, they pose only low-level impacts that are not likely to drive or contribute to the risk of extinction now or in the foreseeable future, and therefore do not rise to the level of a threat.

Wildland fire (Factor A and Factor E) presents a moderate, but periodic, stressor to the San Bernardino flying squirrel and its habitat. Analysis of fire data indicates that forested areas within San Bernardino flying squirrel habitat are burning less frequently than reference conditions, and several fires (reported since the 1980s) in this habitat have burned at moderate to high burn

severity. However, despite these conditions, results from an ongoing study to evaluate habitat use by the San Bernardino flying squirrel after a 2007 fire have shown that 35 percent of all detected individuals were found in areas that had been moderately burned 7 years prior to the study, indicating that San Bernardino flying squirrels are resilient to impacts from wildland fire and are able to repopulate burned areas in a short timeframe. Furthermore, resource management actions, such as fuel reduction practices and thinning, that are being implemented by the USFS within the San Bernardino National Forest provide a benefit to the San Bernardino flying squirrel and its habitat by reducing potential wildland fire fuel loads. The San Bernardino Land Management Plan contains specific design criteria and conservation strategies to benefit the San Bernardino flying squirrel and its habitat. These and other management actions currently being implemented by the USFS within the San Bernardino National Forest will continue to provide important conservation benefits to the San Bernardino flying squirrel. Therefore, we conclude that wildland fire is not a threat to the species, because it poses only a low-level stressor that we do not expect to drive or contribute to the risk of extinction of the subspecies now or in the foreseeable future.

Wildland fire fuel treatment (Factor A) may remove habitat structure used by nesting San Bernardino flying squirrels; however, habitat modification and thinning from fuel treatment activities provide a net benefit by reducing the overall risk of wildfire. Furthermore, San Bernardino flying squirrels and other northern flying squirrel subspecies are known to persist in fragmented and edge habitat. Therefore, we find that wildland fire fuel treatment is a low-level stressor that we do not expect to rise to the level of a threat now or in the foreseeable future.

Based on computer model projections, potential effects to the habitat occupied by the San Bernardino flying squirrel from climate change (Factor A) appear to be minimal; however, cumulative impacts from climate change and wildland fire may have an effect on the subspecies and its habitat (Factor A and Factor E). However, we expect these impacts will be mitigated by wildland fire fuel treatment activities. Therefore, we find that climate change and the cumulative effects of climate change and wildland fires together pose a low to moderate stressor to the San Bernardino flying squirrel and its habitat. Though these stressors are ongoing and expected to continue, they do not rise to the level of a threat now or in the foreseeable future.

We also evaluated existing regulatory mechanisms (Factor D) and did not determine an inadequacy of existing regulatory mechanisms for the San Bernardino flying squirrel. Specifically, we found that management actions currently being implemented by the USFS within the San Bernardino National Forest will continue to provide important conservation benefits to the San Bernardino flying squirrel. Additional important Federal mechanisms include protections provided under the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*); USFS Organic Administration Act of 1897, as amended (16 U.S.C. 473–478, 479–482, and 551); and other USFS management policies, practices, and procedures that guide management within San Bernardino National Forest. State review of projects through the California Environmental Quality Act (CEQA) provides an additional layer of protection for the San Bernardino flying squirrel through restrictions on take and through the inclusion of its designation as a ''Species of Special Concern'' within State (CEQA) planning processes. Additional protections and conservation measures that benefit San Bernardino flying squirrel habitat in the San Jacinto Mountains are provided by the Western Riverside County MSHCP.

The USFS manages approximately 76 percent of the suitable habitat within the San Bernardino Mountains region and 65 percent in the San Jacinto Mountains, and these lands are therefore protected from large-scale urban development and rangewide habitat fragmentation. Furthermore, 33 percent of suitable San Bernardino flying squirrel habitat within the San Jacinto Mountains region is designated as either Federal or State Parks and State Wilderness, which provides an important conservation benefit to the subspecies and its habitat. The subspecies is locally abundant; it has been observed in many residential settings and appears to be adaptable to lower density development and residential-forest habitats, as reported in other flying squirrel populations, as long as habitat features such as available den sites (large trees and snags) and canopy cover are available.

None of the stressors, as summarized above was found to individually or cumulatively affect the San Bernardino flying squirrel to such a degree that listing is warranted at this time. Therefore, based on the analysis contained within the Species Status Assessment (Service 2016, pp. 27–66), we conclude that the best available scientific and commercial information indicates that these stressors are not singly or cumulatively sufficient to cause the San Bernardino flying squirrel to be in danger of extinction, nor are the stressors likely to cause the subspecies to be in danger of extinction in the foreseeable future.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578; July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service (NMFS) makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making.

