

**Billing Code 4333-15-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket Nos. FWS-R3-ES-2016-0061; FWS-R2-ES-2016-0062]**

**4500030115**

**Endangered and Threatened Wildlife and Plants; 90-Day Findings on Two Petitions**

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

**ACTION:** Notice of petition findings and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on two petitions to list or delist wildlife under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that one petition, which requests that we remove the golden-cheeked warbler from the Federal List of Endangered and Threatened Wildlife, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted, and we are not initiating a status review in response to this petition. We refer to this as a “not-substantial petition finding.” We also find that the other petition, which requests that we list the U.S. population of northwestern moose (*Alces alces andersoni*) as an endangered or threatened distinct population segment (DPS), presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, with the publication of this document, we are initiating a review of the status of this population to determine if the petitioned action is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information

regarding this subspecies. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct the status review, we request that we receive information no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Information submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** *Not-substantial petition finding:* The not-substantial petition finding for the golden-cheeked warbler is available on <http://www.regulations.gov> under the docket number FWS-R2-ES-2016-0062. Supporting information in preparing this finding is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

*Status review:* You may submit information on the U.S. population of northwestern moose (*Alces alces andersoni*) by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter the docket number: FWS-R3-ES-2016-0061. You may submit information by clicking on “Comment Now!” If your information will fit in the provided comment box, please use this feature of <http://www.regulations.gov>, as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file

format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R3-ES-2016-0061; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We request that you send information only by the methods described above. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Request for Information**, below, for more details).

**FOR FURTHER INFORMATION CONTACT:** For information on the golden-cheeked warbler, contact Adam Zerrenner, [adam\\_zerrenner@fws.gov](mailto:adam_zerrenner@fws.gov), or 512-490-0057. For information on the U.S. population of northwestern moose (*Alces alces andersoni*), contact John JaKa, [jonathan\\_jaka@fws.gov](mailto:jonathan_jaka@fws.gov), 612-713-5350.

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 listing, reclassification, or delisting a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial data available, we request information on these species from governmental agencies, Native American

Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The biology, range, and population trends of the U.S. population of northwestern moose (*Alces alces andersoni*), including:

- (a) Habitat requirements;
- (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 subspecies, its habitat, or both.

(2) The factors that are the basis for making a listing, reclassification, or delisting determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);
  - (b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);
  - (c) Disease or predation (Factor C);
  - (d) The inadequacy of existing regulatory mechanisms (Factor D); or
  - (e) Other natural or manmade factors affecting its continued existence (Factor E).
- (3) The potential effects of climate change on this subspecies and its habitat.

(4) Additional evidence of discreteness, with respect to the 1996 DPS Policy (61 FR 4722, February 7, 1996), regarding the status of the U.S. population of northwestern moose (*Alces alces andersoni*) satisfying one or both of the following conditions:

(a) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(b) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

(5) Additional evidence of significance regarding the status of U.S. population of northwestern moose (*Alces alces andersoni*) including, but not limited to:

(a) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,

(b) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, or

(c) Evidence that the discrete population segment differs markedly from other populations of the species in genetic characteristics.

If, after the status review, we determine that listing is warranted, we will propose critical habitat (see definition at section 3(5)(A) of the Act) for domestic (U.S.) species under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information for the U.S. population of northwestern moose (*Alces alces andersoni*) on:

(6) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range occupied by the subspecies;

(7) Where these features are currently found;

(8) Whether any of these features may require special management considerations or protection;

(9) Specific areas outside the geographical area occupied by the subspecies that are “essential for the conservation of the species”; and

(10) What, if any, critical habitat you think we should propose for designation if the subspecies is proposed for listing, such as:

(a) Why these habitats meet the requirements of section 4 of the Act; and

(b) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the proposed designation, and the benefits of including or excluding areas that exhibit these impacts.

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

Submissions merely stating support for or opposition to the actions under consideration without providing supporting information, although noted, will not 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 this status review by one of the methods listed in **ADDRESSES**. If you submit information via

*http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. 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 will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours by contacting the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**, above.

### **Background**

Section 4(b)(3)(A) of the Act 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. 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 commence a review of the status of the species, which will be subsequently summarized in our 12-month finding.

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 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 (see (2) under **Request For Information**, above).

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 one or more of 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 or commercial data used at the time the species was classified, or the interpretation of such data, were in error.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat. However, the identification of factors that could affect a species negatively may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. Therefore, during the subsequent status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. The



information presented in the petition must include evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of an endangered or threatened species under the Act.

