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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Pending Petitions and Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The Service announces its findings on pending petitions to add to and revise the Lists of Endangered and Threatened Wildlife and Plants. These findings must be made within 1 year of either the date of receipt of such a petition or of a previous positive finding. The Service also describes its progress in revising the lists during the period from October 1, 1987, to September 30, 1988.

DATES: The findings announced in this notice were made between July 25, 1988, and October 25, 1988. The description of the Service's progress in revising the lists is current as of October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made on the merits within 12 months of the date of receipt of the petition. Provisions of the Endangered Species Act Amendments of 1982 required that such petitions pending on the date of enactment of the Amendments be treated as having been filed on that date, i.e. October 13, 1982. Section 4(b)(3)(C)(i) of the Act requires

that any petition for which a 12-month finding of "warranted but precluded" is made should be treated as having been resubmitted, with substantial scientific or commercial information that the petitioned action may be warranted, on the date of such a finding, i.e. requiring an additional finding to be made within 12 months. This notice reports findings made on or before October 29, 1988, in respect to pending petitions for which such additional findings were due, and describes the Service's progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the sixth year following the enactment of the 1982 Amendments.

The initial (90-day) findings for petitions considered here were announced in the **Federal Register** on January 16, 1984 (49 FR 1919), December 18, 1984 (49 FR 49118), April 2, 1985 (50 FR 13054), May 2, 1986 (51 FR 16363), January 21, 1987 (52 FR 2239), or July 1, 1987 (52 FR 24485).

All but one of the plant species involved in these petition findings were listed individually in a comprehensive notice of review for plants first published in the **Federal Register** on December 15, 1980 (45 FR 82480), and most recently updated as a notice of review published September 27, 1985 (50 FR 39526). The animal species mentioned below, but not named individually, were identified individually in the first announcement of 12-month petition findings published in the **Federal Register** on January 20, 1984 (49 FR 2485), and again in the second annual announcement published on May 10, 1985 (50 FR 19761).

Findings

Section 4(b)(3)(B) of the Act requires that the Service make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Petitioned actions found to be warranted are the subjects of proposals that will be published promptly or have already been published in the **Federal Register**. Therefore only findings of "not warranted" and "warranted but precluded" for pending petitions are reported here.

"Not warranted" and "warranted but precluded" findings for pending plant petitions repeat the findings made in October 1987 and announced in the **Federal Register** of July 7, 1988 (53 FR 25511), except for the removal of 17 plant species proposed for listing as threatened or endangered during fiscal year 1988. Findings on the plants are made by notice of review categories; application of these to individual taxa is published in a notice of review for plants published September 27, 1985 (50 FR 39526). The plant notice category number opposite the name of each taxon that is the subject of a pending petition indicates the Service's finding on that taxon. Findings of "not warranted" on the petitioned action are reported by the designation of subcategories 3A, 3B, or 3C for such taxa. Findings of "warranted but precluded" are reported by the designation of category 1, 1*, 1**, 2, 2*, or 2** for such subject taxa. The complete definitions of these category numbers are described on pages 39526 and 39527 in the 1985 general plant notice of review (50 FR 39526). A finding of "warranted but precluded" was also made for a petition to list the plant *Talinum humile* (the Pinos Altos fame flower) received October 15, 1985, from Mr. Paul R. Neal. This plant is being treated as a category 2 candidate species.

The Service's 12-month findings of "not warranted" and "warranted but precluded" on pending animal petitions are presented in Table 1. Each petition mentioned in Table 1 has had one or more previous findings of "warranted but precluded" reported in the **Federal Register**. The word "Yes" in the "Warranted?" column indicates petitions to list, delist, or reclassify species for which the principal findings are "warranted but precluded" from immediate proposal by other efforts to revise the lists. Note in the "Description" column that at least some species mentioned in the original petitions have been individually found to be not warranted. The species so noted were named in previous notices of petition findings. Four of the species (noted by the word "No" in the "Warranted" column) have new 1988 findings of "not warranted" announced here.