The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered or a threatened species, respectively, and no SPR analysis will be required. If the species is neither in danger of extinction nor likely to become so throughout all of its range, we determine whether the species is in danger of extinction or likely to become so throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is endangered or threatened in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.''

We evaluated the current range of the San Bernardino flying squirrel to determine if there is any apparent geographic concentration of potential threats. In this document, we discussed suitable habitat in two geographically separated mountain ranges. We examined potential threats from habitat loss or fragmentation, wildland fire fuel treatment activities, urban air pollution, wildland fire, climate change, the inadequacy of existing regulatory mechanisms, and any cumulative effects from wildland fire and climate-related changes. We found no concentration of threats that suggests that the San Bernardino flying squirrel may be in danger of extinction in a portion of its range. We found no portions of its range where potential threats are significantly concentrated or substantially greater than in other portions of its range, and that there was no higher concentration of threats in the San Bernardino or San Jacinto Mountains. Therefore, we find that factors affecting the San Bernardino flying squirrel are essentially uniform throughout its range, indicating no portion of its range is likely to be in danger of extinction or likely to become so. Therefore, no portion warrants further consideration to determine whether the species may be endangered or threatened in a significant portion of its range.

Conclusion

Our review of the best available scientific and commercial information indicates that the San Bernardino flying squirrel is neither in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the San Bernardino flying squirrel as an endangered or threatened species under the Act is not warranted at this time.

Spotless Crake (*Porzana tabuensis*)

Previous Federal Actions

In our CNOR published on November 15, 1994 (59 FR 58982), we recognized the American Samoa population of the spotless crake as a candidate for which the Service had sufficient information on the biological vulnerability of, and threats to, the species to determine that listing as endangered or threatened was warranted, but development of a proposal was precluded by other listing actions. Subsequently, we published similar findings on the American Samoa population of the spotless crake in our CNOR on February 28, 1996 (61 FR 7596), September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57534), October 30, 2001 (66 FR 54808), and June 13, 2002 (67 FR 40657). In the 2002 CNOR, we identified the American Samoa population of the spotless crake as a distinct population segment (DPS) for the first time, in accordance with our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy), which published in the **Federal Register** on February 7, 1996 (61 FR 4722). Throughout this period, the American Samoa population of the spotless crake retained the same status (the Service's label for that status changed from ''1'' to ''C,'' but the status remained the same).

Through 2004, the spotless crake had an LPN of 6, reflecting the taxonomic identity of the listable entity as a population, with threats that we did not consider to be imminent, in accordance with our 1983 guidance on establishing listing priorities (48 FR 43103; September 21, 1983). In the 2005 CNOR, we changed the LPN from 6 to 3, indicating that, based on new information about the occurrence of nonnative predators in the only known location of the spotless crake in American Samoa, we now considered the threats to this population to be imminent (70 FR 24870; May 11, 2005). Listing the American Samoa population of the spotless crake continued to be precluded by higher-priority listing actions.

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals, including the American Samoa population of the spotless crake, as an endangered or threatened species under the provisions of the Act. Since then, we have published our annual findings on this population, with the LPN of 3, in the

CNORs dated May 11, 2005 (70 FR 24870), September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), November 9, 2009 (74 FR 57804), November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), November 21, 2012 (77 FR 69994), November 22, 2013 (78 FR 70104), December 5, 2014 (79 FR 72450), and December 24, 2015 (80 FR 80584).

As a result of the Service's 2011 multidistrict litigation settlement with petitioners, the Service is required to submit a proposed listing rule or a not-warranted 12-month finding to the **Federal Register** by September 30, 2016 (In re: Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). This 12-month finding satisfies the requirements of that settlement agreement for the American Samoa population of the spotless crake, and constitutes the 12-month finding on the May 4, 2004, petition to list this population as an endangered or threatened species.

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public.

