DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR245]

Endangered and Threatened Wildlife and Plants; Two Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce findings that two species are not warranted for listing as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the north Oregon coast distinct population segment (DPS) of the red tree vole (Arborimus longicaudus) and Plateau spot-tailed earless lizard (Holbrookia lacerata). However, we ask the public to submit to us at any time any new information relevant to the status of either of the species mentioned above or their habitats.

DATES: The findings in this document were made on February 6, 2024.

ADDRESSES: Detailed descriptions of the bases for these findings are available on the internet at *https://www.regulations.gov* under the following docket numbers:

Species	Docket No.
North Oregon coast DPS of red tree vole	FWS–R1–ES–2023–0259
Plateau spot-tailed earless lizard	FWS–R2–ES–2023–0260

Those descriptions are also available by contacting the appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
North Oregon coast DPS of red tree vole	Kessina Lee, State Supervisor, Oregon Fish and Wildlife Office, 971–442–0560, *kessina_lee@fws.gov.*
Plateau spot-tailed earless lizard	Karen Myers, Field Supervisor, Austin Ecological Services Field Office, 512–937–7371, *karen_myers@fws.gov.*

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SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding on whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but precluded by other listing activity. We must publish a notification of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by

considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary of the Interior determines whether the species meets the Act's definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the north Oregon coast DPS of red tree vole or Plateau spot-tailed earless lizard meet the Act's definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information for all of these species. Our evaluation may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

In accordance with the regulations at 50 CFR 424.14(h)(2)(i), this document announces the not-warranted findings on petitions to list two species. We have also elected to include brief summaries of the analyses on which these findings are based. We provide the full analyses, including the reasons and data on which the findings are based, in the decisional file for each of the two actions included in this document. The following is a description of the documents containing these analyses:

The species assessment forms for the north Oregon coast DPS of red tree vole and Plateau spot-tailed earless lizard contain more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that these species do not meet the Act's definition of an ''endangered species'' or a ''threatened species.'' To inform our status reviews, we completed species status assessment (SSA) reports for these two species. Each SSA report contains a thorough review of the taxonomy, life history, ecology, current status, and projected future status for each species. This supporting information can be found on the internet at *https://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). Our analyses for these decisions applied our current regulations, portions of which were last revised in 2019. Given that we proposed further revisions to these regulations on June 22, 2023 (88 FR 40764), we have also analyzed whether the decisions would be different if we were to apply those proposed revisions. We concluded that the decisions would have been the same if we had applied the proposed 2023 regulations. The analyses under both the regulations currently in effect and the regulations after incorporating the June 22, 2023, proposed revisions are included in our decision file for each action.

North Oregon Coast DPS of the Red Tree Vole

Previous Federal Actions

On June 18, 2007, we received a petition from the Center for Biological Diversity, Oregon Chapter of the Sierra Club, Audubon Society of Portland, Cascadia Wildlands Project, and Oregon Wild to list the dusky tree vole (Arborimus longicaudus silvicola). Alternatively, if we found the dusky tree vole was not a valid subspecies, the petition requested that we list either the north Oregon coast population of the red tree vole as a DPS or the red tree vole (A. longicaudus) throughout all of its range as an endangered or threatened species under the Act (16 U.S.C. 1531 *et seq.*).

On October 28, 2008, we published a 90-day finding in the **Federal Register** (73 FR 63919) concluding that the petition presented substantial information indicating that listing the north Oregon coast DPS of the red tree vole may be warranted, and we initiated a status review. During that review, we concluded that the dusky tree vole is not a valid subspecies.

On October 13, 2011, we published a 12-month finding in the **Federal Register** (76 FR 63720) in which we stated that listing the north Oregon coast population of the red tree vole as a DPS was warranted primarily due to habitat loss. However, listing was precluded at that time by higher priority actions, and the DPS of the red tree vole was added to our candidate species list.

From 2012 through 2016, we addressed the status of the north Oregon coast DPS of the red tree vole annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016). Our 2019 candidate notice of review (84 FR 54732, October 10, 2019) retained that determination and also stated that we were working on a thorough review of all available data for the DPS.

