

**FOR FURTHER INFORMATION CONTACT:** John Kelly, Environmental Scientist, Permits and Grants Section, Air Programs Branch (AR-18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886-4882.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” are used we mean USEPA.

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**I. What Action is USEPA Taking Today?**

The USEPA is proposing to approve the incorporation into the Illinois State Implementation Plan of revised air pollution permitting and emissions standards rules, which the State of Illinois requested. Specifically, we are proposing to approve the incorporation of revisions to Title 35 of the Illinois Administrative Code (35 IAC) 201.146, *Exemptions from State Permit Requirements* into the Illinois State Implementation Plan. These revisions clarify, modify and add to the list of emission units and activities which are exempt from State permitting requirements. The State submitted its plan request to USEPA on February 5, 1998.

**II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?**

In the final rules section of this **Federal Register**, we are approving Illinois' request for a change to the Illinois State Implementation Plan as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless we receive relevant adverse written comment on this action. Should we receive such comment, we will publish a final rule informing you that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. We do not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: February 4, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

[FR Doc. 00-3673 Filed 2-16-00; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding for a Petition To List the Yellow-billed Cuckoo as Endangered and Commencement of a Status Review**

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the yellow-billed cuckoo (*Coccyzus americanus*) as endangered, with critical habitat, pursuant to the Endangered Species Act (Act) of 1973, as amended. We find that the petition presents substantial scientific or commercial information to indicate that the listing of the yellow-billed cuckoo may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species.

**DATES:** The finding in this document was made on February 7, 2000. To be considered in the status review and subsequent 12-month finding for the petition, your information and comments must be received by April 17, 2000.

**ADDRESSES:** You may submit data, information, comments, or questions concerning this finding to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, California 95825. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Karen Miller at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at 916/414-6600.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we must make this finding within 90 days of the receipt of the petition and publish it promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species. This finding is based on information contained in the petition, supporting information submitted with the petition, and information otherwise available to us at the time the finding was made. While the Act does not provide for petitions to designate critical habitat, the specific critical habitat designation is petitionable under the Administrative Procedures Act. As required by section 4(a)(3) of the Act, we will consider critical habitat designation if we determine that listing is warranted.

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

We were previously petitioned to list the western yellow-billed cuckoo (*Coccyzus americanus occidentalis*) in 1986 as endangered in the States of California, Washington, Oregon, Idaho, and Nevada (Manolis *et al.* 1986). We received this petition from Dr. Tim Manolis, Western Field Ornithologists, and it was cosigned by the Animal Protection Institute, Defenders of Wildlife, Sacramento River Preservation Trust, Friends of the River, Planning and Conservation League, Davis

Audubon Society, Sacramento Audubon Society, and the Sierra Club. We published a 90-day finding on January 21, 1987, in the **Federal Register** (52 FR 2239) that the petition presented substantial information indicating that the requested action may be warranted. We acknowledged, in that finding, the difficulties in defining distinct, biologically defensible populations of western yellow-billed cuckoos for possible listing, and the existence of gaps in available information as to its status in certain parts of its range. We published a 12-month finding on December 29, 1988, in the **Federal Register** (53 FR 52746) that the petitioned action was not warranted, finding that the petitioned area did not encompass either a distinct subspecies or a distinct population segment. The finding cited—(1) a study of geographic variation in the species that concluded the morphological differences between eastern and western birds were too small to merit separate subspecies (Banks 1988), and (2) that the petitioned area did not encompass a distinct population segment. It noted that yellow-billed cuckoos near a State line within the petitioned area, such as on the California side of the lower Colorado River, are part of the same population and interbreed with birds immediately across the same State border and outside the petitioned area.

We received another petition on February 9, 1998, and dated February 2, 1998, to list the yellow-billed cuckoo (*Coccyzus americanus*) as an endangered species. The petition was submitted by Robin Silver, Kieran Suckling, and David Noah Greenwald of Southwest Center for Biological Diversity on behalf of 22 groups. The 22 groups are the Maricopa Audubon Society, Tucson Audubon Society, Huachuca Audubon Society, White Mountain Audubon Society, White Mountain Conservation League, Wildlife Damage Review, Sky Island Alliance, San Pedro 100, Zane Grey Chapter of Trout Unlimited, T and E Inc., Biodiversity Legal Foundation, Environmental Protection Information Center, Sierra Nevada Alliance, Wetlands Action Network, Rangewatch, Oregon Natural Desert Association, Oregon Natural Resources Center, Klamath-Siskiyou Wildlands Center, Southern Utah Wilderness Alliance, Wild Utah Forest Campaign, Friends of Nevada Wilderness, and Toiyabe Chapter of the Sierra Club. The petitioners requested that we list the yellow-billed cuckoo as endangered, stating that they believe the yellow-billed cuckoo “is endangered in a

significant portion of its range (*i.e.*, the western United States).” The petitioners also stated they “believe this range of endangerment is coterminous with a valid subspecies, the western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)” and that they would concur with a decision to list only this subspecies. The petitioners also requested that critical habitat be designated. Included in the petition was supporting information relating to the species’ taxonomy and ecology, adequacy of existing regulatory mechanisms for the species, the historic and present distribution, current status, and causes of decline in the western United States. This notice announces our 90-day finding for the 1998 petition.