The spotless crake (*Porzana tabuensis*) is a very small (length: 6 inches (15 centimeters)), blackish rail, with a gray head, neck, and underparts; dark brown wings and back; black bill; and red iris (Watling 2001, p. 113). In American Samoa, the fossil record indicates the prehistoric occurrence of the spotless crake on the island of Tutuila (Steadman and Pregill 2004, p. 620). In modern times, the spotless crake was first known from a series of 10 specimens that were collected from Tau in 1923, during the Whitney South Sea Expedition (Murphy 1924, p. 124; Banks 1984, p. 156). The population of the species in American Samoa today is presumed to be very small and restricted to the mid-elevation forest and the summit of Tau Island, but a population estimate does not exist because of challenges in monitoring this species, which is extremely shy and occurs in dense vegetation in very remote areas (Badia 2014a, in litt.). Prior to the establishment of survey transects and audio playback surveys conducted in 2013 on Tau, recent observations of the crake were few, primarily opportunistic, and infrequent (Rauzon and Fialua 2003, p. 490; Seamon, in litt. 2004, 2007; Tulafono 2011, in litt.). Based on 2013 surveys and presumed potential for birds to occur in suitable habitat areas not surveyed, Badia (2014b, in litt.) estimated a population size of 130 individuals on Tau. In addition to American Samoa, the global range of the spotless crake includes Australia and island nations throughout the tropical Pacific and Southeast Asia: Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Indonesia, New Caledonia, New Zealand, Niue, Papua New Guinea, the Philippines Pitcairn Islands, Samoa, Solomon Islands, and Tonga (BirdLife International 2016).

We evaluated the American Samoa population of the spotless crake under our DPS Policy, which published in the **Federal Register** on February 7, 1996 (61 FR 4722). Under this policy, we evaluate two elements of a vertebrate population segment, its discreteness and its significance to the taxon as a whole, to assess whether the population segment may be recognized as a DPS. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing the DPS as either an endangered or threatened species is warranted.

To meet the discreteness element, a population segment of a vertebrate taxon must be either (1) markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors, or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. The available scientific information indicates that the American Samoa population of the spotless crake is markedly separate from other populations of the species due to geographic (physical) isolation from spotless crake populations on other islands in the oceanic Pacific, the Philippines, and Australia. Although the spotless crake (and other rails) are distributed widely in the Pacific (del Hoyo 1996, p. 134; Steadman 2006, pp. 134, 458), exhibit long-distance vagrancy, and are apparently excellent colonizers of islands on an evolutionary timescale (Ripley 1977, p. 17; Steadman 2006, p. 458), the spotless crake is currently not known for regular migration or frequent long-distance dispersal on an ecological timescale (Taylor 2016). Despite being capable of flight and widely distributed, the spotless crake has been described either as ''rarely flying'' or a ''reluctant flier'' (Muse and Muse 1982, p. 83; Watling 2001, p. 113). The distance between the American Samoa population of the spotless crake and the nearest populations of the species makes the probability of accidental immigration low: Samoa lies 100 miles (mi) (160 kilometers (km)) to the west, Tonga approximately 300 to 560 mi (500 to 900 km) to the southwest, and Niue 333 mi (536 km) to the southeast. For the reasons described above, we conclude that long-distance ocean crossings and mixing among populations of the spotless crake and other island rails is extremely rare or highly improbable on an ecological timescale (*i.e.,* decades to centuries). Therefore, we have determined that the American Samoa population of the spotless crake is markedly separate from other populations of the species due to its geographic isolation, and meets the requirements criteria for discreteness under our DPS Policy.

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs, in light of congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity (see U.S. Congress 1979, Senate Report 151, 96th Congress, 1st Session). This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. In this case, we considered available information about the biological and ecological significance of the spotless crake in American Samoa relative to the spotless crake throughout the remainder of its range in Oceania, Australia, the Philippines, and Southeast Asia. We have not found evidence that the loss of the American Samoa population of the spotless crake would be biologically or ecologically significant to the taxon as a whole, and thus this population does

not meet our criteria for significance under our DPS Policy.

Unique ecological setting. This population does not occur in an unusual or unique ecological setting. In American Samoa, the spotless crake occurs in dense, sometimes rank vegetation, similar to habitats used in other parts of the species' range (Pratt et al. 1987, p. 126; del Hoyo 1996, p. 189; Watling et al. 2001, p. 113; Badia in litt. 2014a, 2014b, 2015; BirdLife International 2016).

Gap in the range. In our original DPS analysis for the American Samoa population of the spotless crake, we stated that the loss of the population could reduce connectivity within the range of the spotless crake in Oceania and thus would constitute a gap in the range of species as a whole (71 FR 53756, September 12, 2006, on p. 53779). Upon review of the available information, we have concluded that our original analysis was in error. The spotless crake is widespread throughout Oceania, Southeast Asia, and Australia. Some populations across the Pacific Islands occur at distances from each other similar to or greater than the distance between populations that would be created if the American Samoa population were lost. Moreover, as noted above, another population is thought to occur in Samoa (Watling 2001, p. 114; Avibase 2016), about 100 mi (160 km) from Tau Island, where the spotless crake occurs in American Samoa. Our original evaluation of the significance of the American Samoa population to the species as a whole did not properly take into consideration the nearby population in Samoa or the relative distribution of other populations.