On December 19, 2019, after completing a species status assessment, we published a 12-month finding in the **Federal Register** (84 FR 69707) determining that the north Oregon coast DPS of the red tree vole was not warranted for listing as an endangered or threatened species under the Act.

The 2007 petitioners (except for the Oregon Chapter of the Sierra Club) filed a complaint in March 2021 challenging our December 19, 2019, not-warranted finding. We reached a settlement agreement with the petitioners, which was approved by the court on May 23, 2022, to withdraw our 2019 not-warranted finding and submit a new 12-month finding to the Office of the Federal Register by January 31, 2024. In

accordance with the settlement agreement, on October 19, 2022, we withdrew our 2019 12-month not-warranted finding (87 FR 63472), effectively returning the DPS to our candidate list, and initiated a new species status assessment to inform a new 12-month finding. This document constitutes our new 12-month finding as to whether the north Oregon coast DPS of the red tree vole warrants listing as an endangered or threatened species under the Act. In addition, in a memorandum to the file (Service 2023a, entire), we explain differences between this and previous findings, and highlight new information that became available after our 2019 determination.

Summary of Finding

The red tree vole is an arboreal mouse-sized rodent found in western Oregon south to northwestern California, with the north Oregon coast DPS of the red tree vole (hereinafter ''tree vole'') occurring in the northwestern quarter of the species' range. The DPS area is made up mostly (69 percent) of private lands including industrial timber forests; the remaining DPS area comprises Federal land managed primarily by the U.S. Forest Service and the U.S. Bureau of Land Management (17 percent), State land managed primarily as State forest (12 percent), and 1 percent or less each of land owned by counties or municipalities, Tribes, or nongovernmental organizations.

Tree voles live and nest in the canopy of conifer forests and feed primarily on Douglas fir (Pseudotsuga menziesii) needles or, in one narrow region within the DPS, alternatively on Sitka spruce (Picea sitchensis) and western hemlock (Tsuga heterophylla) needles. They rarely come to the ground, where they are vulnerable to predation, except if needed on occasion to move between trees. The species' needs are met in conifer stands with (1) trees large enough to supply sufficient food, or with smaller trees connected to each other by adjoining branches; (2) available structures to support nests; (3) connected tree canopies to facilitate breeding and dispersal; and (4) sufficiently large populations with intervening forest matrix between them to provide connectivity. These features may be present in young forests but are more common in older (80 years or more), taller, structurally complex forests.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the tree vole, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats affecting the tree vole's biological status include habitat loss and fragmentation, timber harvest, and wildfire, Swiss needle cast disease, and vegetation shift as influenced by climate change. We used published tree vole habitat models to derive population areas based on habitat patches large enough to accommodate approximately 100 or more individuals, which resulted in 52 population areas within 17 geographic units that represent potential meta-populations.

We modeled resiliency of population areas based on the estimated habitat capacity and effective population size ratio of each population area. We developed an overall resiliency rating for each geographic unit by combining population-area resiliency ratings with measures of connectivity, which we based on distance to neighboring populations both within and between geographic units. Currently, 12 of the 17 tree vole geographic units have moderate or high resiliency and are well-distributed across the northern and southern regions of the DPS and across both vegetation zones found in the DPS, indicating adequate redundancy and representation. As such, we found that the tree vole is not currently at risk of extinction (*i.e.,* endangered) throughout the DPS.

Thus, we proceed with determining whether the species is likely to become endangered within the foreseeable future throughout all of its range (*i.e.,* threatened). We assessed future resiliency out to approximately 2080 under two future scenarios, one representing a lower plausible future condition and one representing an upper plausible future condition. In modeling future resiliency, we considered population-area resiliency and connectivity as we did for the current condition, but we also considered the future effect of Swiss needle cast disease and potential vegetation shifts as influenced by climate change. We also assessed future redundancy by analyzing the risk of catastrophic fire, considering potential fire size based on the perimeter of the most catastrophic wildfires from the past 200 years, relative suitability for fire, and potential fire severity as determined by the land management type.

