Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

40. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

VI. Ordering Clauses

41. Accordingly, *it is ordered* that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, this Notice of Proposed Rulemaking *is adopted.*

42. *It is further ordered* that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, the petitions for rulemaking filed by Highway Information Systems, Inc., on July 16, 2008, and the American Association of State Highway and Transportation Officials on March 16, 2009, *are granted* to the extent indicated herein.

43. *It is further ordered* that pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, the petition for ruling filed by the American Association of Information Radio Operators filed on September 9, 2008, *is denied.*

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

45. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register,** and interested parties may file reply comments on or before 45 days after publication in the **Federal Register**.

Bulah P. Wheeler,

Deputy Manager, Federal Communications Commission.

[FR Doc. 2011–938 Filed 1–18–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0005; 92220–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist or Reclassify From Endangered to Threatened Six California Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist *Oenothera californica (avita)* subsp. *eurekensis* (Eureka Valley evening-primrose) and *Swallenia alexandrae* (Eureka Valley dunegrass), and reclassify the tidewater goby (*Eucyclogobius newberryi*), *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae* (San Clemente Island broom), *Malacothamnus clementinus* (San Clemente Island bush-mallow), and *Castilleja grisea* (San Clemente Island Indian paintbrush) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this notice, we are initiating status reviews of these taxa to determine if the respective actions of delisting and reclassifying are warranted. Section 4(c)(2)(A) of the Act also requires a status review of listed species at least once every 5 years. We are therefore electing to conduct these reviews simultaneously. To ensure that these status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these species and subspecies. Based on these status reviews, we will issue 12-month findings on the petition, which will address whether the petitioned actions are warranted under section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before March 21, 2011. Please note that if you are using the Federal eRulemaking Portal (*see* **ADDRESSES** section, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date.

ADDRESSES: You may submit information by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is [insert docket number]. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-insert docket number]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Request for Information section below for more details).

After March 21, 2011, you must submit information directly to the Field Office (*see* **FOR FURTHER INFORMATION CONTACT**). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

FOR FURTHER INFORMATION CONTACT: For information regarding *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus* and *Castilleja grisea,* contact Jim Bartel, Field Supervisor, by mail at U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009; by telephone at (760–431–9440); or by facsimile at (760–431–9624).

For information regarding *Oenothera californica (avita)* subsp. *eurekensis, Swallenia alexandrae,* and the tidewater goby, contact Diane Noda, by mail at Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; by telephone (805–644–1766); or by facsimile (805–644–3958). If you use

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

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that delisting or reclassifying a species may be warranted, we are required to promptly review the status of the species (status review). For the status reviews to be complete and based on the best available scientific and commercial information, we request information on *Oenothera californica (avita)* subsp. *eurekensis, Swallenia alexandrae,* the tidewater goby, *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea* from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(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.

Please include sufficient information with your submission (such as references to scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, cannot be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning these status reviews by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad or Ventura Fish and Wildlife Offices (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. We published a notice May 21, 2010 (75 FR 28636), announcing the review of *Acmispon* dendroideus (Lotus scoparius subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea.* This notice announces our active review of the *Oenothera californica (avita)* subsp. *eurekensis, Swallenia alexandrae,* and the tidewater goby.

Petition History

On May 18, 2010, we received a petition dated May 13, 2010, from The Pacific Legal Foundation, requesting the Service to delist *Oenothera californica (avita)* subsp. *eurekensis* and *Swallenia alexandrae,* and to reclassify the tidewater goby, *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea* based on the analysis and recommendations contained in the most recent 5-year reviews for these taxa. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). The petition contained minor nomenclatural discrepancies for some taxa. However, we have used the currently accepted names of these taxa in this finding, and the finding addresses all of the petitioned taxa.

Previous Federal Actions

Under the Act, we maintain a List of Endangered and Threatened Wildlife and Plants at 50 CFR 17.11 (for animals) and 17.12 (for plants) (List). We amend the List by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we determine: (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species listed as endangered more properly meets the definition of threatened and should be reclassified to threatened (downlisted); or (3) whether a species listed as threatened more properly meets the definition of endangered and should be reclassified to endangered (uplisted). Using the best scientific and commercial data available, we will consider a species for delisting if the data substantiate that the

species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; or (3) the original data available when the species was listed, or the interpretation of such data, were in error.