As described above, the species' distribution today most likely reflects historical connectivity over time scales of thousands of years or longer, as a result of chance dispersal rather than contemporary migration or frequent intermixing among populations. In our original analysis we did not consider the differing influence between migration or frequent dispersal in ecological time, and chance dispersal in evolutionary time on a species' distribution. Given the poor flight ability of rails generally and the spotless crake's probable low rate of dispersal between islands on an ecological timescale (Ripley 1977, pp. 17–18; Muse and Muse 1982, p. 83; Watling 2001, p. 113), the loss of this population would neither interrupt movement among adjacent populations in ecological time (which is unlikely to occur in any case), nor interfere with the chance or waif dispersal events on an evolutionary timescale (*e.g.,* events that lead to colonization of new islands; Ripley 1977, p. 17). Because American Samoa lies roughly in the center of the species' range in the Pacific Basin, the loss of the American Samoa population would not result in a truncation or shift in the species' distribution, another consideration we did not include in our original analysis. Therefore, loss of the American Samoa population would not result in a significant gap in the species' range.

Only surviving natural occurrence. This criterion does not apply to the American Samoa population of the spotless crake because it is one of many natural occurrences of the species.

Differs markedly from other populations. Our review of the best available information does not indicate that the American Samoa population of the spotless crake is markedly different from populations of the species elsewhere in its behavior, morphology, or genetic characteristics. However, detailed study of the species' behavior and morphology across its range is lacking, and no genetic research exists.

Other considerations. Finally, given the very wide distribution of the spotless crake, the loss of the American Samoa population would not substantively affect the species' conservation status rangewide.

The American Samoa population is geographically isolated from other populations of the species and thus meets discreteness criteria under the DPS policy. It does not, however, meet the criteria for significance to the taxon as a whole. Therefore, the American Samoa population of the spotless crake is not a valid DPS as defined by our DPS Policy, and thus is not a listable entity under the Act.

This determination about the regulatory status of the spotless crake under the Act does not negate the considerable threats faced by the population of this species in American Samoa. Invasive, nonnative plants, such as *Clidemia hirta,* and ungulates, such as feral pigs (*Sus scrofa*) and cattle (*Bos taurus*), damage and degrade the spotless crake's habitat on Tau (Whistler 1992, p. 22; O'Connor and Rauzon 2004, pp. 10–11; Togia pers. comm. in Loope et al. 2013, p. 321; Badia 2014a, 2015, in litt.). Nonnative predators such as rats (*Rattus* spp.) and feral cats (*Felis catus*) have caused the extinction and extirpation of numerous island bird species and populations, especially of ground-nesting species such as rails (Steadman 1995, pp. 1,123, 1,127; Medina et al. 2011, p. 6). These predators are common and widespread on Tau, including on Tau summit (Rauzon and Fialua 2003, p. 491; (O'Connor and Rauzon 2004, pp. 57–59; Adler et al. 2011, pp. 216–217; Badia 2014a, in litt.). Populations that undergo significant decline in numbers and range reduction are inherently highly vulnerable to extinction from chance environmental or demographic events (Shaffer 1981, p. 131; Gilpin and Soulé 1986, pp. 24–34; Pimm *et al.* 1988, p. 757; Mangel and Tier 1994, p. 607; Lacey 2000, pp. 40, 44–46). Owing to its low total number of individuals, restricted distribution, and distribution on a single island, the American Samoa population of the spotless crake is susceptible to natural catastrophes such as hurricanes, demographic fluctuations, or inbreeding depression. Existing regulatory mechanisms may provide some conservation benefit to the American Samoa population of the spotless crake, but they do not address the ongoing threats of habitat loss and degradation or predation by nonnative predators.

Finding

The American Samoa population of the spotless crake was originally placed on the candidate list because of the threats to the species in American Samoa and its apparently very low numbers. Those threats still exist. After review of all available scientific and commercial information and upon closer consideration of the significance of this population to the species as a whole, we find that the American Samoa population of the spotless crake does not meet the significance criteria under our DPS policy, and thus does not constitute a listable entity under the Act. Consequently we are removing the American Samoa population of the spotless crake from candidate status. This determination about the regulatory status of the spotless crake under the Act and our DPS Policy does not alter the threats faced by the population of this species in American Samoa or its conservation needs there. Therefore, we ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of the spotless crake, and we encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts for this rare member of American Samoa's avifauna.

