

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking that the Charleston, West Virginia PM<sub>2.5</sub> nonattainment area has clean data for the 24-hour 2006 PM<sub>2.5</sub> standard does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian Country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping.

**Authority:** 42 U.S.C. 7401 *et seq.*

**Dated:** August 8, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011-21224 Filed 8-18-11; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2011-0063; 92220-1113-0000-C5]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Valley Elderberry Longhorn Beetle

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

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to delist the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that delisting the valley elderberry longhorn beetle may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if delisting is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the valley elderberry longhorn beetle. Based on this status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted under section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before October 18, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Keyword box, enter Docket No. FWS-R8-ES-2011-0063, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on “Send a Comment or Submission.”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R8-ES-2011-0063; Division of Policy and Directives

Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will not accept e-mail or faxes. 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 below for more details).

#### FOR FURTHER INFORMATION CONTACT:

Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825; telephone 916-414-6600; facsimile 916-414-6712. If you use a telecommunications device for the deaf (TDD), 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 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 valley elderberry longhorn beetle 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 for feeding, breeding, and sheltering;

(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 species, its habitat, or both.

(2) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (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.

Please include sufficient information with your submission (such as references to 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 action under consideration without providing supporting information, although noted, cannot 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 this status review 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 Web site. 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 is available for you to review at <http://www.regulations.gov>, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) 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 conduct a species status review, which we subsequently summarize in our 12-month finding.

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the valley elderberry longhorn beetle.

### Petition History

On September 10, 2010, we received a petition dated September 9, 2010, from The Pacific Legal Foundation, requesting the Service to delist the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) based on the analysis and recommendation contained in the most recent 5-year review for the species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). This finding addresses the petition.

### Previous Federal Actions

The valley elderberry longhorn beetle was proposed as a threatened subspecies with critical habitat on August 10, 1978 (43 FR 35636). A rule re-proposing critical habitat was issued on May 2, 1980 (45 FR 29373), to comply with amendments made to the Act. A final rule listing the beetle as threatened and designating critical habitat was published in the **Federal Register** on August 8, 1980 (45 FR 52803). On June 28, 1984, a final recovery plan was approved for the beetle (Service 1984, pp. 1–62). On July 7, 2005, we announced in the **Federal Register** that we were initiating 5-year reviews for 31 listed species, including the beetle (70 FR 39327). Information from the public was accepted until September 6, 2005. On November 3, 2005, we announced in the **Federal Register** an extension of the period for submitting information to be considered in the 5-year review to January 3, 2006 (70 FR 66842). A 5-year review was completed for the beetle on September 26, 2006 (Service 2006), and was

announced in the **Federal Register** on February 14, 2007 (72 FR 7064). Additional information regarding previous Federal actions for the beetle can be obtained by consulting the species' regulatory profile found at: <http://ecos.fws.gov/species> or the Sacramento Fish and Wildlife Office Web site at: <http://fws.gov/sacramento/>.

### Species Information

The valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) is a medium-sized red and dark green (to red and black) insect approximately 0.8 inches (in.) (2 centimeters (cm)) long. It is endemic to the Central Valley of California (Fisher 1921, p. 207; Doane *et al.* 1936, p. 178; Linsley and Chemsak 1972, p. 7). The similar-looking California elderberry longhorn beetle (*Desmocerus californicus californicus*) is primarily known from coastal regions of California (Collinge *et al.* 2001, p. 104). The ranges of the two subspecies may abut or overlap along the foothills of the eastern Coast Range and the southern San Joaquin Valley (Talley *et al.* 2006, p. 5). Beetles meeting the description of the California elderberry longhorn beetle have also been recorded in the Sierra Nevada foothills as far north as Mariposa County (Halstead and Oldham 2000, p. 74–75), suggesting that the ranges of the two subspecies may also abut or overlap in that area.

The beetle is a wood borer, dependent on, and found only in association with, its host plant, the elderberry (*Sambucus* species of the Caprifoliaceae [honeysuckle] family) (Barr 1991, p. 4; Collinge *et al.* 2001, p. 104). The elderberry is a common shrub component of riparian forests and adjacent uplands along river corridors of the Central Valley (Hickman 1993, pp. 474–475; Sawyer and Keeler-Wolf 1995, pp. 171, 229; Halstead and Oldham 2000, p. 74). Adult beetles feed on elderberry nectar, flowers, and foliage, and are generally active from March through June (Eng 1984, p. 916; Barr 1991, p. 4; Collinge *et al.* 2001, p. 105). They are uncommon (see discussion of population sizes, below) and rarely observed, despite their relatively large size and conspicuous coloration.

