

Pacific Southwest Region
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BOARD OF SUPERVISORS

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Date: September 17, 2015

U.S. Fish and Wildlife Service Announces Findings on Petitions to List Species in California and Nevada

SACRAMENTO -- The U.S. Fish and Wildlife Service has completed reviewing petitions to list nine species in California and Nevada under the Endangered Species Act and a petition to delist one species. The Service determined the petitions to list the California spotted owl, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, Panamint alligator lizard, Shasta salamander, southern rubber boa, and tricolored blackbird contained substantial information and warrant more in-depth review of these species' conservation status. The petition to delist the Stephens' kangaroo rat, an endangered species, did not provide substantial information to indicate delisting is warranted.

These determinations, commonly known as 90-day findings, are based on scientific information about the species provided in the petition. The substantial 90-day findings are the first step in a lengthy process that triggers a more thorough review of all the biological information available. There is no regulatory impact resulting from the positive 90-day findings. ***(Additional FAQs on this action are attached)***

The petition findings for the 10 California and Nevada species will be published in a combined notice in the *Federal Register* on September 18, 2015, and also will be available at <https://www.federalregister.gov/public-inspection> by clicking on the 2015 Notices link under Endangered and Threatened Wildlife and Plants. Information can be submitted on species for which a status review is being initiated, using the specified docket number, beginning upon publication in the *Federal Register*, for 60 days until November 17, 2015.

To ensure the status reviews of the California spotted owl, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, Panamint alligator lizard, Shasta salamander, southern rubber boa, and the tricolored blackbird are comprehensive, the Service is soliciting information from state and federal natural resource agencies and all interested parties about their biology and life history.

Comments and information can be submitted electronically at www.regulations.gov. Written comments and information can be submitted by U.S. mail or hand-delivered to: Public Comments Processing, Attn: [Insert appropriate docket number listed below]; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike; Falls Church, VA

22041–3803. When providing comments for specific species, please refer to the following docket numbers:

Species	Docket Number
California spotted owl	FWS-R8-ES-2015-0139
Inyo Mountains salamander	FWS-R8-ES-2015-0092
Kern Plateau salamander	FWS-R8-ES-2015-0093
lesser slender salamander	FWS-R8-ES-2015-0097
limestone salamander	FWS-R8-ES-2015-0099
Panamint alligator lizard	FWS-R8-ES-2015-0105
Shasta salamander	FWS-R8-ES-2015-0115
southern rubber boa	FWS-R8-ES-2015-0119
tricolored blackbird	FWS-R8-ES-2015-0138

Based on each species' status review, the Service will make one of three possible determinations:

- 1) Listing is not warranted, in which case no further action will be taken.
- 2) Listing as threatened or endangered is warranted. In this case, the Service will publish a proposal to list, solicit independent scientific peer review of the proposal, seek input from the public, and consider the input before a final decision about listing the species is made. In general, there is a one-year period between the time a species is proposed and the final decision.
- 3) Listing is warranted but precluded by other, higher priority activities. This means the species is added to the federal list of candidate species, and the proposal to list is deferred while the Service works on listing proposals for other species that are at greater risk. A warranted but precluded finding requires subsequent annual reviews of the finding until such time as either a listing proposal is published, or a not warranted finding is made based on new information.

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. We are both a leader and trusted partner in fish and wildlife conservation, known for our scientific excellence, stewardship of lands and natural resources, dedicated professionals, and commitment to public service. For more information on our work and the people who make it happen, visit <http://www.fws.gov/cno>. Connect with our [Facebook page](#), follow our tweets, watch our [YouTube Channel](#), and download photos from our [Flickr page](#).

U.S. Fish & Wildlife Service

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Questions and Answers
90-Day Petition Findings on 10 Species in California and Nevada
(September 10, 2015)

1. How does the Fish and Wildlife Service determine whether a species warrants protections under the Endangered Species Act (ESA)?

The ESA (Section 4(a)(1)) requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

- (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.

The Act requires us to base our assessment solely on the best scientific and commercial data available.

2. What action is the U.S. Fish and Wildlife Service taking?

The Service is announcing it has completed reviewing petitions to list nine species in California and Nevada under the Endangered Species Act (ESA) and one petition to delist the Stephens' kangaroo rat, listed as endangered under the ESA. The Service determined petitions to list the California spotted owl, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, Panamint alligator lizard, Shasta salamander, southern rubber boa, and the tricolored blackbird contained substantial information and warrant more in-depth reviews of these species and their conservation status. The petition to delist the Stephens' kangaroo rat, an endangered species, did not provide substantial information warranting delisting.

