

part of the vehicle; these items are not necessarily located in the rear cargo area. A "seat performance failure" includes seat hardware failure, seat deformed by intrusion or occupant impact or other failure mechanism. We identified one case where an AIS 3+ injury was reported from contact with "interior loose objects" and there was a "seat performance failure." We then manually reviewed the individual case file<sup>5</sup> for accuracy in the reporting and relevancy to the frontal crash test procedure proposed. After a careful review of the relevant case file, it was concluded that this was not an incident where loose cargo from the luggage area of the vehicle compromised the seat performance, intruded into the passenger compartment, and caused a direct injury to the occupants in a frontal crash. This is not to say that there are not anecdotal cases that occur in the real world. However, our query of five years of NASS data yielded no cases matching the above criteria.

#### C. Analysis of Petition

Analysis of the available real world data does not indicate that the incidences and severity of motor vehicle occupants injured from unrestrained cargo as a direct result of a seat performance failure in motor vehicle crashes is a safety problem that would warrant an amendment to the Federal standard at this time. While there may be anecdotal cases of displaced cargo intruding into the passenger compartment and injuring occupants, the agency has not been able to quantify the safety problem beyond a review of the NASS data. More research would be needed to substantiate a correlation between cargo intrusion and occupant safety resulting from seat deformation or failure. The petitioners also did not provide any field data demonstrating such a problem. Furthermore, for the agency to pursue a rulemaking adopting the ECE 17 requirement, considerable research and testing would be needed on the effectiveness of a seat back deflection measurement to reduce occupant injury and the design and cost of potential countermeasures beyond the current requirements specified in FMVSS No. 207. The petitioners did not provide such information.

#### IV. Conclusion

After carefully considering all aspects of the petitions, the agency has decided to deny them. As stated above, the agency has undertaken research in some areas of concern identified by the petitioners. Making a determination to

amend the standards prior to the completion of this research would be premature. Additionally, other areas of concern identified by the petitioners would require substantial research to address. While the agency may in the future consider adding additional dummies or unrestrained cargo to its frontal crash test and/or other programs, it is not appropriate to consider rulemaking at this time. In accordance with 49 CFR part 552, this completes the agency's review of the petition.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Issued on: November 29, 2006.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E6-20487 Filed 12-4-06; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Sacramento Mountains Thistle (*Cirsium vinaceum*) and Initiation of 5-Year Status Review

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

**ACTION:** Notice of 90-day petition finding and initiation of 5-year status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the threatened Sacramento Mountains thistle (*Cirsium vinaceum*) (thistle) from the Federal List of Threatened and Endangered Plants, under the Endangered Species Act of 1973, as amended (Act). We find the petition does not present substantial information indicating that delisting of the thistle may be warranted. Therefore, we will not initiate a further 12-month status review in response to this petition under section 4(b)(3)(B) of the Act. However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the Act to consider information that has become available since we listed the species as threatened on June 16, 1987 (52 FR 22933). This will provide the public an opportunity to submit new information on the status of the species. We invite all interested parties to submit comments or information regarding this species.

**DATES:** The finding in this document was made on December 5, 2006. To be considered in the 5-year review, comments and information should be submitted to us (see **ADDRESSES** section) on or before March 5, 2007. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** Data, comments, information, or questions concerning this petition finding and 5-year review should be submitted to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. You may send your comments by electronic mail (e-mail) directly to the Service at [thistlecomments@fws.gov](mailto:thistlecomments@fws.gov). The petition, supporting data, and comments will be made available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** above) (telephone 505-346-2525, facsimile 505-346-2542).

#### SUPPLEMENTARY INFORMATION:

##### Background

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

Our 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold. "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating whether or not a petition presents "substantial" information involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

<sup>5</sup> NASS-CDS case reference: 2004-049-105.

We have to satisfy the Act's requirement that we use the best available scientific and commercial information to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case for delisting on its face. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should no longer be classified as a threatened species. We make no determinations as to the currency, accuracy, completeness, or veracity of the petition. The contents of this finding summarize that information that was available to us at the time of the petition review.