The females lay eggs, singly or in small groups, on the leaves or stems of living elderberry shrubs (Barr 1991, p. 4). The larvae hatch in a few days and bore into living stems that are at least 2.5 cm (1 in.) in diameter. The larvae remain within the elderberry stem, feeding on the pith (dead woody material) until they complete their development. Each larva creates its own gallery (set of tunnels) within the stem

by feeding (Talley *et al.* 2006, pp. 8–9). The larva eventually cuts an exit hole out of the stem, but plugs the hole up again from within using wood shavings. This will allow the beetle to eventually exit the stem after it has become an adult, since the adults are not wood borers. The larva remains within the stem, becomes a pupa, and finally emerges from its single exit hole as an adult between mid-March and mid-June (Lang *et al.* 1989, p. 242; Barr 1991, p. 5; Talley *et al.* 2006, p. 9). There is thus one exit hole per larva. The complete life cycle is thought to take either 1 or 2 years (depending on the amount of time the larva stays in the elderberry stem), with adults always emerging in the spring. Adults live from a few days to a few weeks after emerging, during which time they mate and lay their eggs (Talley *et al.* 2006, p. 7).

### Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 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. 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:

- (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.

We must consider these same five factors in delisting a species. 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 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 data used at the time the species was classified were in error.

In making this 90-day finding, we evaluated whether information regarding threats to the valley elderberry longhorn beetle, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action

may be warranted. Our evaluation of this information is presented below.

### Information Provided in the Petition

The petitioner requested the Service to delist the valley elderberry longhorn beetle based on the analysis and recommendation contained in the most recent 5-year review of the species. The petitioner cited the 5-year review as supporting information for the petition.

### Evaluation of Information Provided in the Petition and Available in Service Files

The 2006 5-year review for the valley elderberry longhorn beetle contains general background and life-history information, overview of recovery criteria, an analysis of threats specific to the species based on the five listing factors in section 4 the Act. The petitioner cited the 5-year review as supporting information for the petition, but provided no other information. In the 5-year review conducted for the species, we analyzed the threats based on the five listing factors in section 4 of the Act; we hereby cite and incorporate by reference the data and recommendation in the 5-year review for the species (Service 2006, entire). Accordingly, we have already previously evaluated information regarding threats as presented in the petition (see the 2006 5-year review for the species on <http://www.regulations.gov> or <http://www.fws.gov/endangered/>). Based on the analysis and recommendation contained in the 5-year review for the valley elderberry longhorn beetle, we conclude that the petition and information in our files represent substantial information indicating that the petitioned action may be warranted.

The primary rationale for the recommendation in the 2006 5-year review to delist the valley elderberry longhorn beetle was that the number of known occupied localities had increased from less than 10 at the time of listing in 1980 to more than 190 in 2006. Loss of riparian habitat slowed throughout the Central Valley, and there were a number of programs and regulatory mechanisms in existence to protect habitat. Specifically, protection of more than 50,000 acres (ac) (20,234 hectares (ha)) had been accomplished, and restoration of habitat had occurred on more than 5,100 ac (2,064 ha). Therefore, the Service recommended delisting the valley elderberry longhorn beetle.

Any additional information we receive in response to this finding will be incorporated into our status review.

### Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that delisting the valley elderberry longhorn beetle may be warranted. This finding is based on information provided in our analysis of the threats to the species contained in the 2006 5-year review for the species.

Because we have found that the petition presents substantial information indicating that delisting may be warranted, we are initiating a status review for the valley elderberry longhorn beetle to determine whether the petitioned action of delisting is warranted.

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. We will complete a thorough status review of the species following a substantial 90-day finding. In the resulting 12-month finding, we will determine whether a petitioned action is warranted. 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 Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Author

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Offices (see **FOR FURTHER INFORMATION CONTACT**).

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2011.

### David Cottingham,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–21201 Filed 8–18–11; 8:45 am]

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