3. What is a petition?

A petition is a request filed under the ESA by an interested party asking that a species be listed on, delisted from, or reclassified on the Federal List of Endangered and Threatened Wildlife and Plants. The ESA requires that we make and publish specific findings on the petition. We must make a finding within 90 days of receiving a petition (to the extent practicable) as to whether or not there is "substantial information" indicating that the petitioned listing *may be* warranted. If this preliminary finding is positive, a status review is conducted.

4. What is a 90-day finding?

The ESA requires the Service to determine if a petition to list a species contains substantial information to support the requested action. Findings are based on information contained in the petition, supporting information submitted with the petition, and other readily available information in the Service's files.

5. What did the Service conclude as its 90-day findings?

The Service made 90-day findings for 10 species in California and Nevada. Findings for nine of species were substantial findings, meaning that the petition contained enough scientific information to warrant further review by the Service. A petition to delist the Stephen's kangaroo rat was unsubstantial, meaning it does not contain enough information to warrant delisting, and the species will continue to be protected as an endangered species under the ESA. The findings for all these species were published in a combined "batched" notice in the *Federal Register* on September 18, 2015.

7. What did the Service consider in reaching its conclusion and finding?

In making this finding, the Service evaluated the information provided by the petitioners. The process of coming to a 90-day finding is limited to a determination of whether the information provided in the petition(s), supporting information submitted with the petition(s), and information otherwise available in Service files meets the "substantial information" threshold. The Service does not conduct additional research at this point, nor does the Service subject the petition(s) to rigorous critical review or solicit information from parties outside the Service.

8. What substantial 90-day petition findings are for species found in California and Nevada?

The Service found petitions for the following species to have provided substantial information to warrant further in depth review of the species conservation status: California spotted owl, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, Panamint alligator lizard, Shasta salamander, southern rubber boa, and the tricolored blackbird contained substantial information and warrant more in depth reviews of these species and their conservation status.

9. Why was the petition to delist the Stephen's kangaroo rat found to be unsubstantial? And what does that mean?

In November 2014, we received a petition from the Riverside County Farm Bureau and the Center for Environmental Science, Accuracy and Responsibility requesting that Stephens' kangaroo rat be delisted and removed from the Act based on a new analysis of the rat's dispersal ability. However, none of the studies quoted by the petition found any evidence of dispersal distances greater than previously known and the Stephens' kangaroo rat continues to warrant listing under the ESA.

10. Isn't the tricolored blackbird already protected under the California Endangered Species Act?

The tricolored blackbird received emergency protection under the California Endangered Species Act (CESA) in December 2014 for 180-days. The California Fish and Game Commission did not renew the emergency listing and protections under CESA expired in June 2015. The substantial finding does not impact protections for the tricolored blackbird under the federal Migratory Bird Treaty Act.

11. Has the Service previously issued findings for the California spotted owl?

Yes. The Service was previously petitioned in 2000, 2004 and 2014 to list the owl as threatened under the ESA. Substantial findings were issued in 2000 and 2004. We conducted in-depth status reviews of the species and issued negative 12 month findings (in 2003 and 2006) that the species did not warrant protections under the ESA. In December 2014, we received a petition from John Muir Project of Earth Island Institute and Wild Nature Institute requesting the species be listed under the ESA and issued a substantial finding which is included in this announcement.

12. The petition states the Kern plateau, limestone and Shasta salamander are threatened by spring capping, wind power and dam construction. What affect does the 90-day finding have on those activities?

This positive 90-day finding does not limit those activities. However, two of the three are California state listed species and all are species of special concern for the U.S. Forest Service or the areas they live in have status with the Bureau of Land Management as an ecological preserve and area of concern, which provides some protection.

13. How does a positive finding for the owl and salamanders affect dam construction, timber harvests and other land management activities?

This positive 90-day finding does not change the status of the species. A positive finding does not mean that the Service has decided to grant federal protections for the species. A positive 90-day finding means only that the Service determined the petition presented substantial scientific information to indicate that the action may be warranted. At that time, the Service begins a comprehensive review of the status of the species.