The two Eureka Valley plants were listed as endangered in 1978 (Table 1). A recovery plan was published for both in 1982. Critical habitat has not been designated for either plant. A notice of review initiation was published for the two Eureka Valley plants in 1983 (48 FR 55100; December 8, 1983), 1991 (56 FR 56882; November 6, 1991), and 2005 (70 FR 39327; July 7, 2005). For the review conducted in 1983, the Service concluded in a notice of 5-year review completion that there were no substantial data to suggest a change in status for either of these two plants (50 FR 29900; July 22, 1985). A status review for the two Eureka Valley plants was next completed in 1994 (Noell 1994). Based on this 1994 status review, the Service recommended downlisting each of these two plants. The 5-year review conducted in 2007 for each of these two plants notes that the Service did not publish a proposed rule to downlist either of these species following the 1994 status review, because, under the 1994 Desert Protection Act, the lands where these plants occurred were passed from Bureau of Land Management (BLM) to National Park Service (NPS), and at the time, the Service was uncertain about how the NPS would manage the threats to the species (Service 2007a, p. 4; Service 2007b, p. 2). In the 2007 5-year review, the Service recommended delisting *Oenothera californica (avita)* subsp. *eurekensis* (Service 2007a, p. 14) and *Swallenia alexandrae* (Service 2007b, p. 11).

The tidewater goby was listed as endangered in 1994 (Table 1). In 1999, the Service proposed to delist populations of tidewater goby in areas north of Orange and San Diego Counties and retain populations in Orange and San Diego Counties as an endangered distinct population segment (64 FR 33816; June 24, 1999). Critical habitat in Orange and San Diego Counties was designated in 2000 (65 FR 69693 November 20, 2000). The proposed rule to delist northern populations was withdrawn in 2002 (67 FR 67803; November 7, 2002). In 2003, the U.S. District Court for the Southern District of California ordered the Service to promulgate a revised critical habitat rule that considered the entire geographic range of the tidewater goby, and the Service published a new critical habitat rule in 2008 (73 FR 5920; January 31, 2008). A recovery plan for the tidewater goby was published in 2005. A notice of review initiation was published in 2006 (71 FR 14538; March 22, 2006), and the review was completed in 2007 (73 FR 11945; March 5, 2008). The Service recommended downlisting the tidewater goby (Service 2007c, p. 36); however, the Service recommended that the proposed downlisting action be deferred until taxonomic research referred to in the Genetics section of the 2007 5-year review was published, because there was a high likelihood that taxonomic changes to the tidewater goby were imminent (Service 2007c, p. 35). Part of this research was recently published (Earl *et al.* 2010) and will be considered in the 12-month status review.

The three San Clemente plants were listed as endangered in 1977 (Table 1). A recovery plan was published for each in 1984. Critical habitat has not been designated for any of these three plants. Notice of review initiations were published in 1982 (47 FR 42387; September 27, 1982), 1987 (52 FR 25523; July 7, 1987), 1991 (56 FR 56882; November 6, 1991), 2005 (70 FR 39327; July 7, 2005), and 2010 (75 FR 28636; May 21, 2010). A 5-year status review was completed for each of these three plants in 2007 (73 FR 11945; March 5, 2008). In the 5-year status reviews, the Service recommended downlisting *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae* (Service 2007d, p. 22), *Malacothamnus clementinus* (Service 2007e, p. 28), and *Castilleja grisea* (Service 2007f, p. 19).

TABLE 1—PREVIOUS FEDERAL ACTIONS FOR THE SIX TAXA ADDRESSED IN THIS PETITION FINDING

Species name	Date listed and status	Critical habitat designated	Recovery plan published	Most recent 5-year review and recommendation
Oenothera californica (avita) subsp. *eurekensis* (Eureka Valley evening-primrose).	May 27, 1978 (43 FR 17910) Endangered.	NA	December 13, 1982 ...	September 24, 2007 Delist.
Swallenia alexandrae (Eureka Valley dunegrass).	May 27, 1978 (43 FR 17910). Endangered	NA	December 13, 1982 ..	September 24, 2007 Delist.
Tidewater goby (*Eucyclogobius newberryi*).	February 4, 1994 (59 FR 5494) Endangered.	January 31, 2008 (73 FR 5920).	December 7, 2005	September 28, 2007 Downlist.
Acmispon dendroideus (Lotus scoparius subsp.) var. *traskiae* (San Clemente Island broom).	August 11, 1977 (42 FR 40682) Endangered.	NA	January 26, 1984	September 24, 2007 Downlist.
Malacothamnus clementinus (San Clemente Island bush-mallow).	August 11, 1977 (42 FR 40682) Endangered.	NA	January 26, 1984	September 28, 2007 Downlist.
Castilleja grisea (San Clemente Island Indian paintbrush).	August 11, 1977 (42 FR 40682) Endangered.	NA	January 26, 1984	September 24, 2007 Downlist.