Under the upper plausible future scenario, 12 of the 17 geographic units are projected to be highly resilient and are well distributed across the northern and southern regions of the DPS and in both vegetation zones, indicating adequate resiliency, redundancy, and representation. Under the lower plausible future scenario, more geographic units are projected to decline into low condition or become extirpated, but the DPS would still maintain multiple large and connected geographic units in moderate condition, spanning both the northern and southern regions of the DPS. Although under this scenario there would be a reduction in representation if the Sitka spruce vegetation zone were lost due to extreme vegetation shift caused by climate change, we expect that, because the largest of the units would remain in moderate condition, they would provide adequate resiliency and redundancy for the DPS. As such, we determined that the tree vole is not likely to become endangered within the foreseeable future throughout its range under either the upper or lower plausible future scenarios.

We also evaluated whether the north Oregon coast DPS of red tree vole is endangered or threatened in a significant portion of its range. We did not find any portions of the north Oregon coast DPS of red tree vole's range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion, either now or within the foreseeable future. Thus, after assessing the best available information, we conclude that the north Oregon coast DPS of red tree vole is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that the tree vole is not in danger of extinction or likely to become in danger of extinction throughout all of its range or in any significant portion of its range. Therefore, we find that listing the tree vole as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the tree vole species assessment form and other supporting documents, which are available on *https://www.regulations.gov* under docket number FWS–R1–ES–2023–0259.

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the 2023 tree vole SSA report. The Service sent the SSA report to three independent peer reviewers and received two responses. We also received seven technical reviews on the

SSA report. Results of this structured peer review process can be found at *https://www.regulations.gov* under docket number FWS–R1–ES–2023–0259. We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

Plateau Spot-Tailed Earless Lizard

Previous Federal Actions

On January 13, 2010, we received a petition from WildEarth Guardians requesting that the Service list the spot-tailed earless lizard (Holbrookia lacerata) as a threatened or endangered species and designate critical habitat under the Act. In a July 19, 2010, letter to the petitioner, the Service acknowledged receipt of the petition. On May 24, 2011, the Service published a 90-day finding on the spot-tailed earless lizard, stating that the petition presented substantial scientific information indicating that listing may be warranted (76 FR 30082). In 2019, the two subspecies known as H. l. lacerata and H. l. subcaudalis were formally described as full species, and the common name for the updated entity of H. lacerata became the Plateau spot-tailed earless lizard (used herein). The status of the entity now referred to as H. subcaudalis is being evaluated separately. This document constitutes our 12-month finding on the January 13, 2010, petition to list the Plateau spot-tailed earless lizard under the Act.

Summary of Finding

The Plateau spot-tailed earless lizard is a small, ground-dwelling lizard found in central and western Texas, primarily within the Edwards Plateau region. The Colorado River forms the northern boundary, and the Balcones Escarpment serves as the southern boundary of the species' range. The Plateau spot-tailed earless lizard is found in habitats broadly defined as grasslands or historical grasslands (*e.g.,* mesquite savannahs, prairies, flat stony plateaus, agricultural fields). In the part of the species' range that would otherwise succeed into shrublands or forests, the habitat is associated with frequent disturbance from herbivory and fire. In other parts of the species' range, soils and climate characteristics limit the development of shrublands and forests, maintaining a more open, grass-dominated vegetation community.

Plateau spot-tailed earless lizards spend most of their time underground and are able to self-bury under loose soil or utilize existing animal burrows or soil fissures for shelter. They need minimal woody plant canopy cover, open areas with bare soil, and warm, sunny days so that they can bask and increase their internal body temperature before moving around on the surface. The Plateau spot-tailed earless lizard is believed to be a sit-and-wait predator and an ''opportunistic generalist'' in terms of diet, which includes a variety of arthropods (*e.g.,* beetles, grasshoppers, and termites).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Plateau spot-tailed earless lizard, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats affecting the Plateau spot-tailed earless lizard's biological status include habitat loss and modification due to development, suppression of disturbance processes, grazing practices, and vehicle strikes. We also examined a number of other factors including climate change, energy development, red-imported fire ants, and pesticides, but these factors did not rise to such a level that they affected the species as a whole. The impact of red-imported fire ants, which was identified as a substantial threat in the petition, likely occurred primarily during the period of invasion in the 1930s or 1940s, but the consequences of that invasion have played out and the presence of red-imported fire ants does not pose a significant threat to the Plateau spot-tailed earless lizard today.