14. Are any of these species covered by Habitat Conservation Plans?

Yes, the tricolored blackbird is a covered species under the San Diego County Multiple Species Conservation Program, the Santa Clara Valley HCP, the San Joaquin County Multi-Species HCP, and others. The Stephen's kangaroo rat and the state-listed Southern rubber boa are covered under the Western Riverside County MSHCP. The California spotted owl is included as a non-listed species under the Riverside County MSHCP. During the 12-month review process, the Service will look at all substantive information about the status of these species, including any information about conservation actions being undertaken. The limestone salamander is covered under the PG&E San Joaquin Valley Operations & Maintenance HCP.

15. What is the next step?

The Service will conduct in-depth status reviews of the species with substantial findings. Species undergoing this review will not be afforded any additional protections under the ESA during this review, which typically takes about one year. The Service is also requesting information from the public, scientific community and academics that may assist us in our status review. The Service will accept information from the public for 60 days following publication of the findings in the *Federal Register*. Instructions for submitting information is published in the *Federal Register* notice.

16. Is there a difference between a 90-day finding and a status review?

Yes. A 90-day finding does not assess the status of the species and does not constitute a status review under the Endangered Species Act. A substantial 90-day finding simply states that a petitioned action (i.e., listing, delisting or reclassification) **may be warranted**. Our final determination of whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is only conducted after a positive 90-day finding. A positive 90-day finding does not mean that the finding that results from status review will be positive.

17. What options does the Service have when making a status review determination following a 90-day finding?

Based on the status review, the Service will make one of three possible findings:

- Listing is not warranted, in which case no further action will be taken. This finding will be published and the petitioner notified.

- Listing as either endangered or threatened is warranted. The Service will publish a proposed rule, solicit scientific peer review, seek input from the public, and consider the input before a final decision about listing is made.
- Listing is warranted but precluded.

18. What information is the Service seeking from the public?

We are seeking information from the public about the status of the species included in the substantial 90-day finding. This includes information about the biology, range, and population trends including habitat requirements; genetics and taxonomy; historical and current range and distribution patterns; historic and current population levels, current and projected population trends; and past and ongoing conservation measures for the species and its habitat. Please note, however, that submissions merely stating support for or opposition to a potential listing, without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Endangered Species Act mandates that listing decisions must be made “solely on the basis of the best scientific and commercial data available.”

19. If a status review determines listing a species under the ESA is warranted, will critical habitat be proposed?

Yes. We may propose critical habitat for those species for which listing is warranted. Therefore, we also specifically request the following data and information for the species for which we are conducting status reviews:

- what may constitute “physical or biological features essential to the conservation of the species,” within the geographical range occupied by the species;
- where these features are currently found;
- whether any of these features may require special management considerations or protection;
- specific areas outside the geographical area occupied by the species that are “essential for the conservation of the species”; and
- what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission to allow us to verify any scientific or commercial information or data you provide.

20. How do I submit information?

You may submit information by one of the following methods:

Electronically:

- 1.) Go to the *Federal eRulemaking Portal*: <http://www.regulations.gov>.
- 2.) In the Search box, enter the Docket Number (listed below) for this action and the appropriate species:

Species	Docket Number
California spotted owl	FWS-R8-ES-2015-0139
Inyo Mountains salamander	FWS-R8-ES-2015-0092
Kern Plateau salamander	FWS-R8-ES-2015-0093
lesser slender salamander	FWS-R8-ES-2015-0097
limestone salamander	FWS-R8-ES-2015-0099
Panamint alligator lizard	FWS-R8-ES-2015-0105

Shasta salamander	FWS-R8-ES-2015-0115
southern rubber boa	FWS-R8-ES-2015-0119
tricolored blackbird	FWS-R8-ES-2015-0138

3.) You may click on the document title to open the *Federal Register* notice or you may submit a comment by clicking on the “*Comment Now!*” button.

- *U.S. mail or hand-delivery:*
Public Comments Processing Attn: Docket No. [*Insert appropriate docket number; see table above*]
U.S. Fish and Wildlife, MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803

The Service will post all information received on <http://www.regulations.gov>. This generally means that the Service will post any personal information that is provided.

The 60-day information request period is open until November 17, 2015.

21. What should I do if I’ve already sent in information on any of these species?

If you want to be certain we have your most up-to-date information to consider in the 12-month finding, please resubmit it as detailed above.

-FWS-