Species Information

Oenothera californica (avita) subsp. *eurekensis* (Eureka Valley evening-primrose) is a short-lived herbaceous perennial in the Onagraceae (evening-primrose) family that forms small basal rosettes of leaves. During years with sufficient rainfall, plants undergo rapid stem elongation in April and May and bloom between April and July. In general, *O. c.* subsp. *eurekensis* occupies the stabilized, gentle dune slopes, extending out onto the shallower sand fields bordering the dune systems of Eureka Valley, Inyo County, California (Bagley 1986). These occupied dune systems include the Eureka Dunes, Saline Spur Dunes, and Marble Canyon Dunes, all of which are public lands managed by Death Valley National Park. For more information on

the life history, biology, and distribution of *O. c.* subsp. *eurekensis, see* the 2007 5-year review of the species on *http://www.regulations.gov* or *http://www.fws.gov/endangered/.*

Swallenia alexandrae (Eureka Valley dunegrass) is a perennial, hummock-forming (traps and accumulates wind-blown soil and sand at the base of plants) grass. *Swallenia* is a monotypic genus of Poaceae (grass family). Plants are dormant during the winter, but begin to produce new shoot growth around February. While growth accelerates in May, plants produce loose, multi-branched clusters of flowers between April and June and disperse seeds between May and July (Service 1982). In general, *S. alexandrae* occupies relatively steep slopes of three dune area systems in the southern portion of Eureka Valley (Bagley 1986): Eureka Dunes, Saline Spur Dunes, and Marble Canyon Dunes. These dunes are all within 9.3 mi (15 km) of each other. All populations are on public lands managed by Death Valley National Park. For more information on the life history, biology, and distribution of *S. alexandrae, see* the 2007 5-year review of the species on *http://www.regulations.gov* or *http://www.fws.gov/endangered/.*

The tidewater goby (*Eucyclogobius newberryi*) is a small fish that inhabits discrete locations of brackish water along the California coast. The species is found from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border south to Cockleburr Canyon (northern San Diego County). The tidewater goby is known to have formerly inhabited at least 135 localities within this range (Service 2005). The northern limit of the species' range has not changed; however, the southern limit is now 9.2 mi (14.8 km) farther north from its historically known southernmost location, Agua Hedionda Lagoon (San Diego County) (Swift *et al.* 1989). Tidewater gobies appear to be naturally absent (now and historically) from three large (50 to 135 mi (80 to 217 km)) stretches of coastline where lagoons or estuaries are absent and steep topography or swift currents may prevent tidewater gobies from dispersing between adjacent localities (Swift *et al.* 1989). For more information on the life history, biology, and distribution of the tidewater goby, *see* the 2007 5-year review of the species on *http://www.regulations.gov* or *http://www.fws.gov/endangered/.*

Acmispon dendroideus (*Lotus scoparius* subsp.) var. *traskiae* (San Clemente Island broom) is a semi-woody, short-lived (less than 5 years), subshrub in the Fabaceae (pea family). The subspecies is endemic to San Clemente Island (Isely 1993) and is one of five representatives of the genus *Acmispon* found on the island (U. S. Department of the Navy, Southwest Division 2002). *Acmispon dendroideus* var. *traskiae* is typically less than 4 feet (1.2 meters) in height, with slender, erect green branches (Munz 1974). Since the 1970s, the distribution of *A. d.* var. *traskiae* has been documented, and its range includes north-facing slopes over most of the eastern and western sides of the island (Service 1984; U. S. Department of the Navy, Southwest Division 2002; Junak and Wilken 1998; Junak 2006). Occurrence data for this species also span the entire length of the island, with several occurrences documented in Wilson Cove, and one occurrence documented at the southern tip of the island east of Pyramid Cove; a distance of approximately 19 mi (31 km) (Junak and Wilken 1998; Junak 2006). The majority of the remaining occurrences tend to be clustered on north-facing slopes on the eastern side of the island. For more information on the life history, biology, and distribution of *A. d.* var. *traskiae, see* the 2007 5-year review of the species as *Lotus dendroideus* var. *traskiae* on *http://www.regulations.gov* or *http://www.fws.gov/endangered/.*