In making this finding, we relied on information provided by the petitioners and information available in our files at the time we reviewed the petition, and we evaluated that information in accordance with 50 CFR 424.14(b). Our process for making a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information contained in the petition meets the "substantial information" threshold.

### Species Information

The thistle is a stout plant, 3.3 to 5.9 feet (ft) (1 to 1.8 meters (m)) tall. Thistle stems are brown-purple and highly branched. The basal leaves are green, 12 to 20 inches (in) (30 to 50 centimeters (cm)) long, and up to 8 in (20 cm) wide, with ragged edges. The thistle presently occurs on both the eastern and western slopes of the Sacramento Mountains in Otero County, New Mexico. The thistle occurs primarily on National Forest System lands of the Lincoln National Forest in south-central New Mexico (Service 1993, p. 3). A few occupied sites lie on the extreme southern end of the Mescalero Apache Indian Reservation and a few private land inholdings within the Lincoln National Forest (Service 1993, p. 3). In this area, the thistle occurs within the mixed conifer zone, between 7,500 and 9,500 ft (2,300 and 2,900 m), in limestone substrate. The thistle is an obligate riparian species that requires saturated soils with surface or sub-surface water

flow. Waters at these sites are rich in calcium carbonate that often precipitates out to create large areas of travertine (calcium carbonate) deposits, which occasionally become large bluffs or hills. Travertine deposits are the most common habitats of the thistle.

On June 16, 1987, we listed the thistle as a threatened species based on threats from water development, grazing, recreation, logging, and the invasion of exotic plants (52 FR 22933). A recovery plan for the species was finalized on September 27, 1993 (Service 1993, pp. 1–23).

### Review of the Petition

For this finding, the Service evaluated the statements and information in the petition by comparing these with information contained in our files. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered or whether a listed species should be reclassified or removed from the list. The following discussion presents our evaluation of the petition, based on information provided in the petition, information available in our files, and our current understanding of the species.

On April 30, 2004, we received a petition from Mr. Doug Moore, Otero County Commissioner, New Mexico, to delist the thistle as a threatened species. In response to the petitioner's request to delist the thistle, we sent a letter to the petitioner dated August 31, 2005, explaining that the Service would review the petition and determine whether or not the petition presents substantial information indicating that delisting the thistle may be warranted.

The petition references the June 16, 1987, final listing rule (52 FR 22933) and lists the following threats for the species: (1) Loss of water; (2) trampling or ground disturbance by cattle, wildlife, or humans; (3) grazing of plants; and (4) logging. The supporting information provided by the petitioner includes only a portion of one recent biological assessment and a portion of one recent biological opinion conducted for a USDA Forest Service (Forest Service) grazing allotment (Forest Service 2003, pp. 1, 57–68; Service 2004, pp. 1, 25–27). The petition also provides the following summary statements regarding the thistle: (1) The range of the species is 500 percent greater than when it was listed in 1987; (2) the known population size is 2,800 percent greater than when it was listed; and (3) the known threats that can be managed have been virtually removed. The petitioner states that monitoring has

determined that grazing and disturbance no longer threaten the species, and that logging has never impacted the thistle. The petition also cites a biological assessment prepared by the Forest Service (Forest Service 2003, pp. 41–68) that indicates the thistle's abundance and range have increased since the species was listed.

Finally, the petitioner disagrees with the Recovery Plan's strategy of encouraging the State of New Mexico to adopt water law standards that recognize the need for preservation of in-stream flow to benefit plants, fish, and other wildlife (Service 1993, p. 9). The petitioner suggests that proactive watershed restoration would be a more effective strategy to insure the availability of water at the springs and bogs which provide habitat for the species. The Petitioner also suggests that the availability of water, air, and sunshine are aspects of the natural world which do not need to be guaranteed by the Service before a species can be delisted.