The yellow-billed cuckoo is a medium-sized bird of about 30 centimeters (12 inches) in length, and weighing about 60 grams (2 ounces). The species has a slender, long-tailed profile, with a fairly stout and slightly down-curved bill, which is blue-black with yellow on the basal half of the lower mandible (bill). Plumage is grayish-brown above and white below, with rufous primary flight feathers. The tail feathers are boldly patterned with black and white below. The legs are short and bluish-gray, and adults have a narrow, yellow eye ring. Juveniles resemble adults, except the tail patterning is less distinct, and the lower bill may have little or no yellow. Males and females differ slightly. Males tend to have a slightly larger bill, and the white in the tail tends to form oval spots, whereas in females the white spots tend to be connected and less distinct (Hughes 1999).

In the west, based on historic accounts, the species was widespread and locally common in California and Arizona; locally common in a few river reaches in New Mexico; common very locally in Oregon and Washington; generally local and uncommon in scattered drainages of the arid and semiarid portions of western Colorado, western Wyoming, Idaho, Nevada, and Utah; and, probably uncommon and very local in British Columbia. Hughes (1999) summarizes the species’ historic range and status in these areas. The species was listed by the State of California as threatened in 1971 and was reclassified as endangered in 1987. Based on a 1986–87 statewide survey, only three areas in the State support more than about five breeding pairs on a regular basis. In the Pacific Northwest, the last confirmed breeding records were in the 1930s in Washington and in the 1940s in Oregon. The species may now be extirpated from Washington. Arizona probably contains the largest

remaining cuckoo population among States west of the Rocky Mountains, but cuckoo numbers in 1999 are substantially less than some previous estimates for Arizona as habitat has declined. In Colorado and Idaho, the species is rare, and in Nevada, the remaining breeding populations are threatened with extinction, if not already extirpated (Hughes 1999). The portion of Texas west of the Pecos River has been identified as within the range of the historic western subspecies (Oberholser and Kincaid 1974), but other authors consider birds from this area most similar to eastern cuckoos (Hughes 1999). The species still occurs in this area, but its conservation status is unknown (Groschupf 1987). The species is widespread and uncommon to common in central and eastern Texas (Oberholser and Kincaid 1974; Rappole and Blacklock 1994).

The species breeds from extreme southern Canada (Quebec and Ontario) south to the Greater Antilles and Mexico (American Ornithologist Union (AOU) 1998). The cuckoo occurs widely and is an uncommon to common breeding bird in the United States east of the Continental Divide. Habitat for the species in the eastern United States, mainly riparian and other broad-leaved woodlands, is widespread. This habitat is in contrast to habitat west of the Continental Divide, where suitable habitat is limited to narrow, and often widely separated, riparian patches. Distribution, population, and trend data we obtained from the Breeding Bird Survey (BBS) program and other available sources indicate that, although regional declines have occurred, the yellow-billed cuckoo is relatively common as a breeding bird in much of the eastern United States (Oberholser and Kincaid 1974; Rappole and Blacklock 1994; BBS 1999; Hughes 1999).

The petitioners included information on factors affecting the species in the western United States, which they define as the historic range of the western subspecies. The petition identifies habitat loss, overgrazing, tamarisk invasion of riparian areas, river management, logging, and pesticides as causes of decline. These factors are consistent with loss, degradation, and fragmentation of riparian habitat as the primary factor causing yellow-billed cuckoo declines in the western United States. Estimates of riparian habitat losses include 90–95 percent for Arizona, 90 percent for New Mexico, 90–99 percent for California, and more than 70 percent nationwide (Noss *et al.* 1995; Ohmart 1994). Much of the remaining habitat is in poor condition

and heavily affected by human use (U.S. Department of Interior 1994; Almand and Krohn 1978). Local extinctions and low colonization rates have also been identified as factors, and pesticides and loss of wintering habitat as potential factors (Hughes 1999).