Sprague's Pipit (*Anthus spragueii*)

Previous Federal Actions

On October 10, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians, requesting that we list the Sprague's pipit as

endangered or threatened under the Act and designate critical habitat. We published a 90-day finding that the petition presented substantial scientific or commercial information indicating that listing the Sprague's pipit may be warranted in the **Federal Register** on December 3, 2009 (74 FR 63337). On May 19, 2010, the Service and WildEarth Guardians entered into a settlement agreement. According to the agreement, the Service was to submit a 12-month finding to the **Federal Register** on or before September 10, 2010. On September 15, 2010, we published the 12-month petition finding (75 FR 56028). We found that listing the Sprague's pipit as endangered or threatened was warranted. However, listing the Sprague's pipit was precluded by higher-priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants, and the Sprague's pipit was added to our candidate species list. We have since addressed the status of the candidate taxon through our annual CNOR (November 10, 2010 (75 FR 69222), October 26, 2011 (76 FR 66370), November 21, 2012 (77 FR 69994), November 22, 2013 (78 FR 70104), December 5, 2014 (79 FR 72450), and December 24, 2015 (80 FR 80584)). As a result of the Service's 2011 multidistrict litigation settlement, the Service is required to submit a proposed listing rule or a withdrawal of the 12-month finding to the **Federal Register** by September 30, 2016 (In re: Endangered Species Act Section 4 Deadline Litigation, No. 10—377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)).

Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public.

The Sprague's pipit (*Anthus spragueii*) is a small passerine first described by John James Audubon that breeds exclusively in the Northern Great Plains. Sprague's pipits have an affinity for grasslands throughout their range; however they can show flexibility in their use of habitat types in different portions of their range.

The Sprague's pipit breeding range is throughout North Dakota, except for the easternmost counties; northern and central Montana east of the Rocky Mountains; northern portions of South Dakota; north central and northeastern portions of Wyoming; and occasionally northwestern Minnesota. In Canada, Sprague's pipits breed in southeastern Alberta, the southern half of Saskatchewan, and in southwest Manitoba. The Sprague's pipit's wintering range includes south-central and southeast Arizona, Texas, southern Oklahoma, southern Arkansas, northwest Mississippi, southern Louisiana, and northern Mexico.

In 2010, the Sprague's pipit was listed as a candidate species. The major threats to the species identified at that time were native prairie conversion of breeding grounds and energy development, primarily from oil and gas and associated infrastructure. A recent model evaluating habitat use on the breeding grounds allowed us to evaluate the threats facing the species more specifically for this finding and focus on that part of the range where the Sprague's pipit is concentrated (hereafter the core area). Available models indicate that most of the core area is unlikely to be converted because it is relatively low-value land for row-crop agriculture. The most likely future scenario predicts that only about 13 percent of the population will be affected by future habitat conversion on the breeding grounds. In addition, the response to oil and gas development appears to be more nuanced than we previously thought, with less avoidance behavior reported in Canada, where infrastructure is already in place, than had been expected. This suggests the overall disturbance impacts from oil and gas development are lower than we anticipated in our 2010 finding.

We evaluated the Sprague's pipit population trend both within and outside of the core area in the breeding range, as well as for the population overall. Inside the breeding range core area, population estimates from 2005–2014 have a range of uncertainty that means numbers may have slightly increased or decreased, with a somewhat more likely possibility that they decreased. Outside of the breeding range core area, the analysis more clearly indicated a decline from 2005–2014. As noted above, however, current Sprague's pipit populations are concentrated within the core area of the breeding range, and therefore evaluation of the overall population trends from 2005–2014 suggests a more slight population decline than the rates solely outside the core area.

Because recent population declines appear to have been largely outside of the breeding range core area, while the current population is concentrated within the core area where population trends have been more stable, continued overall population decreases at the same rate appear unlikely. In addition, with decreasing commodity prices and changes to crop insurance for conversion of native grassland, we anticipate conversion rates will decrease in the future, rather than continue at the 10-year trend rate. Finally, as noted above, the extent of exposure to threats within the core appears to be less than for exposure to threats outside the core area. For all these reasons, the overall population trends are likely to be more stable in the future than over the last 10 years.

