



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[4500030115]

#### Endangered and Threatened Wildlife and Plants; 90-Day Findings for Three Species

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on three petitions to add or remove species from the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the three petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate reviews of the status of these species to determine if the petitioned actions are warranted. To ensure that these status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these species. Based on the status reviews, we will issue 12-month findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

**DATES:** These findings were made on [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. As we commence work on the status reviews, we seek any new information concerning the status of, or threats to, these species or their habitats. Any information received during our work on the status reviews will be considered.

**ADDRESSES:** *Supporting documents:* Summaries of the bases for the petition findings contained in this document are available on <http://www.regulations.gov> under the appropriate

docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, supporting information in preparing these findings is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

*Submitting information:* If you have new scientific or commercial data or other information concerning the status of, or threats to, the species for which we are making these petition findings, or their habitats, please submit that information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter the appropriate docket number (see the table under **SUPPLEMENTARY INFORMATION**). Then, click on the Search button. After finding the correct document, 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: [Insert appropriate docket number; see the table under **SUPPLEMENTARY INFORMATION**], 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 we receive on <http://www.regulations.gov>. This generally means that we will post

any personal information you provide us (see **Request for Information for Status Reviews**, below, for more information).

**FOR FURTHER INFORMATION CONTACT:**

<b>Species common name</b>	<b>Contact person</b>
Dixie Valley toad	Carolyn Swed, 775-861-6337; carolyn_swed@fws.gov
Oregon vesper sparrow	Jeffrey Dillon, 503-231-6179; jeffrey_dillon@fws.gov
Yellow-billed cuckoo	Jennifer Norris, 916-414-6600; jennifer_norris@fws.gov

If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (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 (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (i.e., “list” a species), remove a species from the Lists (i.e., “delist” a species), or change a listed species’ status from endangered to threatened or from threatened to endangered (i.e., “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 the finding promptly in the *Federal Register*.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to “credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific

review would conclude that the action proposed in the petition may be warranted” (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C 1531 et seq.).

The five factors 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).

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, affect individuals of a species negatively. 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) 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. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect 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 are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires us to promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

### **Summaries of Petition Findings**

The petition findings contained in this document are listed in the table below and the bases for the findings, along with supporting information, are available on

<http://www.regulations.gov> under the appropriate docket number.

*Table: Status reviews.*

<b>Common name</b>	<b>Docket no.</b>	<b>URL to Docket on <a href="http://www.regulations.gov">http://www.regulations.gov</a></b>
Dixie Valley toad	FWS-R8-ES-2018-0018	<a href="https://www.regulations.gov/docket?D=FWS-R8-ES-2018-0018">https://www.regulations.gov/docket?D=FWS-R8-ES-2018-0018</a>
Oregon vesper sparrow	FWS-R1-ES-2018-0019	<a href="https://www.regulations.gov/docket?D=FWS-R1-ES-2018-0019">https://www.regulations.gov/docket?D=FWS-R1-ES-2018-0019</a>
Yellow-billed cuckoo	FWS-R8-ES-2018-0027	<a href="https://www.regulations.gov/docket?D=FWS-R8-ES-2018-0027">https://www.regulations.gov/docket?D=FWS-R8-ES-2018-0027</a>

## **Evaluation of a Petition to List the Dixie Valley Toad as an Endangered or Threatened Species Under the Act**

### *Species and Range*

The Dixie Valley toad (*Anaxyrus williamsi*) is a small toad found in four spring-fed wetlands in Dixie Valley, Churchill County, Nevada.

### *Petition History*

On September 18, 2017, we received a petition from the Center for Biological Diversity requesting that the Dixie Valley toad be listed as threatened or endangered 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 the petitioned action may be warranted for the Dixie Valley toad due to potential threats associated with the following: development of geothermal energy and difficulty in associated mitigation, decrease in spring discharge, changes in water temperature, and groundwater extraction (Factor A); and chytridiomycosis disease and predation by the invasive American bullfrog (Factors C and E).

However, during our status review we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either endangered species under section 3(6) of the Act or threatened species under section 3(20) of the Act, including information on the five listing factors under section 4(a)(1) (see **Request for Information for Status Reviews**, below).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0018 under the Supporting Documents section.

## **Evaluation of a Petition to List the Oregon Vesper Sparrow as an Endangered or Threatened Species Under the Act**

### *Species and Range*

The Oregon vesper sparrow (*Pooecetes gramineus affinis*) is a medium- to large-sized migratory sparrow with a restricted range. The breeding range currently consists of the States of Washington (South Puget lowlands, San Juan Island, lower Columbia River islands, and Mason County) and Oregon (Willamette, Umpqua, and Rogue Valleys). The winter range consists of areas in California—the lowlands west of the Sierra Nevada Mountains, from the San Francisco Bay area through the San Joaquin Valley to coastal southern California.

