Endangered Species Act of Occidentaois list the Mexican spotted owl received a petition (listing petition) to

Background

SUPPLEMENTARY INFORMATION:

For further information contact:

Steve Spangle, Listing Coordinator, at the above Regional Office address.

ADDRESSES:

For information, comments, or questions concerning the petitioned action, including section 7 consultation, have in no way implied that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that delisting the Mexican spotted owl may be warranted.


James L. Witt,

Director.

[FR Doc. 94–7839 Filed 3–31–94; 8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Mexican Spotted Owl From the List of Endangered and Threatened Wildlife

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 remove the Mexican spotted owl (Strix occidentalis lucida) from the List of Endangered and Threatened Wildlife. The Service has determined that the petition did not present substantial scientific or commercial information indicating that delisting the Mexican spotted owl may be warranted.

DATES: The finding announced in this notice was made on March 25, 1994.

ADDRESSES: Information, comments, or questions concerning the petitioned action may be submitted to the Listing Coordinator, Southwest Region, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; or the Field Supervisor, Suite D, 3530 Pan American Highway NE, Albuquerque, New Mexico 87107. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the latter address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Listing Coordinator, at the above Regional Office address (505/766-3972).

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1989, the Service received a petition (listing petition) to list the Mexican spotted owl (Strix occidentalis lucida) (MSO) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). The Service published a proposed rule to list the subspecies as threatened on November 4, 1991 (56 FR 56344) (proposed rule). The MSO was listed as a threatened species effective April 15, 1993 (58 FR 14248) (final rule). The primary reasons cited for conferring threatened status on the subspecies included the present or threatened destruction, modification, or curtailment of its habitat or range and the inadequacy of existing regulatory mechanisms. Secondary factors included the potential for catastrophic wildfire and potential competition and/or predation by other raptors, including the great horned owl (Bubo virginianus) and red-tailed hawk (Buteo jamaicensis).

On August 16, 1993, the Service received a petition (delisting petition) from the Coalition of Arizona/New Mexico Counties for Stable Economic Growth (delisting petitioners) to remove the MSO from the List of Endangered and Threatened Wildlife (delist).

Section 4(b)(3)(A) of the Act requires that the Service 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, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the Federal Register.

This finding is based on various documents, including the final rule, the delisting petition, and unpublished reports. All of these documents are on file in the Service’s Southwest Regional Office and/or the New Mexico Ecological Services Field Office (see ADDRESSES section).

The delisting petitioners presented 21 issues that they believed supported delisting the MSO; those issues, as presented in the petition, are addressed below. (The issues were numbered 1–20 in the delisting petition, but two issues received number 9. Those issues are addressed as 9a and 9b below.)

Issue 1: The listing of the MSO has created “de facto” critical habitat throughout much of a five-state region.

Response: “Critical habitat” consists of areas legally described and designated through a formal rulemaking process. The Service has not yet designated critical habitat for the MSO. The Service’s listing and recovery actions, including section 7 consultation, have in no way implied the existence of MSO critical habitat.

Issue 2: The Service believes that MSOs are exclusively associated with old-growth.

Response: The Service has acknowledged that the owl uses a variety of habitat types, including old growth, but also second growth that provides complex habitat characteristics such as multiple canopy layers, moderate to high canopy closure, large trees, and abundant dead and downed woody material.

Issue 3: No information in the administrative record for the listing of the MSO supports the theory that logging, increased predation, or lack of adequate regulation threatens the owl. In fact, the overly restrictive nature of MSO management precludes management of forests to reduce fuel loads and maintain healthy ecosystems.

Response: There have been extensive surveys of suitable habitat (i.e., habitat thought to be formerly suitable but, due to natural or anthropogenic causes, no longer considered suitable) adjacent to habitat identified as suitable. When owls are located at nest or roost sites, it is almost always in some area of habitat.

There are records of owls foraging in recently harvested areas when these areas occur near suitable habitat. There have also been instances where owls have disappeared from areas following timber harvest (Larry Henson, Region 3 Forest Service, in litt. 1993). The Service believes that there is adequate evidence that even- age management produces conditions that will not support owls over the long term.

