

have increased by 300 percent over normal. As a consequence, natural high spring flows rarely occur during the May-July sturgeon spawning season. In addition, elimination of side channel slough habitat in the Kootenai River floodplain due to diking to protect agricultural lands from flooding is likely a contributing factor to the sturgeon decline. The former slack water areas were considered important rearing and foraging habitat for early age sturgeon and their prey (Partridge 1983).

The petition and supporting information have been reviewed by staff of the Boise Field Office. The Service finds that the petition presents substantial information indicating that listing of the Kootenai River population of the white sturgeon may be warranted. This decision is based on information contained in the petition and scientific and commercial information otherwise available to the Service at this time.

The Service first initiated review of this population for listing in 1991. The Service now requests additional data, information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

#### References Cited

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#### Author

This notice was prepared by Steve Duke of the Boise Field Office (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

Dated: April 8, 1993.

**Richard N. Smith,**  
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93-8663 Filed 4-13-93; 8:45 am]

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#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition to List the Buff-Breasted Flycatcher

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

**ACTION:** Notice of petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition failed to present substantial scientific or commercial information indicating that listing of the buff-breasted flycatcher (*Empidonax fulvifrons*) as an endangered species may be warranted.

**DATES:** The finding announced in this notice was made on April 8, 1993. The Service will accept information on the status of the buff-breasted flycatcher at any time.

**ADDRESSES:** Information, comments, or questions concerning the buff-breasted flycatcher petition may be submitted to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Sam Spiller, Field Supervisor at the above address (telephone 602/379-4720).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practical, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the *Federal Register*. If the finding is positive, the Service is also required to promptly commence a status review of the species.

On June 2, 1992, Mr. Elmer Richardson submitted a letter to the Service, requesting the Service to list the buff-breasted flycatcher (*Empidonax fulvifrons*) as an endangered species (Richardson 1992). On June 12, 1992, the Service informed the petitioner that his letter had been accepted as a petition.

This finding is based on various documents, including published and unpublished studies, and agency documents. All documents on which this finding is based are on file in the Fish and Wildlife Service Field Office in Phoenix, Arizona.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is likely to become an endangered species (as defined above) within the foreseeable future throughout all or a significant portion of its range may be declared a threatened species under the Act. Section 3(15) of the Act includes under the term species " \* \* \* any subspecies \* \* \* and any distinct population segment of any species \* \* \* which interbreeds when mature."

The buff-breasted flycatcher ranges from central Arizona and southwestern New Mexico, south through Mexico to Honduras and El Salvador. It occurs in open, montane pine or pine-oak forests, generally above 5,500 feet elevation. This flycatcher also occurs in montane canyon riparian groves of sycamore and other deciduous trees at similar elevations (Bailey 1928, Bent 1963, Phillips *et al.* 1964, Davis 1972, Peterson and Chalif 1973, American Ornithologists' Union 1983). The buff-breasted flycatcher appears to prefer relatively open forests, where it forages in the grassy or herbaceous understory (Bent 1963, Hubbard 1972, Phillips *et al.* 1964).

Section 4(a)(1) of the Act lists five factors to be considered in determining whether a species may be threatened or endangered. These five factors are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range.
2. Overutilization for commercial, recreational, scientific or educational purposes.
3. Disease or predation.
4. The inadequacy of existing regulatory mechanisms.
5. Other natural or manmade factors affecting its continued existence.

The petitioner presented information on the first of these factors, contending that extensive loss of habitat has occurred, and that remaining habitat continues to face threats of destruction and modification. In support of this

contention, the petitioner provided a single reference, to the Arizona Game and Fish Department's (AGFD) "List of threatened native wildlife in Arizona" (AGFD 1988). That source makes a summary statement that population declines have occurred in Arizona since 1920, possibly due to changes in forest stand densities and control of forest fire. Neither the petition nor AGFD (1988) presented substantiating information or references.

Although the petition presented no other information to support the need to list, the Service reviewed other information not presented by the petitioner. The AGFD and New Mexico Department of Game and Fish (NMDGF) consider the buff-breasted flycatcher as endangered (NMDGF 1979, AGFD 1988). Phillips *et al.* (1964) suggested that, in Arizona, unspecified "ingenious programs of misuse" have modified buff-breasted flycatcher habitat by eliminating grassy ground cover in montane forests, and allowing encroachment by brushy juniper and young trees. The AGFD (1988) also suggested that control of wildfire and other manipulation of forests had modified buff-breasted flycatcher habitat. However, some authors believe the causes of the decline are poorly understood. They note that some areas formerly occupied by the bird remain unchanged, but these areas are not now occupied (Phillips 1968, Hubbard 1972, NMDGF 1979).

The range and numbers of the buff-breasted flycatcher may have declined in the southern portions of Arizona and New Mexico (Phillips *et al.* 1964, Phillips 1968, Hubbard 1972 and 1978, NMDGF 1979). However, the magnitude of this decline is difficult to determine. Several authors believed the bird may have once been locally common in the United States portion of its range (Phillips *et al.* 1964, Hubbard 1978). Others describe this flycatcher as rare, uncommon or little known in the region, even prior to the declines (Bailey 1928, Ligon 1961, Swarth 1904 in Bent 1963). In 1991, the buff-breasted flycatcher was recorded near Flagstaff, Arizona (Keller 1992), an area considered the extreme northern limit of the bird's range.

Information on the status of the flycatcher and its habitat in Mexico and Central America was not presented by

the petitioner. The species has been considered common in Mexico, long after declines in the U.S. were noted (Phillips *et al.* 1964, NMDGF 1979, Monson and Phillips 1981). Monroe (1968) considered the buff-breasted flycatcher common in suitable habitat in Honduras. No information has been found on the status of the buff-breasted flycatcher in Guatemala or El Salvador.

After a review of the petition, the single reference cited, and other available information to the Service, the Service concludes the petition did not present substantial scientific or commercial information indicating that listing the buff-breasted flycatcher as a threatened or endangered species may be warranted. Information otherwise available to the Service indicates that the numbers and range of the buff-breasted flycatcher have declined in Arizona and New Mexico, probably partly due to modification of habitat. However, these areas of decline do not constitute a significant portion of the range of the species. The status of the buff-breasted flycatcher in the majority of its range is either unknown (Central America) or apparently stable (Mexico).

This notice acknowledges that declines are known in part of the species' range, possibly due to modification of habitat. However, sufficient information is not available to support listing, and the Service is seeking conclusive data on biological vulnerability and threats. The Service would appreciate any additional data, information or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the buff-breasted flycatcher.

#### References Cited

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- \_\_\_\_\_, J. Marshall, and G. Monson. 1964. The Birds of Arizona. University of Arizona Press, Tucson, Arizona. 212 pp.
- Richardson, E. 1992. Petition to list the buff-breasted flycatcher (*Empidonax fulvifrons*) under the endangered Species Act of 1973. Letter to Fish and Wildlife Service Regional Director, Region 2, Albuquerque, New Mexico. June 2, 1992. 1 pg.

#### Author

The primary author of this notice is Timothy Tibbitts of the Fish and Wildlife Service's Ecological Services Field Office in Arizona (See ADDRESSES above).

**Authority:** The authority citation for this action is 16 U.S.C. 1531-1544.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: April 8, 1993.

**Richard N. Smith,**  
Acting Director, Fish and Wildlife Service.  
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