### Conservation Status

Under section 4 of the Act, we may list or delist a species, subspecies, or Distinct Population Segment of vertebrate taxa on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. This 90-day finding is not a status assessment and does not constitute a status review under the Act. Therefore, what follows below is a preliminary review of the factors affecting this species.

#### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The June 16, 1987, listing (52 FR 22933) and subsequent recovery plan (Service 1993, pp. 4–6) list habitat destruction or alteration by domestic livestock, water development (e.g., withdrawal from springs and reservoir construction), trampling by recreationists, road maintenance, and logging as threats to the species' habitat and range. The thistle also has been impacted by off-road vehicles (ORVs), motorcycles, road grading, and other activities (Service 1993, pp. 4–6; Forest Service 2004, pp. 625–629).

#### Information Provided in the Petition

The petitioner maintains that loss of water may threaten the thistle, but suggests that the availability of water, air, and sunshine are aspects of the natural world which do not need to be guaranteed by the Service. The petitioner notes that proactive watershed restoration would be more appropriate than acquiring water rights for the thistle. The petitioner also states that logging has not impacted the thistle because forest management discourages these activities near areas considered habitat (springs and bogs). Finally, the petitioner maintains that the plant's known population size is 2,800 percent greater than when it was listed.

#### Evaluation of Information in the Petition

We agree with the petitioner that reduction in the availability of water could threaten the species. As noted, the thistle is an obligate riparian species that requires surface or immediately sub-surface water flows. The loss of water can be: (1) Naturally caused due to drought conditions; (2) caused by other factors that may cause a spring to go dry (*i.e.*, rerouting of underground channels); or (3) caused by human impacts such as spring development or loss of water flow to an occupied site through diversion by roads or trails (Service 1993, pp. 4–5; Service 2004, p. 35). Since 1999, New Mexico has been in a drought (Piechota *et al.* 2004, pp. 303–305); however, the length or severity of the current drought cycle is not known, and the Southwest may be entering a period of prolonged drought (McCabe *et al.* 2004, pp. 4138–4140). Droughts of the 20th century are minor in comparison to droughts in the last 2000 years. For example, droughts prior to 1600 are characterized by longer duration (multidecadal) and greater spatial extent than droughts of today (Woodhouse and Overpeck 1998, pp. 2698–2706; Piechota *et al.* 2004, pp. 303–305). It is unknown how the springs in the Sacramento Mountains would respond to extended drought and an increase in the level of water withdrawals (*e.g.*, groundwater pumping). It is likely that the seasonal distribution of yearly precipitation also plays a role in water availability for the thistle. Spring desiccation at occupied sites has led to a reduction in the number of individual plants, and in some cases, caused a loss of all plants at previously occupied sites (Forest Service 2003, pp. 35–36). We will consider the petitioner's suggestion for alternative methods of providing water in future recovery planning efforts.

We generally agree with the statement that logging does not currently threaten the thistle. At present, the Forest Service applies a minimum 200 ft (60 m) protective buffer around thistle occurrences during forest management activities (Service 2002, p. 3; Service 2004, pp. 4–13; Service 2005a, p. 3). Still, the petition does not provide substantial scientific information that the present or threatened destruction, modification, or curtailment of habitat or range no longer threatens the thistle.

Information in our files indicates that at the time of listing, the range of the thistle consisted of approximately 20 known population areas (within 6 large canyon drainages) containing an estimated 10,000 to 15,000 sexually reproducing individuals (52 FR 22933; Service 1993, p. 2). Presently, the thistle occurs in small, dense populations at 86 sites on the Lincoln National Forest with an estimated population of 350,000 to 400,000 plants (Service 2005b, pp. 695–697). The extent of occupied sites and plant numbers fluctuates with rainfall and the amount of surface flow available. Populations generally expand in years of higher spring flows, with plants establishing farther downstream and scattered along the springs' outflow creeks. In years of lower flow, populations contract back to the wetter areas around the springs (Forest Service 2004, pp. 625–629).