The Service has not maintained that owls cannot survive in forests that have experienced timber harvest. Much of the forest land in New Mexico and Arizona was extensively railroad-logged in the first decades of the twentieth century. Some of these areas, particularly in Lincoln National Forest, now support owls. Many railroad-logged areas in the Gila, Cibola, Santa Fe, Coconino, and Kaibab national forests, however, still do not support MSOs. It appears that in areas where productivity is high, suitable conditions can be restored in less than 100 years, even when the treatments were severe. Other areas, which have been selectively logged, have probably been continuously occupied by owls. The Service accepts that some harvest in second growth may hasten the return of suitable habitat conditions. The Service does not know the extent to which currently occupied habitat can be altered without adverse effects on the owl. The practice of even- age management called for in Region 3 Forest Management Plans has resulted in owls disappearing from previously occupied territories without subsequent
The Forest Service is currently revising its Forest Management Plans; however, the revised guidelines have not yet been formally adopted.

Service concern that forest fragmentation will increase predation by red-tailed hawks and great horned owls is based on the knowledge that these species prefer more open habitats. As the owl's habitat opens up under harvest, more great horned owls and red-tailed hawks are expected to occur closer to MSOs. The closer proximity may result in a higher rate of predation.

The Service disagrees that management for the MSO will lead to increased fire risk and unhealthy forests. The Service has recognized the need for active management in order to reduce fuel loading in some areas where past fire suppression has created unnaturally dense stands and high fuel loads.

Issue 4: The Service failed to appropriately solicit public and local government participation, which would have provided information to preclude listing, and failed to notify private individuals or organizations known to be affected by the proposed listing. Counties in which the owl occurs, and the Republic of Mexico, of the proposal to list the subspecies. The delisting petitioners further claim that the public hearings to solicit public comment were inadequate.

Response: The Service went well beyond all statutory requirements in soliciting and considering public comments prior to publication of the final rule. The Service opened a second comment period in addition to the initial 120-day comment period, although only a single 60-day comment period was required. The Service held 6 public hearings (3 in New Mexico, 2 in Arizona, and 1 in Utah) throughout the range of the owl, which were attended by approximately 653 people. Of those, 142 people provided oral or written comments. Although no hearings were held in Colorado or Texas, hearings nearby in Alamogordo and Santa Fe, New Mexico; Cedar City, Utah; and Flagstaff, Arizona, were attended by individuals from neighboring states. People in Colorado and Texas also had ample opportunity to provide written testimony, which is considered equally with oral testimony. Furthermore, it is doubtful that substantive information from those two states that was not considered in the listing decision exists.

Newspaper notices inviting public comment were published for each comment period as follows — 20 notices in Arizona, 5 in New Mexico, 3 in Utah, and 2 in Colorado. In addition, more than 400 letters were sent to interested individuals, county governments, and relevant government agencies (including the Mexican Government, via the U.S. Embassy) following publication of the proposed rule. Comments were received from 1,707 agencies, public officials, private organizations, companies, and individuals. The Service believes that the opportunities for public input were adequate.

Issue 5: No formal communication was made to the Mexican Government; little or no information is available on the MSO in Mexico; and no scientifically conclusive statement can be made about its occurrence in that country. This is contrary to the requirement that the best scientific and commercial information be used in the listing process (section 4(b)(1)(A) of the Act and 50 CFR 424.14(b)).

Response: The Service invited the Mexican Government to comment on the owl's status during the status review, in a letter transmitted by the U.S. Embassy in Laredo, Texas. The Mexican Government responded by letter expressing concern for the species in Mexico. The Service requested comments on the proposed rule from the Mexican Government via the U.S. Embassy. The Mexican Government was similarly notified of publication of the final rule. The Service agrees that little information is available on the status of theowl in Mexico. Nevertheless, the Service believes that the best scientific and commercial information available was used in making a determination to list the MSO. Communications between the Service and Mexican officials have continued during the recovery planning process, and a Mexican representative has been appointed to the MSO Recovery Team.

Issue 6: Only speculation was advanced in the proposed and final rules concerning owl populations in low- and middle-elevation riparian habitat. Organized owl surveys have not been conducted in riparian habitats; if they were conducted, many additional owls would be found.

Response: The Service had to rely on historical accounts to find records of MSOs in low- and middle-elevation riparian habitats. As stated in the final rule, MSOs have been found in desert riparian systems in the past, but such habitats have been much reduced.

Historic records also exist of owls breeding in desert riparian habitat. The Service speculates that these low-elevation riparian systems also may have served as dispersal corridors, although there were no hard data to support this. The Service also believes that there has been sufficient research in such systems in recent years to demonstrate that MSOs are no more than rarely found in desert riparian systems today. Where montane riparian habitats extend down canyons, they still provide important habitat for MSOs at lower elevations.

