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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS-R8-ES-2014-0058; FWS-R3-ES-2014-0056; 4500030113]

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 reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on a petition to delist the coastal California gnatcatcher (*Polioptila californica californica*) and a petition to list the monarch butterfly (*Danaus plexippus plexippus*) under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that both petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of these subspecies 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 subspecies. Based on the status reviews, we will issue 12-month findings on the petitions, 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 reviews, 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:

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

<http://www.regulations.gov>. In the Search box, enter the appropriate docket number (see table below). 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 table below]; U.S. Fish and

Wildlife Service Headquarters, 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 the **Request for Information** section, below, for more details).

Species	Docket Number
coastal California gnatcatcher	FWS-R8-ES-2014-0058
monarch butterfly	FWS-R3-ES-2014-0056

FOR FURTHER INFORMATION CONTACT: For the coastal California gnatcatcher: Mendel Stewart, Field Supervisor, Carlsbad Fish and Wildlife Office, 2177 Salk Ave, Suite 250, Carlsbad, CA 92008; telephone 760-431-9440; or facsimile (fax) 760-431-5901.

For the monarch butterfly, Tony Sullins, Chief of Endangered Species, Midwest Region, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; telephone 612-713-5334; or fax 612-713-5292.

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 information, we request information on the coastal California gnatcatcher and monarch butterfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. For both petitioned subspecies we seek information on:

(1) The subspecies' biology, range, and population trends, 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;

- (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.
- (3) The potential effects of climate change on the subspecies and its habitat.
- (4) Information specific to a subspecies (e.g., taxonomy of the entity, information about its status in a particular area, or information that may be used in a potential rule issued under section 4(d) of the Act for the conservation of the subspecies).

Specific questions for the coastal California gnatcatcher:

- (1) The coastal California gnatcatcher's biology, range, and population trends, including, but not limited to, distribution, abundance, population trends, demographics, and genetics.
- (2) Information related to the taxonomy, particularly the distinctiveness at the subspecies level, of California gnatcatchers in southern California and Baja California, Mexico, including:
- (a) New morphological, genetic, or other relevant information;
 - (b) New analyses or new interpretations of existing morphological, genetic, or other relevant information;
 - (c) Information on the methods, results, and conclusions of Zink *et al.* (2000, entire) and Zink *et al.* (2013, entire), on which the petition heavily relies; and

(d) Information related to consideration of the coastal California gnatcatcher as a distinct population segment (DPS).

Specific questions for the monarch butterfly:

- (1) Any relevant aspects of the life history or behavior of the monarch butterfly that have not yet been documented; and
- (2) Thermo-tolerance range and microclimate requirements of the monarch butterfly.

If, after the status review, we determine that listing the monarch butterfly is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the subspecies. Therefore, we also request data and information on:

- (1) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range occupied by the subspecies;
- (2) Where these features are currently found;
- (3) Whether any of these features may require special management considerations or protection;
- (4) Specific areas outside the geographical area occupied by the subspecies that are “essential for the conservation of the species”; and
- (5) What, if any, critical habitat you think we should propose for designation if the subspecies is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

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

Submissions merely stating support for or opposition to the 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 the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the 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 at the appropriate lead U.S. Fish and Wildlife Service Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

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

Section 3(6) of the Act defines an “endangered species” as any species which is in danger of extinction throughout all or a significant portion of its range. Section 3(20) of the Act defines a “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. Section 3(16) of the Act defines “species” as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

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:

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, and, 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. However, the identification of factors that could affect a species negatively may not be sufficient for us to find that the information in the petition and our files is substantial. The information 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.

Review of Petition to Remove the Coastal California Gnatcatcher from the List of Endangered and Threatened Wildlife Under the Act

Additional information regarding our review of this petition can be found as an appendix at <http://www.regulations.gov> under Docket No. FWS-R8-ES-2014-0058 under the Supporting Documents section in the document labeled Appendix for the coastal California gnatcatcher.

Subspecies and Range

This petition concerns the coastal California gnatcatcher (*Polioptila californica californica*). Its range includes coastal southern California in the United States and northwestern Baja California, Mexico.

Petition History

On June 11, 2014, we received a petition dated June 10, 2014, from Pacific Legal Foundation requesting that the coastal California gnatcatcher be removed from the List of Endangered and Threatened Wildlife (List) due to error. The petition claims that the coastal California gnatcatcher is not a valid subspecies and thus does not meet the definition of “species” 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 coastal California gnatcatcher (*Polioptila californica californica*).

Thus, for the coastal California gnatcatcher, the Service requests information regarding the species taxonomy and listing factors under section 4(a)(1) of the Act (see **Request for Information**).

Review of Petition to List the Monarch Butterfly as a Threatened Species Under the Act

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-2014-0056 under

the Supporting Documents section in the document labeled Appendix for Monarch Butterfly.

Subspecies and Range

This petition concerns the monarch butterfly (*Danaus plexippus plexippus*), with a range in North America (continental United States, southern Canada, Mexico), and Cuba and other Caribbean Islands; the subspecies' nonnative dispersed range includes Hawaii, Australia, New Zealand, other Pacific Islands, Azores, Canary Islands, and coastal Spain.

Petition History

On August 26, 2014, we received a petition dated August 26, 2014, from the Center for Biological Diversity, the Center for Food Safety, the Xerces Society for Invertebrate Conservation, and Dr. Lincoln Brower requesting that we list the monarch butterfly (*Danaus plexippus plexippus*) as a threatened species under the Act. 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.

The petition also requested that we designate critical habitat for the monarch butterfly, that we consider any significant portion of range (SPR) when making our listing determination, and that we develop a rule under section 4(d) of the Act ("4(d)

rule”) allowing activities that promote conservation of the subspecies. Should we propose to list the monarch butterfly, we will at that time consider the monarch’s status rangewide; whether there may be a threatened or endangered SPR if the subspecies is not found to be threatened or endangered throughout its range; if threatened status is warranted, whether a 4(d) rule may be appropriate; and propose to designate critical habitat if appropriate.

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 listing may be warranted for the monarch butterfly under section 4(a)(1) of the Act, based on factors A, B, C, and E (see Appendix for Monarch Butterfly). We therefore request information on the five listing factors under section 4(a)(1) of the Act (see **Request for Information**).

We reviewed the petition and information presented in the petition and determined that issuing an emergency regulation temporarily listing the subspecies under section 4(b)(7) of the Act is not warranted. However, if at any time conditions change and we determine emergency listing is necessary, an emergency rule may be developed.

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 petitions summarized above for the coastal California gnatcatcher (*Polioptila californica californica*) and the monarch butterfly (*Danaus plexippus plexippus*) present substantial scientific or commercial information indicating that the requested actions may be warranted. Because we have found that the petitions present substantial information indicating that the petitioned actions may be warranted, we are initiating status reviews to determine whether these actions under the Act are warranted. At the conclusion of the status reviews, we will issue a 12-month finding in accordance with section 4(b)(3)(B) of the Act, stating whether listing, reclassification, or delisting, as appropriate, 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 warranted finding.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the appropriate lead Field Offices (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Branch of Listing, 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.*).

Date: December 18, 2014

Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service

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