As discussed above, information in our files indicates that the petitioner's claim that the number of populations and range of the thistle are greater than what was known in 1987 is reliable and accurate. However, the petitioner has presented no information or analysis to suggest these increased numbers would indicate that listing is no longer warranted, nor to suggest that threats under Factor A no longer impact the species. Impacts to habitat remain substantial factors impacting the long-term viability of this species.

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

The petition provides no information addressing this factor. The original listing did not cite this factor as significant.

#### *C. Disease or Predation*

##### Information Provided in the Petition

The petition indicates that herbivory does not adversely affect the species because vigorous growth of thistle was observed in areas following heavy use.

##### Evaluation of Information in the Petition

The original listing suggested the amount of predation by herbivores was

minimal (52 FR 22933, June 16, 1987). Livestock can trample vulnerable seedlings, rosettes, and flowering stalks, as well as damage travertine and soft substrates in occupied and potential habitat (Thomson 1991, pp. 44–52; Service 2004, pp. 62–63). The petition includes information indicating that livestock use of occupied habitat results in trampling and herbivory, but reduced livestock stocking levels and fencing around springs has led to large increases in thistle abundance (Forest Service 2003, pp. 53–56; Service 2004, p. 35; Service 2005b, pp. 698–703). For example, more than 10-fold increases have been observed in some areas following the construction and maintenance of exclosures (Forest Service 2003, pp. 53–56). Grazing exclosures have protected thistles from trampling and herbivory, and allowed populations inside the exclosures to expand outside fenced areas (Forest Service 2003, pp. 53–56). Forty of the 86 population sites located within the Lincoln National Forest have been fenced to exclude livestock or are considered to be inaccessible (Service 2005b, p. 698). Exclosures total approximately 120 ha (290 ac), protecting occupied thistle habitat from the negative impacts associated with livestock use (Service 2005b, p. 698). Although thistles have been documented to recover within a few weeks from light grazing (*i.e.*, grazing impacting less than 10 percent of known plants), livestock grazing on the thistle's flowering stalks and the leaves of rosettes can contribute to the loss of the entire reproductive output of the plant (Forest Service 2003, p. 53, 59; Service 2005b, p. 697). The petitioner did present evidence that threats from grazing can be reduced by using exclosures but did not present evidence that grazing no longer is a threat to the species.

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

The petition does not discuss the adequacy of regulatory mechanisms. The original listing did not cite this factor as significant except to briefly mention that take was prohibited by existing Forest Service regulations and that no other State and Federal regulations protected the species.

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

The petition does not discuss other natural or manmade factors. The original listing discussed the impacts of livestock grazing on range and the impacts of competition from introduced exotic species. As livestock grazing was

also discussed under Factor C in the original listing, the petition's discussion of this issue and our response is covered under Predation above.

### Finding

We have reviewed the petition and evaluated the information in relation to other pertinent literature and information available in our files. The thistle's population numbers and range are greater today than at the time of the June 16, 1987, listing. The petitioner states the threats are no longer significant, and requested that we delist the species. However, the petition does not analyze any new scientific information in relation to the five factors we must consider before proposing to delist a species. In addition, the petitioner includes very little detailed justification for the suggested delisting of the thistle, does not provide information regarding the status of the species over a significant portion of its range, does not describe or analyze how the threats relate to past or present numbers and distribution of the thistle, and includes only a small amount of supporting documentation. After this review and evaluation, we find the petition does not present substantial information to indicate that delisting the thistle may be warranted at this time.

### 5-Year Review

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 initiation of a 5-year review for the threatened thistle.

### Why Is a 5-Year Review Conducted?

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) of the Act, to determine, on the basis of such a review, whether or not any species should be removed from the List of Endangered and Threatened Wildlife (50 CFR 17.11) or the List of Endangered and Threatened Wildlife Plants (50 CFR 17.12) (delisted), or reclassified from endangered to threatened (downlisted), or from threatened to endangered (uplisted).