TABLE 1.—12-MONTH FINDINGS ON PENDING ANIMAL PETITIONS

Description	Petitioner	Date received	Warranted?*
5 species of sponges (2 others not warranted)	Mr. Ronald M. Cowden	June 17, 1974	Yes.
37 species of cave crustaceans (1 species listed, 12 others not warranted).	National Speleological Society	Sept. 9, 1974	Yes.
6 species of cave amphipods (1 other not warranted)	Dr. John Holsinger	July 12, 1974	Yes.
Uncompahgre fritillary butterfly	Dr. Lawrence F. Gall	Nov. 5, 1979	Yes.
Columbia River tiger beetle	Mr. Gary Shook	Dec. 15, 1979	No.
Shoshone sculpin	Dr. Peter A. Bowler	Dec. 3, 1979	No.
Bonneville cutthroat trout	Desert Fishes Council	Oct. 23, 1979	Yes.
Silver rice rat	Center for Action on Endangered Species	Mar. 12, 1980	No.
Bliss Rapids snail and Snake River physa snail	Dr. Peter A. Bowler	Feb. 7, 1980	Yes.
10 U.S. and 60 foreign species of birds (4 others listed, 5 not warranted).	International Council for Bird Preservation	Nov. 24, 1980	Yes.
Orangefin madtom	Mr. Noel M. Burkhead	Oct. 6 1983	Yes.
Barbara Anne's tiger beetle and Guadaloupe Mountains tiger beetle.	W.D. Sumlin III and Christopher D. Nagano	July 24, 1984	Yes.
Spiny River Snail	American Malacological Union	Aug. 13, 1984	Yes.
Desert tortoise in remainder of its range	Dr. Martha L. Stout, Dr. Faith T. Campbell, and Mr. Michael J. Bean.	Sept. 14, 1984	Yes.
Lower (Florida) Keys marsh rabbit	Ms. Joel L. Beardsley	Apr. 27, 1985	Yes.
Henne's eucosman moth	Mr. Bruce S. Mannheim, Jr	May 21, 1985	Yes.
Western yellow-billed cuckoo	Dr. Tim Manolis and coalition of groups	May 20, 1986	No.
Appalachian Bewick's wren	Mr. Rodney Bartgis and Mr. D. Daniel Boone	Aug. 13, 1986	Yes.
White-necked crow	Mr. Alexander R. Brash	July 25, 1986	Yes.

*But precluded by other actions to revise the List of Endangered and Threatened Wildlife.

The four findings of "not warranted" in Table 1 require explanation. The Service was requested by Mr. Gary Shook to list the Columbia River tiger beetle in a petition received by the Service December 15, 1979. Information presented in the petition and a status survey conducted by the petitioner indicated that about 15 populations of this species are found in the lower reaches of the Salmon River in Idaho. The construction of dams, resulting in the inundation and destruction of the species' sandbar habitat, has extirpated this beetle from its former range along the Columbia and Snake Rivers. At the time of the petitioning, potential damming of the Salmon River posed a threat to the continued existence of this species.

Current review of the available data indicates that the damming of the Salmon River is no longer being proposed and the species is substantially less subject to the previously identified threats. Therefore, based on the best scientific and commercial information available, the action requested by this petition is considered not warranted at this time and the status of this species is to be reclassified from 2 to 3C in the next animal notice of review.

A second finding of "not warranted" was made for a petition to list the Shoshone sculpin (*Cottus greenei*). This petition came from Dr. Peter A. Bowler and was received by the Service on December 3, 1979. Current review of the status shows that the Idaho State University and the Idaho Department of Fish and Game have found additional populations of the species. They have also transplanted approximately 30,000 fish to widely distributed spring habitats. Two of the larger spring complexes are now managed under the protection of the Nature Conservancy. Therefore, based on the best scientific and commercial information available, the action requested by this petition is considered not warranted at this time. The species is to be reclassified from category 1 to subcategory 3C in the next animal notice of review.

The third "not warranted" finding in Table 1 concerns the silver rice rat (*Oryzomys argentatus*). The Service was petitioned to list the species by the Center For Action On Endangered Species on March 12, 1980. In a recent (unpublished MS, in press) thorough study of geographic variation in rice rats of the United States, Drs. Steven Humphrey and Henry Setzer of the Florida Museum of Natural History concluded that no good evidence for the taxonomic recognition of *Oryzomys argentatus* exists. The Service has therefore determined on the best scientific and commercial information available that the action requested by this petitioner is not warranted, and it therefore is to be relegated to Category 3B.

In a petition received May 20, 1986, the Service was requested to list the western yellow-billed cuckoo, *Coccyzus americanus occidentalis*, as an endangered species in the State of California, Oregon, Washington, Idaho, and Nevada. The petition was submitted by Dr. Tim Manolis, Acting President, Western Field Ornithologists, and was co-signed by representatives of the Animal Protection Institute, Defenders of Wildlife, Sacramento River Preservation Trust, Friends of the River, Planning and Conservation League, Davis Audubon Society, Sacramento Audubon Society, and Sierra Club. The Service determined that the petition presented substantial information indicating that the requested action may be warranted and announced the finding January 21, 1987 (52 FR 2239). At that time the Service acknowledged that difficulties existed in defining separate biologically defensible populations of the western yellow-billed cuckoo for possible listing, and that gaps remained in our knowledge of its status in certain portions of its range. Additional information on the status of the yellow-billed cuckoo in Arizona, California, and New Mexico was obtained as the result of the review.