Issue 7: There was no accounting for drought conditions during the period when owl surveys were conducted, and the drought caused a depression of apparent owl numbers because owls may not breed during drought conditions. The petitioners believed that this would limit responses during surveys.

Response: The years 1991 and 1992 were wet years. Monitoring and demographic studies on Coconino and Gila national forests showed high reproductive output, as did monitoring on Lincoln National Forest during those years. During 1990, 18 monitored sites in New Mexico had very low reproduction. Reproduction during 1989, which was not a wet year, was similar to 1991-1992. The Service is not aware of any data that show conclusively that where territorial owls are present during the breeding season, they are less likely to be discovered during calling surveys when they are not breeding. The Service is aware of no data that would indicate that owls do not call during years when they do not breed.

Issue 8: The Service miscalculated owl populations.

Response: The Service used all available data on known owl occurrences in conjunction with information on the distribution of owl habitat acreage, surveyed habitat, and unsurveyed habitat to estimate the number of owls in the Southwest. The estimate included known owls, plus expected owls based on extrapolation of known owl densities over unsurveyed suitable habitat. The Service believes that the estimate provided in the final rule was reasonable, given the available data.

Additional acres have been surveyed since the status review which produced the number published in the final rule. By the end of 1992, more than 1,500,000 acres of habitat had been surveyed in New Mexico and Arizona national forests. This is nearly half the habitat in New Mexico and Arizona.

The following factors were considered in developing estimates of owl populations in Region 3 forests:

1. The number of acres of suitable habitat in each national forest.
2. The acres of suitable habitat surveyed in each forest.
3. The number of management territories (a Forest Service term for MSO areas that fall under special
management guidelines) designated in each forest.

4. Formal monitoring data on occupancy rates in each forest.

The procedure used in the following estimates is the same one used in the status review, except that the analysis was done for each forest rather than dividing the range into north and south. Because more recent monitoring data have not yet been analyzed, the estimate is based on the occupancy rates through 1990, published in the status review. (Analysis of monitoring data from 1991 through 1993 is currently underway and will be used in the recovery planning process.) The calculations are presented in Table 1 by forest. In Table 1, the management territory number (MT#) equals the minimum number of management territories (Min) in the forest. The maximum number (Max) would be the number expected in all of the suitable habitat in the forest, if owls continue to be found at the present rate. The expected number (Exp) is an average of the minimum and the maximum. The expected number is based on the assumption (supported by Ward et al. 1991) that the rate of discovery will decline as surveys continue. Because there were differences in pair occupancy rates for northern New Mexico and southern New Mexico, based on formal monitoring, separate estimates were made for northern New Mexico and Arizona (40 percent pair occupancy), and southern Arizona and New Mexico (68 percent pair occupancy). The estimated number of pairs of owls (# Pairs) is given in Table 1 for each forest. The total number of single owls expected in Forest Service Region 3 is 495.91 and the total number of owls expected is 1,954.47.