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new scientific and commercial data on the thistle. Considering the best scientific and commercial information available, the Service will recommend whether or not a change is warranted in

the Federal classification of the thistle. Any change in Federal classification would require a separate rulemaking. As part of our 5-year review, we will ensure that the information used is complete, accurate, and consistent with the requirements of the Act, the Service's Policy on Information Standards under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

### What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since we listed the species on June 16, 1987 such as: (A) Species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented to benefit the species; (D) threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and (E) other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

### How Is the Sacramento Mountains Thistle Currently Listed?

Under the Act, the Service maintains Lists of Endangered and Threatened Wildlife and Plant species (Lists) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Amendments to the Lists through final rules are published in the **Federal Register**. The Lists are also available on our Internet site at <http://endangered.fws.gov/wildlife.html>. The Sacramento Mountains Thistle (*Cirsium vinaceum*) is listed as threatened, with an historic range of U.S.A. (New Mexico), in the family Asteraceae. It does not have designated critical habitat, and no 4(d) special rules apply to this plant.

### Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature; (B) *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range; (C) *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

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

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

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

If we find that there is new information concerning the Sacramento Mountains thistle, indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered (uplist); or (b) remove the species from the List (delist). If we determine that a change in classification is not warranted, then the thistle will remain on the List under its current threatened status.

### Public Solicitation of New Information

We request any new information concerning the status of the Sacramento Mountains thistle. See "What Information Is Considered in the Review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources. If you wish to submit information for the 5-year review, you may submit information to the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review

during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address under the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### References Cited

A complete list of all references cited in this notice is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES**).

#### Author

The primary authors of this rule are the New Mexico Ecological Services Field Office staff (see **ADDRESSES**).

#### Authority

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

Dated: November 14, 2006.

**H. Dale Hall,**

*Director, Fish and Wildlife Service.*

[FR Doc. E6-20317 Filed 12-4-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the tricolored blackbird (*Agelaius tricolor*) as threatened or endangered under the

Endangered Species Act of 1973, as amended. We find that the petition does not present substantial scientific or commercial information indicating that listing the tricolored blackbird may be warranted. Therefore, we will not be initiating a status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the tricolored blackbird or its habitat at any time.

**DATES:** The finding announced in this document was made on December 5, 2006. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2605, Sacramento, California 95825-1846. New information, materials, comments, or questions concerning this species may be submitted to us at any time.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Field Supervisor or Arnold Roessler, Listing Branch Chief of the Sacramento Fish and Wildlife Office (see **ADDRESSES**), by telephone at (916) 414-6600, or by facsimile to (916) 414-6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877-8339, 24 hours a day, 7 days a week.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information 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 at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and the finding is to be published in the **Federal Register**.

This finding summarizes information included in the petition and information available to us at the time of the petition review. A 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the

information in the petition meets the "substantial information" threshold. Substantial information 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)).

#### Previous Federal Action

In 1990, the California Department of Fish and Game (CDFG) added the tricolored blackbird to its list of Bird Species of Special Concern. In 1991 the Yolo Chapter of the National Audubon Society submitted a petition to the Service and to the California Fish and Game Commission to list the tricolored blackbird as a threatened or endangered species. Researchers (Hamilton *et al.* 1995, p. 7) working on the species in 1992 found that the population had increased from the late 1980s; thus, the petitioners withdrew their petition based on new information that the population numbers had increased. The Service included this species as a candidate (Category 2) for Federal listing as either threatened or endangered in the 1991 and 1994 Candidate Notice of Review (CNOR) (59 FR 58981, p. 58990, issued November 15, 1994). Category 2 status included those taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In the CNOR published on February 28, 1996, the Service announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the List of Threatened and Endangered Species (61 FR 7595). The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species, and to clarify that the Service no longer regarded these species as candidates for listing. Since the tricolored blackbird was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR. The tricolored blackbird is now considered a U.S. Fish and Wildlife Service Bird of Conservation Concern (USFWS 2002). This designation is a result of mandates required through the Fish and Wildlife Conservation Act, which in part requires the Service to identify nongame migratory bird species that, without additional conservation actions, are likely to become candidates for listing under the Act. One of the goals of identifying species of conservation concern is to draw attention to the