We note that little is known about this species' distribution and habitat use on the wintering grounds in Mexico, where grassland conversion and woody vegetation encroachment into grasslands are occurring. However, the available evidence suggests that the Sprague's pipit is more flexible in its habitat use on the wintering grounds in comparison to breeding rounds. For example, a study in the Chihuahuan Desert found that the Sprague's pipit is broadly distributed and apparently mobile in response to annual habitat conditions. Additionally, in the United States, experts report that Sprague's pipits use a wide variety of native and nonnative grassland types.

Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the Sprague's pipit is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. Threats identified in 2010 are now believed to have lower impacts on the Sprague's pipit than understood at that time; recent downward population trends are unlikely to continue at the same rate, and even if they do, they would not indicate the species is likely to become an endangered species in the foreseeable future; and while unknowns remain, especially regarding wintering grounds, the species' adaptability appears greater than previously understood. Because the distribution of the species is relatively stable across its range and stressors are similar throughout the species' range, we found no concentration of stressors that suggests that the Sprague's pipit may be in danger of extinction in any portion of its range. Therefore, we find that listing the Sprague's pipit as an endangered or a threatened species is not warranted

throughout all or a significant portion of its range at this time, and consequently we are removing this species from candidate status.

New Information

We request that you submit any new information concerning the status of, or stressors to, the San Bernardino flying squirrel, the American Samoa population of the spotless crake or the Sprague's pipit to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and encourage their conservation. If an emergency situation develops for any of these species, we will act to provide immediate protection.

References Cited

Lists of the references cited in the petition findings are available on the Internet at *http://www.regulations.gov* and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Branch of Listing, Ecological Services Program.

Authority

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

Dated: March 29, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–07809 Filed 4–4–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 151113999–6206–01]

RIN 0648–BF55

Designating the Sakhalin Bay-Nikolaya Bay-Amur River Stock of Beluga Whales as a Depleted Stock Under the Marine Mammal Protection Act

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to designate the Sakhalin Bay-Nikolaya Bay-Amur River Stock of beluga whales (*Delphinapterus leucas*) as a depleted stock of marine mammals pursuant to the Marine Mammal Protection Act (MMPA). This action is being taken as a result of a status review conducted by NMFS in response to a petition to designate a group of beluga whales in the western Sea of Okhotsk as depleted. The biological evidence indicates that the group is a population stock as defined by the MMPA, and the stock is depleted as defined by the MMPA.

DATES: Comments must be received by June 6, 2016.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2015–0154, by either of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

A list of references cited in this proposed rule and the status review report are available at *www.regulations.gov* (search for docket NOAA–NMFS–2015–0154) or *http://www.fisheries.noaa.gov/pr/species/mammals/whales/beluga-whale.html* or upon request.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 115(a) of the MMPA (16 U.S.C. 1383b(a)) allows interested parties to petition NMFS to initiate a status review to determine whether a species or stock of marine mammals should be designated as depleted. On April 23, 2014, NMFS received a petition from the Animal Welfare Institute, Whale and Dolphin Conservation, Cetacean Society International, and Earth Island Institute (petitioners) to ''designate the Sakhalin Bay-Amur River stock of beluga whales as depleted under the MMPA.'' NMFS published a notice that the petition was available (79 FR 28879, May 20, 2014). After evaluating the petition, NMFS determined that the petition contained substantial information indicating that the petitioned action may be warranted (79 FR 44733, August 1, 2014). Following its determination that the petitioned action may be warranted, NMFS convened a status review team and conducted a status review to evaluate whether the Sakhalin Bay-Amur River group of beluga whales is a population stock and, if so, whether that stock is depleted. This proposed rule is based upon that status review.

Section 3(1)(A) of the MMPA (16 U.S.C. 1362(1)(A)) defines the term ''depletion'' or ''depleted'' to include ''any case in which. . . the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals . . .determines that a species or a population stock is below its optimum sustainable population.'' NMFS' authority to designate a stock as depleted is not limited to stocks that occur in U.S. jurisdictional waters. Although the Sakhalin Bay-Amur River group of beluga whales does not occur in U.S. jurisdictional waters, NMFS has authority to designate the stock as depleted if it finds that the stock is below its optimum sustainable population.

Status Review

A status review for the population stock of beluga whales addressed in this proposed rule was conducted by a status review team (Bettridge *et al.* 2016). The status review compiled and analyzed information on the stock's distribution, abundance, threats, and historic take from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. The draft status review report was submitted to independent peer reviewers, and comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the report.