### Table 1.—Calculation of the Number of Management Territories and Pairs of MSOs in Forest Service Region 3

<table>
<thead>
<tr>
<th>National forest</th>
<th>Suitable acres</th>
<th>Suitable surveyed</th>
<th>MT# – Min</th>
<th>Max</th>
<th>Exp</th>
<th># Pairs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apache/Sierragreaves</td>
<td>256,000</td>
<td>194,000</td>
<td>89</td>
<td>118</td>
<td>104</td>
<td>70.50</td>
</tr>
<tr>
<td>Carson</td>
<td>250,000</td>
<td>148,000</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>6.61</td>
</tr>
<tr>
<td>Cibola</td>
<td>172,000</td>
<td>63,000</td>
<td>29</td>
<td>79</td>
<td>54</td>
<td>36.78</td>
</tr>
<tr>
<td>Coconino</td>
<td>356,000</td>
<td>167,000</td>
<td>124</td>
<td>264</td>
<td>194</td>
<td>132.03</td>
</tr>
<tr>
<td>Coronado</td>
<td>107,000</td>
<td>78,000</td>
<td>97</td>
<td>133</td>
<td>115</td>
<td>78.22</td>
</tr>
<tr>
<td>Gila</td>
<td>619,000</td>
<td>225,000</td>
<td>147</td>
<td>404</td>
<td>276</td>
<td>187.48</td>
</tr>
<tr>
<td>Kaibab</td>
<td>63,000</td>
<td>60,000</td>
<td>4</td>
<td>14</td>
<td>4</td>
<td>1.64</td>
</tr>
<tr>
<td>Lincoln</td>
<td>371,000</td>
<td>267,000</td>
<td>114</td>
<td>158</td>
<td>136</td>
<td>92.62</td>
</tr>
<tr>
<td>Prescott</td>
<td>133,000</td>
<td>10,000</td>
<td>10</td>
<td>133</td>
<td>72</td>
<td>48.62</td>
</tr>
<tr>
<td>Santa Fe</td>
<td>476,000</td>
<td>110,000</td>
<td>32</td>
<td>138</td>
<td>85</td>
<td>34.09</td>
</tr>
<tr>
<td>Tonto</td>
<td>317,000</td>
<td>182,000</td>
<td>49</td>
<td>85</td>
<td>67</td>
<td>45.68</td>
</tr>
<tr>
<td>Total</td>
<td>3,122,000</td>
<td>1,504,000</td>
<td>693</td>
<td>1,449</td>
<td>1,073</td>
<td>729.28</td>
</tr>
</tbody>
</table>

There are no data available to justify changing the estimates of owl populations on non-Forest Service lands. The status review listed 67 territories in northern New Mexico, 55 territories in southern New Mexico, and 249 territories in Arizona on non-Forest Service lands. If one assumes that occupancy rates on non-Forest Service lands are similar to those in national forests, an estimate of 624 birds on non-Forest Service public and tribal lands in New Mexico and Arizona is derived (56 FR 56344). In 1992 there was an additional 64 birds known from Utah, 14 from Colorado, and 2 from Texas (58 FR 14248), for an estimated total of 2,658 on public and tribal lands in the Southwest U.S. Current estimates for the owl population on private lands in New Mexico and Arizona add another 41 birds for a total of 2,699 MSOs in the United States (see also Issue 15). It should be noted that this does not indicate that owl numbers have increased since 1990, but rather that more complete data provide a higher estimate.

**Issue 9a**: Population estimates have been based on MSOs located during drought conditions, and locating methods were deficient.

**Response**: The Service is required to base listing actions on the best scientific and commercial information available, and the data used at the time of listing constituted the best available data. The revised population estimate given in the response to Issue 8 is believed to be reasonable. (See discussion under Issues 7 and 8.)

**Issue 9b**: Incorrect conclusions were drawn from Ganey and Balda (1989). Only select comments taken out of context were relied upon. This invalidates the positive listing petition finding.

**Response**: Ganey and Balda’s (1989) paper was not the only information used in the positive listing petition finding. The Service recognized the limitations of statements made in the paper and believes the information was correctly applied at all stages of the listing process. Although the comments mentioned in the delisting petition were not directly referenced in the Federal Register listing documents, the paper was considered in its entirety and reasonable conclusions were drawn.

**Issue 10**: The Service has used the suitable and capable habitat designations to advance its argument for listing to the detriment of Southwest forest ecosystems. Forest Service figures (Fletcher 1990) for capable habitat are erroneous and were a poor basis on which to identify habitat threats.

**Response**: The Service recognizes that identification of capable habitat can be difficult. However, the Forest Service is the agency best qualified to identify past management and its effects on habitat on its lands. Various sites in the ponderosa pine (Pinus ponderosa) type probably varied in quality as owl habitat prior to treatment, which caused them to be labeled “capable” by the Forest Service. Many of these sites were probably suitable owl habitat prior to treatment. More recent Forest Service estimates of suitable habitat (3,122,000 acres) and capable habitat (1,040,000 acres) (Henson, in litt. 1993) are similar to the figures provided to the status review team (Fletcher 1990). The figures for suitable habitat were derived by forest and district biologists from stand data bases, aerial photography, satellite data, and ground-truthing. Capable habitat was defined as habitat that had been suitable in the past, but because of natural or human-caused changes was no longer suitable.