Malacothamnus clementinus (San Clemente Island bush-mallow) is a rounded subshrub (plants with stems woody at the base only) in the Malvaceae (mallow) family. It grows up to 6.6 feet (2 meters) tall, with numerous branched stems arising from its base (Munz and Johnston 1924; Munz and Keck 1959; Bates 1993; S. Junak pers. comm. 2006). The species' leaves are angularly 3–5 lobed or nearly circular or ovate, less than 2 inches (5 centimeters) in length and conspicuously bicolored, with green, sparsely pubescent (covered with short, fine hairs) upper surfaces and veiny, white, and hairy under surfaces that are densely matted with branching hairs (Munz and Johnston 1924). Plants bloom between March and August (California Native Plant Society 2001). *Malacothamnus clementinus* is the only species in its genus that occurs on San Clemente Island (Tierra Data Inc. 2005). *Malacothamnus clementinus* is restricted to San Clemente Island, where it occurs in a range of conditions, including rock crevices along canyon walls, at the base of rocky walls, at the base of escarpments between coastal terraces, along canyon rims and ridgelines, and in vegetated flats (S. Junak pers. comm. 2006; Junak and Wilken 1998; U. S. Department of the Navy, Southwest Division 2001). The plant is often associated with maritime cactus scrub on coastal flats at the southwestern end of the island (Junak and Wilken 1998). The collection of moisture in rock crevices and at the base of canyon walls and escarpments may provide favorable conditions for this species (S. Junak pers. comm. 2006). For more information on the life history, biology, and distribution of *M. clementinus, see* the 2007 5-year review of the species on *http://www.regulations.gov* or *http://www.fws.gov/endangered/.*

Castilleja grisea (San Clemente Island Indian paintbrush) is a highly branched perennial subshrub in the Orobanchaceae (broom-rape) family. The species is endemic to San Clemente Island (Chuang and Heckard 1993) and is the only representative of the genus *Castilleja* found on the island (Helenurm et al. 2005). *Castilleja grisea* is typically 11.5 to 31.5 inches (3 to 8 decimeters) in height and covered with a dense white-wooly felt. The flowers of *C. grisea* are yellow. The original range and distribution of *C. grisea* on San Clemente Island is speculative, because its decline began before thorough botanical studies were completed. However, since initial surveys were conducted in 1996 and 1997, *C. grisea* has expanded its distribution to include steep canyon walls on the western side of the island (Junak and Wilken 1998). Occurrence data (as defined by the reporters, not equivalent to CNDDB occurrences) for this species span the southern two-thirds of the island, a distance of approximately 17.5 mi (28 km). For more information on the life history, biology, and distribution of *C. grisea, see* the 2007 5-year review of the species on *http://www.regulations.gov* or *http://www.fws.gov/endangered/.*

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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 must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons:

(1) The species is extinct;

(2) The species has recovered and is no longer endangered or threatened; or

(3) The original scientific data used at the time the species was classified were in error.

In making this 90-day finding, we evaluated whether information regarding threats to *Oenothera californica (avita)* subsp. *eurekensis, Swallenia alexandrae,* the tidewater goby, *Acmispon dendroideus* (*Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus* and *Castilleja grisea,* as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned actions may be warranted. Our evaluation of this information is presented below.

Information Provided in the Petition

The petitioner requested the Service to delist *Oenothera californica (avita)* subsp. *eurekensis* and *Swallenia alexandrae,* and reclassify the tidewater goby, *Acmispon dendroideus* (*Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea,* based on the analysis and recommendations contained in the most recent 5-year reviews of these taxa. The petitioner cited the 5-year reviews for each of these respective species as supporting information for the petition.

Evaluation of Information Provided in the Petition and Available in Service Files

On March 5, 2008 (73 FR 11945), we published a notice of completion of 58 5-year reviews, including the recommendation of status changes for the six petitioned species. Status change recommendations for these species are shown in Table 1. Each 5-year review contains general background and life history information, overview of recovery criteria, an analysis of threats specific to each taxon based on the five listing factors in section 4 the Act, and recommendation of status change, if appropriate. The petitioner cited the 5-year reviews for each of these respective species as supporting information for the petition, but provides no other information. In each 5-year review conducted for the six petitioned species, we analyzed the threats specific to each taxon based on the five listing factors in section 4 of the Act; we hereby cite and incorporate the data and recommendations in the 5-year reviews for each of these respective species. Accordingly, we have already previously evaluated information regarding threats as presented in the petition (*see* the 2007 5-year reviews of the species on *http://www.regulations.gov or http://www.fws.gov/endangered/*.) Based on the analyses and recommendations contained in the 5-year reviews for each of the six petitioned taxa, we conclude the petition and information in our files represent substantial information indicating the petitioned actions may be warranted.