We reviewed the petition, supporting documentation, and other information available in our files to determine if substantial information is available to indicate that the requested actions may be warranted. We find that the petition presents substantial information indicating that listing a western yellow-billed cuckoo subspecies (*Coccyzus americanus occidentalis*) may be warranted, although the taxonomy of this subspecies is currently unclear. The petitioners stated that "all existing scientific data supports the AOU conclusion that the western yellow-billed cuckoo is a valid sub-species." However, this statement does not represent the AOU's current position. The AOU does not have a current position on the validity of yellow-billed cuckoo subspecies and has stated the need to evaluate the taxonomic standing of the subspecies of North American birds (AOU 1998). The AOU's Committee on Classification and Nomenclature (the body that makes taxonomic decisions for North American birds) has begun a comprehensive review of the taxonomic status of subspecies for North American birds, a task that is expected to take at least several years (Richard C. Banks, U.S. National Museum of Natural History, chair of AOU Committee on Classification and Nomenclature (North America), pers. comm., 1999). The existing scientific data, including that provided by the petitioners, is equivocal (of uncertain significance) on the taxonomic status of western yellow-billed cuckoo subspecies.

The yellow-billed cuckoo was separated into eastern (*Coccyzus americanus americanus*) and western (*Coccyzus americanus occidentalis*) subspecies by Ridgway (1887), who cited a larger average size for birds from the western versus eastern United States. Several ornithologists who have questioned the validity of these subspecies since that time (Todd and Carriker 1922; Swarth 1929; Van Tyne and Sutton 1937; Bent 1940; Monson and Phillips 1981) noted the small magnitude and inconsistency of differences between eastern and western cuckoos and the broad overlap in the size of eastern and western individuals. The yellow-billed cuckoo has been the subject of two taxonomic studies published since 1980. One study concluded that the division of yellow-

billed cuckoos into two subspecies was not supported by the morphological data and that all yellow-billed cuckoos in North America should be classified simply as *C. americanus* (Banks 1988, 1990). The second study found small but statistically significant size differences between western and eastern cuckoos (Franzreb and Laymon 1993). This study stated that the recognition of subspecies on the basis of these differences was equivocal (of uncertain significance) and recommended that the subspecies described by Ridgway (1887) be retained, pending further studies (Franzreb and Laymon 1993).

The petitioners cited the above studies' findings of statistically significant differences in morphological measurements between western and eastern cuckoos, but did not provide evidence that these differences meet traditional or other accepted criteria for defining avian subspecies. Banks (1988, 1990) concluded that these differences were not adequate for subspecies recognition. The petition and other information currently available to us do not resolve this taxonomic question for this species. However, we are funding ongoing genetic work that may aid in resolving this issue. Although the available information does not conclusively resolve this issue, we find that the petition presents substantial information that leads us to conclude that further investigation is required, through a status review, to determine if listing the western yellow-billed cuckoo as a subspecies is warranted.

The petitioners stated that they believed the western States constitute a significant portion of the species' range. However, we find that the petition does not provide information to support this statement. The petition does not provide information on the conservation status of the yellow-billed cuckoo outside the western United States and British Columbia, Canada, and the available data do not indicate that the species as a whole may be threatened or endangered in a significant portion of its range. On a gross level, the area of the western States within the species' historic range represents about 27 percent of the total area within the species' U.S. range. However, this number includes the entire area of States and does not represent the distribution or area of habitat suitable or available for the species. The species nests almost exclusively in riparian habitats in the west and occurs widely in riparian habitats in the east (Hughes 1999). More than 95 percent of the riparian habitat area within the species' U.S. range is located east of the Continental Divide, and less than 5

percent is located west of the divide. Further, these percentages overestimate the proportion of cuckoo habitat occurring west of the Continental Divide, as they do not account for the fact that, east of the divide, the cuckoo also nests in a variety of nonriparian habitats, including woodlands, hardwood forests, abandoned farmlands, fencerows, shade trees, and gardens (Hughes 1999).

Although not specifically addressed by the petitioners, we also considered whether substantial information exists indicating that listing of the western yellow-billed cuckoo as a distinct population segment (DPS) as described in our 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4721) may be warranted. The policy states that we will consider three elements in decisions regarding the status of a possible DPS as endangered or threatened under the Act: (1) Distinctness of a population segment in relation to the remainder of the species to which it belongs, (2) significance of the population segment in relation to the species as a whole, and (3) conservation status of the population segment in relation to the Act's standards for listing as threatened or endangered. Criteria for all three elements must be satisfied to be considered a DPS.