There is some confusion regarding the importance of ponderosa pine as an owl...
habitat type. Ponderosa pine appears to provide suitable habitat where it occurs in multiple canopy layers with high canopy closure and with abundant dead and downed woody material. These conditions now exist in some forests, and may have been more abundant prior to the extensive railroad-logging at the beginning of the century. The ponderosa pine forest type also appears to provide suitable habitat when it occurs on steep slopes adjacent to rock outcrops and in association with various species of hardwoods. It is often difficult to tell from the available data whether current second-growth pine stands are capable of attaining suitability. The Service believes that the Forest Service acreage figures for suitable and capable habitat in Arizona and New Mexico represent the best scientific data available.

**Issue 11:** The Service has not accurately described the nesting habits of the owl. The owl is an opportunist in regard to nest-site selection. As evidence for this, the petitioners note the owl’s frequent use of old nests built by other species, which they claim shows adaptability and survival potential.

**Response:** A lack of suitable nest structures was not discussed as a limiting factor to the MSO population in any listing document. As stated in the final rule, nesting habitat nearly always has a microclimate characterized as a cool, shady, humid site with substantial overhead cover. Thus, it is the loss of these microclimatic conditions, rather than nesting structures, that poses a risk to the MSO. Furthermore, it is unclear why the petitioners believe that use of other reptile nests implies adaptability or survivability, because all owl species use existing structures for nesting rather than building their own.

**Issue 12:** The decision to list the owl poses a threat to Southwest forest ecosystems. The petitioners state further that the forests are currently in a condition that is considerably more dense than in “pre-European” times, and that this increased density creates fire and insect damage hazards and is detrimental to other species.

**Response:** The Service agrees that many areas are overstocked with trees and may be at risk from fire, insects, and/or disease. That risk was recognized in the final rule. The Service does not agree that managing forests for a well-distributed population of owls will result in adverse conditions for other species. The Service has encouraged forest managers to adopt fire management plans and thinning of overstocked stands to reduce fire hazards and threats from insect pests.

**Issue 13:** Data and studies from other owl subspecies should not be used to make listing determinations.

**Response:** The Service disagrees. The Service is required to use the best scientific and commercial data to determine whether a species should be listed. The Service relied on studies of the conspecific northern (Strix occidentalis lucida) and California (S. o. occidentalis) spotted owls to supplement available information on the Mexican subspecies. The Service agrees that those data must be applied cautiously and that ecological differences in the habitats of the three subspecies must be taken into account.

**Issue 14:** The term “suitable habitat” is not found in the Act, and the Service should only consider “critical habitat” in habitat discussions. The petitioners assert that, if the species is truly threatened, the final rule should have addressed critical habitat.

**Response:** The term “suitable habitat” is appropriate when assessing the biological status of any species. In fact, any evaluation of a species’ status would be incomplete without such a discussion, particularly where habitat loss is cited as a threat to the species. “Critical habitat” is a legal term in the Act, and refers to areas officially designated through a rulemaking procedure. Therefore, the term “suitable” is appropriately used in the “Summary of Factors Affecting the Species” section of the final rule. In the “Critical Habitat” section of the final rule, the Service stated that, although much was known about the habitat requirements of the species, detailed maps necessary for determining critical habitat were not available at the time of listing, and therefore critical habitat was not determinable at that time. The Service has since initiated an effort to obtain the necessary additional information.

**Issue 15:** Private land estimates in the final rule are inaccurate. Private lands are much more extensive than the Service claimed in the final rule. As evidence, the petitioners cite the Colfax Soil and Conservation District Long Range Plan (1981) as stating that privately owned commercial timber covers 656,818 acres in the district.

**Response:** The Service figure of 5,000 acres, cited on page 38 of the status review, was based on known occupied habitat in Arizona and New Mexico. The delisting petitioners are correct in stating that the Service underestimated the extent of habitat on private land.

The Service has calculated acres of suitable habitat on private land from Collins (1989), who provides acreage figures for non-Forest Service land in Arizona, and Van Hooser et al. (1993) who provide figures for “private timberland” in New Mexico. In New Mexico, 2,000,000 acres attributed to private ownership includes Native American tribal lands. In New Mexico, tribal timberlands cover 641,278 acres (Steve Haglund, Bureau of Indian Affairs (BIA) New Mexico Area Office, and James Carter, BIA Navajo Area Office, pers. comms. 1993). No owls have been confirmed in Carson National Forest in Taos County or Colfax County, despite extensive surveys. The acreage in Colfax County should therefore not be included as occupied habitat, even though suitable habitat may be present. This leaves 701,904 acres of private timberland in the remainder of New Mexico.

