

future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the western tier of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notice of intent for partial deletion.

(3) Concurrent with the national Notice of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate federal, State, and local officials, and other interested parties. These notices announced a thirty (30) day public comment period on the deletion package, ending October 23, 2002, based upon publication of the notice in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day extension of the public comment period, which ends on November 22, 2002.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty (30) calendar day extension of the public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the western tier of

the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty (30) day extension of the public comment period for the proposed partial deletion of the RMA/NPL Site. EPA Region 8 announced its intent to delete the western tier parcel of the RMA/NPL Site from the NPL on September 23, 2002. The original basis for deleting the western tier parcel from the RMA/NPL Site has not changed. The **Federal Register** notice (67 FR 59487) provides a thorough discussion of the basis for the intended western tier parcel deletion.

Dated: October 16, 2002.

Robert E. Roberts,

Regional Administrator, U.S. Environmental Protection Agency, Region 8.

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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 List the Cerulean Warbler as Threatened With Critical Habitat

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 list the cerulean warbler (*Dendroica cerulea*) as threatened, under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presented substantial information indicating that listing this species may be warranted. We are initiating a status review to determine if listing the cerulean warbler is warranted.

DATES: The finding announced in this document was made on September 24, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to the Service by January 21, 2003.

ADDRESSES: Data, information, comments, or questions should be submitted to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, MO 65201, or by facsimile to (573) 876-1914. The complete petition finding, supporting literature, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Amy Salveter at the Columbia, Missouri, Field Office see **ADDRESSES**), or at (573) 876-1911, extension 113.

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 the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. 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 we make the finding. To the maximum extent practicable, we make this finding within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that substantial information was presented, we commence a review of the status of the species. After considering the comments and information submitted to us during the status review comment period following this 90-day finding, we will issue an additional finding (*i.e.*, the 12-month finding) determining whether listing is in fact warranted.

On October 31, 2000, we received a petition to list the cerulean warbler as a threatened species and to designate critical habitat for the species pursuant to the Act. The petition was submitted by the Southern Environmental Law Center, which acted on its own behalf, and for 27 other organizations, and 7 scientists.

The letter clearly identified itself as a petition, and included the name, signature, and address of the representative of the parties submitting the petition. The petition referenced supporting information on the species' description, natural history, habitat, and population status. It also presented information on threats to the cerulean warbler including present or threatened destruction, modification, or

curtailment of the species' habitat or range; predation; the inadequacy of existing regulatory mechanisms to protect the species; and other natural or manmade factors affecting the species' continued existence. This notice announces and summarizes our 90-day finding for the October 30, 2000, petition.

The cerulean warbler is a neotropical migratory bird that winters in montane forests of northern South America and breeds in deciduous forests of the eastern United States and southern Canada. The breeding range of cerulean warbler generally extends from the eastern Great Plains in eastern North and South Dakota, Nebraska, Kansas, and Oklahoma; south to Arkansas, Mississippi, Tennessee, northern Alabama and Georgia, and South Carolina; and north to Massachusetts, southern Quebec, southeastern Ontario, Michigan, Wisconsin, and central Minnesota (Hamel 2000a, Rosenberg *et al.* 2000). Breeding cerulean warblers are found in the Mississippi and Ohio River valleys, but appear to be concentrated in the upper Ohio valley in West Virginia and western Pennsylvania (Hamel 2000a, 2000b, Rosenberg *et al.* 2000). During migration, the birds pass through the southern United States, across the Gulf of Mexico to the highlands of Central America, and on to South America. Cerulean warblers winter in the middle and lower elevations of the subtropical zone of the eastern slope of the Andes and other mountains in northern South America (Hamel 2000a). Their winter range generally extends from Colombia and Venezuela south, mostly along the eastern slope of the Andes, to southern Peru and perhaps northern Bolivia (AOU 1998).