The primary rationale for the recommendations in the 2007, 5-year reviews to delist *Oenothera californica (avita)* subsp. *eurekensis* and *Swallenia alexandrae* was that the primary threat to the two plant taxa at the time of listing—unrestricted off-highway vehicle (OHV) use—has been eliminated (Service 2007a, p. 13; Service 2007b, p. 11). At the time of listing, the Eureka Dunes was managed by the Bureau of Land Management and open to unrestricted OHV use. Following publication of the proposed rule to list the two Eureka Valley plants, the Bureau closed the Eureka Dunes and some of the surrounding area to OHVs in 1976 and designated campsites, closed undesignated routes, installed vehicle barriers, increased ranger patrols to enforce vehicle closures, conducted monitoring, and instituted an educational outreach program (Service 2007a, p. 8; Service 2007b, p. 6). The 1994 Desert Protection Act passed management of the Eureka Valley from the Bureau to Death Valley National Park (Park). The Park designated all of the dune systems within Eureka Valley as wilderness areas, and illegal OHV use within these areas has occurred only on a sporadic basis. Other potential threats have been identified such as horseback riding and sandboarding and competition from Russian thistle, but we were unable to find evidence that these threats were having an adverse effect on the status of *Oenothera californica (avita)* subsp. *eurekensis* or *Swallenia alexandrae* (Service 2007a, p. 13; Service 2007b, p. 11).

The primary rationale for the recommendation in the 2007, 5-year review to downlist tidewater goby was that the number of known occupied localities had more than doubled since the time it was listed from 48 localities to 106, indicating that the species was more resilient to perturbations and climatic factors such as drought than previously believed (Service 2007c, p. 35). In addition, threats identified at the time of listing had been reduced or were not as serious as thought. One of the main threats identified at the time of listing was habitat destruction and alteration. Current laws and regulations have largely eliminated the major destruction of habitat that occurred in the past along the coast of California (Service 2007c, p. 35).

The primary reasons for the recommendations in the 2007, 5-year review to downlist *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea* were removal of feral pigs and goats from San Clemente Island by 1992 and subsequent increases in the distribution and abundance of each of these three plants (Service 2007d, p. 17; Service 2007e, pp. 21–22; Service 2007f, p. 14). In addition, in 2002 the Department of the Navy adopted the San Clemente Island Integrated Natural Resources Management Plan which helps promote the conservation of these three plants by identifying a number of goals and objectives designed to protect and restore habitat (Service 2007d, p. 17; Service 2007e, pp. 21–22; Service 2007f, p. 14).

Since completion of the 5-year reviews for the six petitioned species, additional information has become available and will be considered in our status reviews. Specifically, we have received additional monitoring data for the two Eureka Valley plants, and, as noted above, additional genetic and taxonomic information for the tidewater goby has been published. The recently published genetic information indicates that there is a divergent southern clade of tidewater gobies in northern San Diego County that may warrant classification as a separate species (Earl *et al.* 2010, p. 103). This and any additional information we receive in response to this finding will be incorporated into our status reviews.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that delisting *Oenothera californica (avita)* subsp. *eurekensis* and *Swallenia alexandrae* and reclassifying the tidewater goby, *Acmispon dendroideus* (*Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea* may be warranted. This finding is based on information provided in our analysis of the threats to each taxon contained in the most

recent 5-year reviews for each of these taxa.

Because we have found that the petition presents substantial information indicating that delisting *Oenothera californica (avita)* subsp. *eurekensis* and *Swallenia alexandrae,* and reclassifying the tidewater goby, *Acmispon dendroideus (Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea,* may be warranted, we are initiating status reviews for each taxon to determine whether the petitioned actions of delisting or reclassifying are warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. We will complete a thorough status review of the species following a substantial 90-day finding. In the resulting 12-month finding, we will determine whether a petitioned action is warranted. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

5-Year Reviews

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the *Oenothera californica (avita)* subsp. *eurekensis, Swallenia alexandrae,* and tidewater goby. Active reviews for *Acmispon dendroideus* (*Lotus scoparius* subsp.) var. *traskiae, Malacothamnus clementinus,* and *Castilleja grisea* were announced on May 21, 2010 (75 FR 28636).

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad or Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Carlsbad and Ventura Fish and Wildlife Offices (*see* **FOR FURTHER INFORMATION CONTACT**).

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

Dated: January 3, 2011.

Gregory E. Siekaniac,

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

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