More than 60 percent of New Mexico timberland (421,142 acres) is in the ponderosa pine type. Eleven percent of that (46,326 acres) is stocked at a rate greater than 5,000 board feet per acre (BFA), which is less than the stocking that is usually found in suitable owl habitat. Because there are no figures relating the acreage of suitable habitat on private land, the Service uses this stocking level as indicative of the acreage of suitable habitat in New Mexico. Spruce (Picea sp.), white fir (Abies concolor), Douglas-fir (Pseudotsuga menziesii), and aspen (Populus tremuloides) together occupy 16 percent of timberlands in New Mexico, and approximately two-thirds are stocked at greater than 5,000 BFA. This produces a figure of 67,383 acres in these forest types. Thus, in New Mexico there may be as much as 113,709 acres of privately owned suitable timberland supporting spotted owls. This figure probably overestimates suitable owl habitat because it assumes that forests in private ownership have the same likelihood of suitability as forests in public or Native American ownership. This is unlikely, however, because private lands generally occur at lower elevations; thus they are drier and less productive. In addition, suitable owl habitat is likely to have a stocking level greater than 5,000 BFA.

Arizona has 1,317,076 acres of non-reserved timberland in non-Forest Service ownership. In Arizona, Native American tribal lands occupy 1,260,162 acres (Conner et al. 1990). This leaves 56,914 acres of timberland in private ownership in Arizona. Approximately 84 percent (47,808 acres) is in ponderosa pine, and 14 percent (7,968 acres) is in Douglas-fir (Collins 1989). References for Arizona (Collins 1989, Conner et al. 1990) do not break down acreage by stocking level as was done in New Mexico. Rather, they provide...
The final rule is designed to protect information. (See Response to Issue 8).

The Service critically examined Forest Service and other agency data during preparation of the status review, proposed rule, and final rule, and believes that these figures constitute the best available information. (See Response to Issue 8.)

Response: In the final rule, the Service noted that owls use old growth where it is available within the species’ range, but that they are not limited to old-growth forests. The final rule also pointed out that owls are frequently found in second-growth forests where those forests possess the attributes of suitable habitat (e.g., multiple canopy layers, moderate to high canopy closure). In addition, the final rule noted that owls are found in a variety of habitat types, from mixed conifer owl habitat on private land in Arizona. Thus, a more accurate figure of 125,000 and 130,000 acres of habitat probably exist on private lands in the two states.

Assuming that the acreage is evenly divided between northern and southern New Mexico and Arizona, approximately 63,000 acres occur in the north and a similar acreage in the south. Owls in northern New Mexico and Arizona are found at the rate of one for each 15,092 acres surveyed. Thus approximately four owls would be expected on private land in the northern portions of the two states. In the south, owls are found at the rate of one for every 1,690 acres. This produces an estimated 37 birds. The Service does not believe that addition of 41 birds from private land is a sufficient increase to justify delisting.

Response: The Service disagrees. The decision was based upon the best scientific and commercial data available. The most important factors behind the decision to list were the present and threatened destruction of habitat, possible increases in predation resulting from habitat fragmentation, and the inadequacy of existing regulatory mechanisms.

Issue 19: The Service failed to recognize statistical biases in the data regarding the owl, in that most surveys were motivated by timber sales.

Response: The Service clearly addressed this bias in the status review, the proposed rule, and the final rule.

Issue 20: The scientific and commercial information did not support a positive listing petition finding, nor, after the status review, a finding that listing was warranted.

Response: The Service disagrees. The listing petition pointed out that forest plans called for additional conversion of owl habitat from suitable to capable, which, added to ongoing conversion, would result in the likely extinction of the subspecies. The protection offered by Forest Service Region 3 Interim Directive Number 2 (ID No. 2) was not considered to be adequate. The Service continues to believe, as do Forest Service researchers in the Northwest (Thomas et al. 1990) and California (Verner et al. 1992), that protection only of single territories, as proposed in ID No. 2, would inevitably lead to the extinction of habitat-dependent species. Based on continued and projected destruction of habitat and inadequate regulation, the Service determined that the MSO was likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to or removing species from the Federal Lists. 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). These factors and their application to the Mexican spotted owl, with reference to the delisting petition, are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The delisting petitioners asserted that there is no threatened destruction, modification or curtailment of the owl’s habitat or range. However, the final rule pointed out that, at the time of publication, Forest Management Plans still called for implementation of uneven-age management and steep slope harvest in owl habitat. Although harvest has slowed recently, individual projects have been modified to protect owl habitat, and the Forest Service is currently revising its Forest Management Plans. Revised plans have not yet been formally adopted. Owl habitat reduction remains a concern of the Service.