While there are several stressors to the species, the Plateau spot-tailed earless lizard currently occupies an area roughly the size of its historical range. The Plateau spot-tailed earless lizard has multiple resilient populations in three of the six ecoregions it occupies in central and western Texas, which is an indication that the species has redundancy. Habitat loss and modification is the primary factor influencing the species rangewide; however, 13 population analysis units comprising 91 percent of the land within the range of the species are currently in moderate to high condition. While land management has changed over time, this land management has not resulted in substantial changes to habitat conditions across the species' range, and most population analysis units are highly resilient based on the current proportion of suitable habitat. Similarly, most population analysis units are highly resilient based on the current level of traffic intensity. The threats of habitat loss and modification and vehicle strikes appear to be impacting a small proportion of the species' range. Overall, the majority of population analysis units and a majority of the areas in the population analysis units are characterized by populations with the ability to withstand stochastic events (*e.g.,* disturbance).

The Plateau spot-tailed earless lizard has maintained representation similar to historical levels, thereby maintaining its ability to adapt to environmental change. The threats to date have not significantly affected the species' viability. The SSA report describes some of the uncertainties about potential threats and the species' response to these potential threats, but the best available information indicates the risk of extinction is low. Therefore, we conclude that the Plateau spot-tailed earless lizard is not in danger of extinction throughout all of its range and does not meet the definition of an endangered species.

Thus, we proceed with determining whether the species is likely to become endangered within the foreseeable future throughout all of its range (*i.e.,* threatened). The SSA report's analysis of future scenarios through 2050 encompasses the best available information for future projections of habitat suitability (*i.e.,* tree and shrub encroachment) and traffic intensity (*i.e.,* road mortality). We determined that this timeframe enabled us to consider the threats/stressors acting on the species and draw reliable predictions about the species' response in the 20 years following these factors (*i.e.,* 10 generations, to the year 2070) because it provides a reasonable timeframe to assess the effects of environmental changes. Based on our two plausible future scenarios, we projected that 7 to 10 population analysis units comprising 69 to 77 percent of the area occupied by the species will have moderate to high resiliency in the future; thus, these populations will have the ability to withstand stochastic events. In both scenarios, the species is expected to maintain redundancy at the scale of its entire range and to maintain representation because it will continue to be distributed throughout most of its known historical range. Therefore, after assessing the best available information, we conclude that the Plateau spot-tailed earless lizard does not meet the definition of a threatened species because it is not likely to become endangered within the foreseeable future throughout all of its range.

We also evaluated whether the Plateau spot-tailed earless lizard is endangered or threatened in a significant portion of its range. We did not find any portions of the Plateau spot-tailed earless lizard's range for

which both (1) the portion is significant, and (2) the species is in danger of extinction in that portion, either now or within the foreseeable future. Thus, after assessing the best available information, we conclude that the Plateau spot-tailed earless lizard is not in danger of extinction in a significant portion of its range now, or within the foreseeable future.

After assessing the best available information, we concluded that the Plateau spot-tailed earless lizard is not in danger of extinction or likely to become in danger of extinction throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Plateau spot-tailed earless lizard as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Plateau spot-tailed earless lizard species assessment form and other supporting documents, which are available on *https://www.regulations.gov* under docket number FWS–R2–ES–2023–0260.

Peer Review

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the Plateau spot-tailed earless lizard SSA report. The Service sent the SSA report to three independent peer reviewers and received three responses. Results of this structured peer review process can be found at *https://www.regulations.gov* under docket number FWS–R2–ES–2023–0260. We incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this finding.

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the north Oregon coast DPS of red tree vole or Plateau spot-tailed earless lizard to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References

A complete list of the references used in these petition findings is available in the relevant species assessment form, which is available on the internet at *https://www.regulations.gov* in the appropriate docket (see **ADDRESSES**, above) and upon request from the appropriate person (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

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

Martha Williams,

Director, U.S. Fish and Wildlife Service.

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