The petitioners assert that the cerulean warbler is threatened by destruction, modification, or curtailment of habitat or range by logging on public and private lands, construction of water projects *e.g.*, reservoirs, sewer lines and stream channelization), agricultural practices and urbanization through: (1) Loss and fragmentation of breeding habitat in the United States *e.g.*, loss of tall, mature deciduous forest, especially extensive bottomland hardwood forest throughout the floodplain of the Lower Mississippi River Alluvial Valley), (2) loss of winter habitat (within a relatively narrow elevation zone of the Andes in South America), and (3) loss of migratory habitat *e.g.*, development of property along the beaches of Texas, Louisiana, and the Florida panhandle). According to the petitioners, logging creates smaller and more fragmented forest

tracts, resulting in higher rates of cerulean warbler nest predation by jays, crows, raccoons, opossums, and snakes. They also cite existing regulations and guidelines as inadequate mechanisms for protecting cerulean warbler breeding and wintering habitats on public and private lands. Finally, the petitioners assert that other natural or human-caused factors affecting the cerulean warbler's continued existence are the likely increase in nest parasitism by cowbirds resulting from the destruction and fragmentation of forests as well as direct mortality resulting from collisions with communication towers.

Historical data on the distribution and abundance of cerulean warblers are scant. However, it is clear from the nineteenth century accounts of several prominent naturalists that the cerulean warbler was a conspicuous and abundant species throughout the Ohio and Mississippi River valleys (Hamel 2000a). Presently, cerulean warblers are much less numerous, and they are absent from some areas where they were abundant (Hamel 2000a, Smith *et al.* 1996). However, the species has increased in numbers or expanded its range in the northeastern United States (Hamel 1992; R. Mulvihill, *in litt.* 3 April 2001), Quebec (Ouellet 1967), and Ontario (Eagles 1987, Oliarnyk and Robertson 1996), perhaps in response to the maturation of previously harvested forests. McCracken (1993) reports that cerulean warbler populations remain fairly stable overall in Canada. Current population trends and estimates are derived from several sources, such as the Breeding Bird Survey, Breeding Bird Census, Breeding Bird Atlas projects, research and monitoring.

Much of the support provided by the petitioners for the listing of cerulean warbler under the Endangered Species Act is based on Breeding Bird Survey (BBS) data they cite as an indication of a declining trend for this species. While it is clear that the cerulean warbler's range has contracted and the overall population has declined, the species exists at high densities at various locations in the core of its range, populations are increasing in several areas, and new populations have been identified. Using a standardized method for extrapolating bird populations from BBS data, the total population of cerulean warblers is estimated at 214,000 pairs (K. Rosenberg, *in litt.* 13 June 2002). Roughly 70% of this population is concentrated in the North Cumberland Plateau and Ohio Hills physiographic areas.

The adequacy of the BBS as a method to monitor forest birds, such as cerulean warblers, has been questioned

(Peterjohn *et al.* 1995, James *et al.* 1996). These concerns focus on changes in habitat along roadside routes, which would reduce the detectability of the birds potentially more than their numbers. This is because habitat loss due to development tends to be focused along roadsides, thus areas with habitat lost to development likely will be over-sampled by BBS surveys, with the resulting data possibly overstating the actual decline of the cerulean warbler throughout its range. Furthermore, because BBS routes are always located along roadsides, BBS coverage may not adequately sample those forested habitats that frequently are more distant from roads, such as the bottomlands and ridgetops that are preferred by cerulean warblers (Hamel 2000a, 2000b). This criticism of BBS suggests that other census techniques might be developed that could be more effective for detecting cerulean warblers. For example, recent surveys conducted by canoe on rivers in Missouri have revealed several previously unknown cerulean warbler populations (Robbins 2001); however this method would be difficult to implement on a larger scale. In addition, there are several logistical concerns about the BBS, which arise from the nature of BBS as a volunteer program. Some biologists believe that another problem with BBS data for cerulean warblers is the potential for unfamiliarity with the song of this species among BBS observers (Hamel 2000a).

We and our colleagues who oversee and analyze BBS data believe that BBS data are of questionable value for reliably determining trends for making listing determinations even for declining mature forest associated species, like the cerulean warbler. For example, BBS routes in eastern Kentucky and West Virginia, particularly in the more remote parts of those States where cerulean warblers are numerous *e.g.*, in West Virginia, cerulean warblers were reported from 74 percent of the sites surveyed during the Cerulean Warbler Atlas Project, Rosenberg *et al.* 2000), were not uniformly covered throughout the period of the BBS; therefore, trend calculations cannot effectively utilize the data from some of these routes (Hamel 2000a). The net effect of these differences in coverage is to introduce an unknown amount of uncertainty into the BBS trend estimates, particularly in some of the areas central to the cerulean warbler's breeding range (Hamel 2000a). Moreover, Sauer (1993) indicated that, while sufficient sampling intensity in the BBS existed to detect a 50 percent

decline in population of the species over a 25-year period with a probability of 0.9, low relative abundance of this species mandated caution when interpreting trend results.