B. Overutilization for commercial, recreational, scientific or educational purposes. The delisting petitioners stated that there is no threat from overutilization of the species for commercial, recreational, or educational purposes. The Service agrees; this was the position held by the Service in the final rule.

C. Disease or predation. The delisting petitioners stated that there is no threat from disease or predation. The Service remains concerned that opening the canopy in suitable owl habitat will increase contact with red-tailed hawks and great horned owls, species which occur in more open habitats. Increased contact may result in increased predation.

D. The inadequacy of existing regulatory mechanisms. The delisting petitioners asserted that existing regulatory mechanisms provide adequate protection for owls. As discussed in Issue 20 above, the Service believes that the Forest Service’s ID No. 2 would not provide adequate protection. The Service also notes that...
E. Other natural or manmade factors affecting its continued existence.

The delisting petitioners asserted that no other natural or manmade factors threaten the owl. They further asserted that listing may jeopardize the owl because it will prevent the Forest Service from correctly managing forests to reduce threats from wildfire and insect and disease damage. The threat to owl habitat from wildfire has not changed since publication of the final rule. A change in Forest Management Plans that would decrease the threat from timber harvest has not yet been formalized. The Service disagrees with the delisting petitioners that listing itself brings new threats because of reducing the ability to manage for wildfire, insect, and disease threats. The Service encourages the Forest Service to address those threats with a variety of management options.

In conclusion, the Service used the best scientific and commercial information available in all phases of the decision to list the Mexican spotted owl as a threatened species. The Service further believes that the factors for listing the species cited in the final rule have not changed substantially. Therefore, the Service finds that the delisting petitioners did not present substantial information indicating that delisting the MSO may be warranted. Through the recovery planning process, the Service will analyze all available information in formulating a recovery plan for the MSO. The plan will contain objective, measurable criteria which, when met, could result in delisting the MSO.

Author

The primary authors of this notice are Dr. Buck Cully of the New Mexico Ecological Services Field Office, and Steve Spangle of the Southwest Regional Office (see ADDRESSES section).

Authority


List of Subjects in 50 CFR Part 17

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


Mollie H. Beattie,
Director, Fish and Wildlife Service.

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BILLING CODE 4310–65–P

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Public Hearings on Proposed Designation of Critical Habitat for the Louisiana Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public hearings and extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that two public hearings will be held on the proposed designation of critical habitat for the Louisiana black bear, Ursus americanus luteolus. The Louisiana black bear occupies the Tensas and Atchafalaya River basins with possible remnant numbers in the lower Mississippi River Delta and the bluffs south of Vicksburg, Mississippi. The proposed critical habitat areas are limited to forests within the Tensas and Atchafalaya River basins and south of U.S. Highway 90, west from the lower Atchafalaya River along the coastline to the Vermillion Parish line, north to Highway 14, thence east to U.S. Highway 90. These hearings will allow additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is extended through May 25, 1994. The public hearings will be held from 6 to 10 p.m. on May 10, 1994, in West Monroe, Louisiana; and from 6 to 10 p.m. on May 11, 1994, in New Iberia, Louisiana.

ADDRESSES: The May 10th hearing will be held at the West Monroe Convention Center, 901 Ridge Avenue, West Monroe, Louisiana; and the May 11th hearing will be held in the auditorium of the New Iberia Senior High School, 1301 E. Admiral Doyle Drive, New Iberia, Louisiana. Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell A. Neal at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species. Although the Service found that designation of critical habitat was not prudent in the proposed rule of June 21, 1990 (55 FR 25341) for listing the Louisiana black bear as threatened, published on January 7, 1992 (57 FR 588), the Service changed its earlier finding to indicate that designation of critical habitat may be prudent, but that it was not then determinable. A proposal to designate three areas as critical habitat was published in the Federal Register on December 2, 1993 (58 FR 63560). The actual critical habitat within these areas is limited to forestland.

Section 4(d)(5)(E) of the Endangered Species Act requires that a public hearing be held on proposed designation of critical habitat if requested within 45 days of the proposal's publication in the Federal Register. Public hearing requests were received during the allotted time period.