### **Evaluation of a Petition to Remove the Golden-cheeked Warbler from the List of Endangered and Threatened Wildlife**

Additional information regarding our review of this petition can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2016-0062 under the Supporting Documents section.

#### *Species and Range*

Golden-cheeked warbler (*Dendroica chrysoparia* = *Setophaga chrysoparia*, hereafter warbler), a migratory songbird breeding exclusively in Texas, and wintering in the highlands of Mexico (Chiapas) and Central America (Guatemala, Honduras, Nicaragua, El Salvador).

#### *Petition History*

On June 30, 2015, we received a petition dated June 29, 2015, from Nancie G. Marzulla (Marzulla Law, LLC – Washington DC) and Robert Henneke (Texas Public Policy Foundation – Austin TX) requesting that the golden-cheeked warbler be removed from the Federal List of Endangered and Threatened Wildlife (“delisted”) due to recovery or error in information. The petition clearly identified itself as a petition and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(a).

On December 11, 2015, we received supplemental information from the petitioners that included additional published studies and an unpublished report. These studies, as well as others known to the Service and in our files at the time the supplement

was received, were considered, as appropriate, in this finding. This finding addresses the petition.

*Finding*

Based on our review of the petition, sources cited in the petition, and information in our files, we find that the petition does not provide substantial scientific or commercial information indicating that the petitioned action may be warranted. No new information is presented that would suggest that the species was originally listed due to an error in information. The golden-cheeked warbler is a taxonomically unique species and was shown to be in danger of extinction at the time of the listing. The golden-cheeked warbler has not been recovered, and due to ongoing, widespread destruction of its habitat, the species continues to be in danger of extinction throughout its range (Service 2014, p. 15).

Because the petition does not present substantial information indicating that delisting the golden-cheeked warbler may be warranted, we are not initiating a status review in response to this petition. Our explanation for this finding can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2016-0062 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, the golden-cheeked warbler or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

**Evaluation of a Petition to List the U.S. Population of Northwestern Moose (*Alces alces andersoni*) as an Endangered or Threatened Distinct Population Segment (DPS)**

Additional information regarding our review of this petition can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS-R3-ES-2016-0061 under the Supporting Documents section.

*Species and Range*

U.S. population of northwestern moose (*Alces alces andersoni*); Michigan (Upper Peninsula), Minnesota, North Dakota, and Wisconsin.

*Petition History*

We received a petition dated July 9, 2015, from the Center for Biological Diversity and Honor the Earth, requesting that we list the U.S. population of northwestern moose (*Alces alces andersoni*) under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted for the U.S. population of the northwestern moose (*Alces alces andersoni*) based on factors A, C, D, and E.

Our explanation for this finding can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS-R3-ES-2016-0061 under the Supporting Documents section. Thus, for the U.S. population of northwestern moose

(*Alces alces andersoni*), the Service requests information on the five listing factors under section 4(a)(1) of the Act, including the factors identified in this finding and explanation (see **Request for Information**, above).

## **Conclusion**

On the basis of our evaluation of the information presented under section 4(b)(3)(A) of the Act, we have determined that the petition to remove the golden-cheeked warbler from the List of Endangered and Threatened Wildlife does not present substantial scientific or commercial information indicating that the requested action may be warranted. Therefore, we are not initiating a status review for this species.

We have further determined that the petition to list the U.S. population of northwestern moose (*Alces alces andersoni*) as an endangered or threatened DPS presents substantial scientific or commercial information indicating that the requested action may be warranted. Because we have found that the petition presents substantial information indicating that the petitioned action may be warranted, we are initiating a status review to determine whether this action under the Act is warranted. At the conclusion of the status review, we will issue a 12-month finding in accordance with section 4(b)(3)(B) of the Act, as to whether or not the Service believes the petitioned action is warranted.

It is important to note that 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. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough

status review of the species, which is conducted following a substantial 90-day finding. 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 finding that the petitioned action is warranted.

### **References Cited**

A complete list of references cited is available for each species addressed in this document on the Internet at <http://www.regulations.gov> and upon request from the appropriate person listed under **FOR FURTHER INFORMATION CONTACT**, above.

### **Authors**

The primary authors of this document are the staff members of the Branch of Recovery and State Grants, Ecological Services Program, U.S. Fish and Wildlife Service.

### **Authority**

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

Dated: May 25, 2016

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Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service

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