The BBS estimate of the cerulean warbler's average annual population trend (for the period 1966 to 1996) of -3.7 percent per year (95 percent confidence interval -2.5 to -5.0) is based on 236 survey routes. The average annual trend for the survey period 1966 to 1979 (-5.5 percent per year, $n = 113$) indicates a significant decline in the cerulean warbler population over the first half of the survey period. However, the trend estimate for the remainder of the survey period, 1980 to 1996 (-0.4 percent per year, $n = 183$), is not significantly different from a stable population. These trend estimates suggest that the population declined most dramatically prior to 1980, and may not have declined since then. Whether this represents the primary or sole period of decline or perhaps indicates that, by 1980, populations were reduced to the point that the BBS became a less useful monitoring tool rangewide, is not clear (Hamel 2000b).

Hamel (2000a) stated that land use changes brought about by increasing human populations in the breeding, migratory, and winter range of cerulean warbler are the underlying causes of the population decline of the bird in this century. According to Hamel (2000a), Robbins *et al.* (1992a) compiled the most extensive listing of potential threats facing cerulean warblers. This list included six items which they categorized as constraints on the breeding grounds as well as non-breeding season constraints: (1) Loss of mature deciduous forest, especially along stream valleys; (2) fragmentation and increasing isolation of remaining mature deciduous forest; (3) change to shorter (timber harvest) rotation periods and even-aged management, so that less deciduous forest habitat reaches maturity; (4) loss of key tree species, especially oaks from oak wilt and gypsy moths, sycamores from a fungus, elms from Dutch elm disease, and American chestnuts from chestnut blight; (5) nest parasitism by the brown-headed cowbird; and (6) environmental degradation from acid rain and stream pollution. However, research is needed to determine whether these potential threats affect cerulean warbler populations, and if so, whether the effects of these potential threats vary across the species' breeding and winter range.

We agree with the petitioner's contention that there appear to be several potential threats to cerulean

warbler migratory, breeding, and wintering habitats. Demographic data, and especially recruitment data, are currently lacking across the cerulean warbler's range, making it impossible to determine the important features of habitat that provide for successful reproduction, thus complicating the evaluation of potential threats to that habitat. We believe there are significant gaps in the threats data currently available to us, including: the degree to which timber management and harvest on privately owned forest habitat constitute a benefit or threat to the species; loss of habitat due to development has not been quantified or analyzed across the species' range; mountaintop mining impacts assessments and modeling effects on individual species, including the cerulean warbler, are currently unavailable; the magnitude of wintering habitat loss and its role in the species' decline; and mortality factors during migration.

We have reviewed the petition, supporting documentation, and other information available in our files. On the basis of the best scientific and commercial information, we find that substantial information exists indicating that listing the cerulean warbler as threatened may be warranted. When we make a 90-day finding that listing may be warranted, we are required to initiate a review of the status of the species. Following the status review we will issue a 12-month petition finding as required by section 4(b)(3)(B) of the Act. The 12-month finding considers all additional data received during the status review and determines whether listing is warranted. If the 12-month finding is "warranted," we elevate the species to candidate status and assign it a listing priority number. We will then commence work on a proposal to list the species in the order dictated by its listing priority number and the listing priority numbers of other candidate species.

The petitioners also requested that critical habitat be designated for the cerulean warbler. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the cerulean warbler is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the

species involved, including providing an opportunity for data and other information to be provided by the public for our consideration. A rangewide status assessment of cerulean warbler was completed in April 2000, and this status assessment is available on the Service's Web site at <http://midwest.fws.gov/endangered/lists/concern.html#Birds>. This status assessment reviewed most of the information available at that time, so we are primarily interested in receiving data on the species that have become available since April 2000. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the cerulean warbler. Of particular interest is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

If you wish to comment or provide data for our consideration, you may submit your comments and materials to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 608 East Cherry Street, Room 200, Columbia, Missouri 65201. Our practice is to make comments, including names and home addresses of respondents, available for public review. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment and explain the reason for your request. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

You may request a list of all references cited in this document, as

well as others, from the Columbia, Missouri Field Office (see **ADDRESSES**).

Author

The primary author of this document is Amy Salveter, Columbia, Missouri Field Office (see **ADDRESSES**).

Authority

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

Dated: September 24, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

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