Anecdotal reports have suggested differences between eastern and western birds based on bill color and vocalizations (Franzreb and Laymon 1993), but these differences have not been documented. Western cuckoos have been reported to nest later, on average, than eastern cuckoos (Franzreb and Laymon 1993; Hughes 1999), but the species demonstrates considerable plasticity in timing of nesting (Hamilton and Hamilton 1965; Hughes 1999). These observed differences could represent distinct populations with genetically based adaptations to local conditions, however, equally plausible alternative explanations exist. For example, the observed differences could also represent the interaction between individuals of a relatively uniform but flexible species and local environmental factors. We are not currently aware of any study that has tested the alternative explanations, although the principal study of nesting biology published in a scientific journal (Hamilton and Hamilton 1965) favored the latter interpretation (differences are due to interactions of individuals of a flexible species). This study questioned whether eastern and western cuckoos were distinct, based on observations of

ecology, adaptation to the physical environment, and timing and duration of breeding season. Based on the available scientific information, it is unclear that eastern and western yellow-billed cuckoos are distinct. However, we find that the petition presents substantial information that leads us to conclude that further investigation is required, through a status review, to determine if listing the western yellow-billed cuckoo as a distinct population segment may be warranted.

In making these findings, we recognize that yellow-billed cuckoo populations have declined in portions of their range in the United States, particularly west of the Continental Divide. Loss and degradation of western riparian habitats appears to be a primary factor in these declines. The range of the species has contracted substantially in many regions of the western United States, compared to the range reported for the species in the first several decades of the twentieth century (Gaines and Laymon 1984; Laymon and Halterman 1987; Hughes 1999). Population numbers have also declined substantially in the western United States (Hughes 1999), although scientific data on the magnitude of population changes are unavailable for most regions.

#### Public Information Solicited

We solicit information regarding the taxonomic status, occurrence, and distribution of the species, and any additional data or scientific information from the public, scientific community, Tribal, local, State, and Federal governments, and other interested parties concerning the status of the yellow-billed cuckoo. Of particular interest is information regarding:

(1) The taxonomy and genetics of the species and whether this information supports classifying the western yellow-billed cuckoo as a valid subspecies;

(2) Behavioral and ecological differences between eastern and western yellow-billed cuckoos; and

(3) Significance of the western population in relation to the species as a whole that may aid in differentiating population segments.

After consideration of additional information received during the public information collection period (see DATES section of this notice), we will prepare a 12-month finding as to whether listing the yellow-billed cuckoo as a species, subspecies, or distinct population segment is warranted.

#### References Cited

You may request a complete list of all references we cited, as well as others,

from the Sacramento Fish and Wildlife Office (see ADDRESSES section).

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

Dated: February 7, 2000.

**Jamie Rappaport Clark,**

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

[FR Doc. 00-3652 Filed 2-16-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 012100C]

#### South Atlantic Fishery Management Council; Public Hearings; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Correction to notice of public hearings.

**SUMMARY:** This document contains corrections to the notice of public hearings pertaining to the draft options for an amendment to the Golden Crab Fishery Management Plan.

**DATES:** Effective February 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; E-mail address: kim.iverson@safmc.noaa.gov.

**SUPPLEMENTARY INFORMATION:** A notice of public hearings was published in the **Federal Register** on February 3, 2000, notifying the public of the hearings that would be conducted regarding draft options for an amendment to the Golden Crab Fishery Management Plan. That document misidentified the amendment, which must be corrected.

NMFS is correcting the error but is making no other change to the document.

#### Corrections

Under the Proposed Rules Section, South Atlantic Fishery Management Council; Public Hearings, FR Doc. 00-2404, published on February 3, 2000 (65 FR 5300), on page 5300, please correct the text "Amendment 1" to read "Amendment 3" in both places: (1) first column, last line and (2) third column, fourth line from the top.

Dated: February 11, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 00-3856 Filed 2-16-00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No.000214041-0041-01; I.D. 012100C]

RIN 0648-AN50

#### Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Fishery Line Clipper and Dipnet Requirement; Guidelines for Handling of Sea Turtles Brought Aboard Hawaii-based Pelagic Longline Vessels

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; gear requirements.

**SUMMARY:** NMFS issues a proposed rule which would require the possession and use of line clippers and dip nets aboard vessels registered for use under a Hawaii longline limited access permit to disengage sea turtles hooked or entangled by longline fishing gear. The proposed rule would require the use of specific methods for the handling, resuscitating, and releasing of sea turtles. The intended effect of the proposed measures is to minimize the mortality of, or injury to, sea turtles hooked or entangled by longline fishing gear.

**DATES:** Comments on this proposed rule will be accepted through March 3, 2000.

**ADDRESSES:** Written comments on this action must be mailed to Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or internet. Copies of the environmental assessment prepared for this action may be obtained from Alvin Katekaru or Marilyn Luipold, PIAO.

**FOR FURTHER INFORMATION CONTACT:** Margaret Dupree or Marilyn Luipold, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** The Hawaii-based pelagic longline fishery is