The American Ornithologists' Union *Checklist of North American Birds* (1957) recognized two subspecies of yellow-billed cuckoo: *Coccyzus americanus americanus* in eastern North America and *C. a. occidentalis* in western North America. This classification was first proposed by Ridgeway in 1887. A recent analysis of the geographic variation in this species was conducted by Banks (Condor 90:473–477). On the basis of bill size (length and upper mandible depth), wing length, and plumage color, Banks concluded that the eastern and western birds are not distinguishable and that subspecific recognition is not warranted. Since the Banks investigation is the most current published work on the taxonomic question the Service has accepted his interpretation.

Section 3 of the Act defines "endangered species" as, "* * * a species that is in danger of extinction throughout all or a significant portion of its range" and "species" to include "any subspecies of fish or wildlife or plants, and any distinction population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Apparently no data exist (such as banding studies or electrophoretic information) regarding the degree of genetic difference between the eastern and western birds to indicate that they form separate subspecies. Based on Banks' (1988) findings regarding morphometrics and plumage color, yellow-billed cuckoos in the petitioned area do not constitute a subspecies, as eastern and western birds are not taxonomically distinct. Therefore, yellow-billed cuckoos in the West do not qualify for listing as a subspecies.

Moreover, there is not indication that yellow-billed cuckoos in the petitioned area constitute a distinct population segment of a species that interbreeds when mature. Cuckoos immediately across the State line from the area referenced in the petition (e.g., such as those along the Arizona border across from California) are part of the same population and often interbreed. Yellow-billed cuckoos in the petitioned states cannot be regarded as a population separate from adjoining states that were not included in the petition. Therefore, the petitioned action is not warranted, because the yellow-billed cuckoos in the petitioned states do not constitute a subspecies or a distinct population segment.

The information in previous 12-month finding notices is current for the species indicated by "Yes" in the "Warranted" column of Table 1. In the case of the desert tortoise the Service has some information to add to the finding announced on July 7, 1988 (52 FR 24485). In an updated review of the species, the Service has documented an accelerated declining trend in tortoise population, especially north and west of the Colorado River. The primary factors causing a threat and resulting in the decline are considered to be as follows: (1) Loss of habitat due to housing developments, pipeline construction and operation, transmission line construction, solar facility development, mining, grazing, a proposed racetrack project, and highway projects; (2) predation of young tortoises by ravens; (3) illegal collecting; and (4) disease. The threats in Nevada have remained similar to earlier reports. The populations north and west of the Colorado River will be placed in Category 1 status in the next animal notice of review.

Progress in Revision of the Lists

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious

progress in revising the lists. The Service's progress in revising the lists in the year following October 1, 1987, the cutoff date of the previous report, is described below. For simplification in reporting, the 12-month period described actually coincides with the 1988 fiscal year; activity during the last 12 days preceding the anniversary of the Amendments will be described in a subsequent notice. The described activities prevented immediate action on the "warranted but precluded" petitioned actions.

The Service's progress in revising the lists during fiscal year 1988 is represented by the publication in the **Federal Register** of final listing actions on 60 species, and proposed listing actions on 39 species. The number of species affected by each type of listing action published during this period is presented in Table 2.

TABLE 2.—LISTING ACTIONS DURING THE PERIOD OCTOBER 1, 1987, THROUGH SEPTEMBER 30, 1988

Type of action	Number of species affected
Final endangered status	39
Final threatened status	18
Final reclassification threatened to endangered	1
Final reclassification endangered to threatened	1
Final delisting	1
Proposed endangered status	26
Proposed threatened status	12
Proposed reclassification from threatened to endangered	1

As of October 1, 1988, the Service's Division of Endangered Species and Habitat Conservation was also reviewing documents that would propose or make final listing actions on 27 species. The type of action and numbers of affected species are given in Table 3.

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCTOBER 1, 1988

Type of action	Number of species affected
Final endangered status	8
Final threatened status	1
Final critical habitat	6
Final reclassification from endangered to threatened	1
Final experimental population	1
Proposed endangered status	6
Proposed threatened status	2
Proposed delisting	1

TABLE 3.—POSSIBLE LISTING ACTIONS FOR WHICH THE SERVICE WAS REVIEWING DRAFT DOCUMENTS ON OCTOBER 1, 1988—Continued

Type of action	Number of species affected
Proposed experimental population	1

The general plant and animal notices of review are important tools for gathering data on species that are candidates for listing and for informing interested parties on the Service's general views on the status of present and past candidate species. The Service is currently preparing a general notice of review for animals, to include both vertebrate and invertebrate species. The most recent previous general notices were for plants on September 27, 1985 (50 FR 39526), for vertebrate animals on September 18, 1985 (50 FR 37958), and for invertebrate animals on May 22, 1984 (49 FR 21664).

Author

This notice was prepared by Dr. George Drewry, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 21, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

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