### *Petition History*

On November 8, 2017, we received a petition from the American Bird Conservancy requesting that the Oregon vesper sparrow be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such

and included the requisite identification information for the petitioner, required at former 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 Oregon vesper sparrow due to potential threats associated with the following: habitat loss and degradation (Factor A); land use/management impacts to nesting birds (Factor E); and existing regulatory mechanisms that may be inadequate to address impacts of these threats (Factor D) (for information about these factors, see **Background**, above).

However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either endangered species under section 3(6) of the Act or threatened species under section 3(20) of the Act, including information on the five listing factors under section 4(a)(1) (see **Request for Information for Status Reviews**, below).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS–R1–ES–2018–0019 under the Supporting Documents section.

## **Evaluation of a Petition to Delist the Western Distinct Population Segment of the Yellow-Billed Cuckoo**

### *Species and Range*

The yellow-billed cuckoo (*Coccyzus americanus*) occurs in North America across the continental United States and parts of British Columbia and Mexico. The species winters in



Central and South America. The Western Distinct Population Segment (DPS) of the yellow-billed cuckoo (western yellow-billed cuckoo) occurs generally in the area west of the Rocky Mountains from British Columbia to Mexico. The western DPS of the yellow-billed cuckoo is listed as a threatened species on the List of Endangered and Threatened Wildlife (List; 50 CFR 17.11(h)).

#### *Petition History*

On May 4, 2017, we received a petition from the American Stewards of Liberty, Arizona Cattlemen's Association, Arizona Mining Association, Hereford Natural Resource Conservation District, Jim Chilton, National Cattlemen's Beef Association, Public Lands Council, WestLand Resources, Inc., and Winkelman Natural Resource Conservation District, requesting that the western DPS of the yellow-billed cuckoo be removed from the List due to an error in our DPS analysis. They also provided information in their petition indicating the species should be delisted as a result of its utilization of additional habitat. The petition clearly identified itself as such and included the requisite identification information for the petitioners, 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 delisting the western DPS of the yellow-billed cuckoo may be warranted due to information on additional habitat being used by the species (Factor A). While we did not find the petition provided substantial information indicating the entity may warrant delisting due to an error in our DPS analysis, because the petitioners did provide substantial information regarding additional habitat use by the species, we will review the DPS as part of our status review of the species. During our

status review we will thoroughly evaluate all potential threats to the species, as well as revisit our DPS determination. Thus, for this species, the Service requests information on the five listing factors under section 4(a)(1) of the Act, including the factors identified in this finding as well as information pertaining to the DPS (see **Request for Information for Status Reviews**, below).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0027 under the Supporting Documents section.

### **Request for Information for Status Reviews**

When we make a finding that a petition presents substantial information indicating that listing, reclassification, or delisting of a species may be warranted, we are required to review the status of the species (a status review). For the status review to be complete and based on the best available scientific and commercial information, 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 species' biology, range, and population trends, including:
  - (a) Habitat requirements;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns; and
  - (d) Historical and current population levels and current and projected trends.

(2) The five factors described in section 4(a)(1) of the Act (see **Background**, above) that are the basis for making a listing, reclassification, or delisting determination for a species under section 4(a) of the Act, including past and ongoing conservation measures that could decrease the extent to which one or more of the factors affect the species, its habitat, or both.

(3) The potential effects of climate change on the species and its habitat, and the extent to which it affects the habitat or range of the species.

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 these status reviews 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>.

It is important to note that the standard for a 90-day finding differs from the Act's standard that applies to a status review to determine whether a petitioned action is warranted. In making a 90-day finding, we consider information in the petition and sources cited in the petition, as well as information that is readily available, and we evaluate merely whether that information constitutes "substantial information" indicating that the petitioned action "may be warranted." In a 12-month finding, we must complete a thorough status review of the species and evaluate the best scientific and commercial data available to determine whether a petitioned action "is warranted." Because the Act's standards for 90-day and 12-month findings are

different, a substantial 90-day finding does not mean that the 12-month finding will result in a “warranted” finding.

## **Conclusion**

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the Dixie Valley toad, Oregon vesper sparrow, and yellow-billed cuckoo present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, we are initiating status reviews to determine whether these actions are warranted under the Act. At the conclusion of each status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned action is not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

**Authors**

The primary authors of this document are staff members of the 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 15, 2018

James W. Kurth

**James W. Kurth,**  
*Deputy Director,*  
*U.S. Fish and Wildlife Service,*  
*Exercising the Authority of the Director,*  
*U.S. Fish and Wildlife Service.*

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