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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 for a Petition To List the Washington Population of the Western Gray Squirrel as Threatened or Endangered****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 for a petition to list the western gray squirrel (*Sciurus griseus griseus*) in Washington under the Endangered Species Act of 1973, as amended. After reviewing the petition and all available scientific and commercial information, we find that the petition presents substantial information indicating that there may be one or more distinct population segments (DPS) of western gray squirrels in Washington for which listing may be warranted. With the publication of this notice, we are initiating a status review of the western gray squirrel subspecies *Sciurus griseus griseus* in Washington. In addition to requesting information on the status of the western gray squirrel in Washington, we are requesting information on the subspecies rangewide for the purpose of determining if one or more of the Washington populations of this subspecies constitutes a DPS, or constitutes a significant portion of the range of the subspecies. We will prepare a 12-month finding on our determination.

**DATES:** The finding announced in this document was made on October 17, 2002. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by December 30, 2002.

**ADDRESSES:** Submit information, comments, or questions concerning this petition finding to the Manager, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. The petition, supporting information, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Manager (see **ADDRESSES** section) (telephone 360/753-9440; facsimile 360/753-9518).

**SUPPLEMENTARY INFORMATION:****Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533(b)(3)(A)), requires us to 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. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and a notice of the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

On January 4, 2001, we received a petition dated December 29, 2000, from the Northwest Ecosystem Alliance, Bellingham, Washington, and the Tahoma Audubon Society, University Place, Washington. The petition and cover letter clearly identified itself as such and contained the names, addresses, and signatures of the petitioning organizations' representatives. Information relating to the taxonomy, the historic and present population status and trends, threats, and a discussion of the qualifications of the western gray squirrel (*Sciurus griseus griseus*) in Washington as a distinct vertebrate population segment (DPS) were included in the petition. The petition requested an emergency rule to list the Washington population(s) of the western gray squirrel as threatened or endangered under the Act or, as an alternative, the immediate emergency listing of just the southern Puget Sound population of western gray squirrels followed by a later consideration of the "full Washington State distinct population segment under the standard processing requirements." The petition also requested the designation of critical habitat for the western gray squirrel in Washington, coincident with the listing.

In a letter dated March 9, 2001, we acknowledged receipt of the petition (Service, *in litt.*, 2001). We stated that we were unable to address the petition

at that time because we were required to spend nearly all of our listing and critical habitat funding for fiscal year 2001 to comply with court orders and judicially approved settlement agreements. We also indicated in our letter that, from our initial review of the petition, there was no emergency situation for Washington population(s) of the western gray squirrel. The proposed construction of the Cross-Base Highway, identified by the petitioners as an imminent threat to the Puget Sound population, was not scheduled to be constructed for at least 5 years.

On May 6, 2002, we received a 60-day Notice of Intent to sue from the Northwest Ecosystem Alliance and Tahoma Audubon Society (plaintiffs) alleging we had violated the Act by failing to make a finding on whether the petition to list the Washington population(s) of the western gray squirrel presented substantial information indicating that listing may be warranted. On July 17, 2002, the plaintiffs filed a lawsuit in United States District Court for the District of Oregon to compel us to comply with the listing requirements of the Act. We are making this 90-day petition finding in accordance with the court's order in this case, *Northwest Ecosystem Alliance and Tahoma Audubon Society v. U.S. Fish and Wildlife Service, Badgely, Williams, and Norton*, No. CV 02-945 (D. OR.).

The western gray squirrel belongs to the mammalian order Rodentia, the suborder Sciurognathi, and the family Sciuridae. There are three subspecies of western gray squirrel: *Sciurus griseus griseus*, which ranges from central Washington to the western Sierra Nevada Range in central California; *Sciurus griseus anthonyi*, which ranges from the southern tip of the California Coast Range into south-central California; and *Sciurus griseus nigripes*, which ranges from south of San Francisco Bay in the central California Coast Range to San Luis Obispo County (Hall 1981). *Sciurus griseus griseus* was described from a squirrel seen by Lewis and Clark at the Dalles in Wasco County, Oregon (Rodrick 1987).

The western gray squirrel is the largest native tree squirrel in the Pacific Northwest and is the only member of the genus *Sciurus* native to Washington. Two other members of the genus found in Washington are introduced species: the eastern gray squirrel (*Sciurus carolinensis*) and the fox squirrel (*Sciurus niger*) (Washington Department of Wildlife (WDW) 1993). Other common names applied to the western gray squirrel include the silver gray squirrel, California gray squirrel, Oregon gray squirrel, Columbian gray squirrel,

and gray squirrel (Northwest Ecosystem Alliance and Tahoma Audubon Society 2000).

The historic distribution of the western gray squirrel was once widespread throughout Washington, Oregon, California, and in western Nevada along the base of the Carson Range and in Washoe County (Linders 2000). Currently, the species is rare in Nevada. Western gray squirrels in California still occur in the interior valley margin of the Cascades, Sierra Nevada, Tehachapi, Little San Bernardino, Santa Rosa, and Laguna Mountains, and west through the Coast Range to the Pacific Coast (Carraway and Verts 1994). In Oregon, the western gray squirrel distribution extends along the southwestern foothills of the Coast Range northward to Coos Bay, north along the eastern side of the Coast Range and along both sides of the Cascades into Washington (Verts and Carraway 1998).

#### **Washington Western Gray Squirrel Populations**

Historically, western gray squirrels probably ranged throughout western Washington and the Cascades in association with oak communities. One hypothesis suggests that the western gray squirrel migrated northward into Washington with the spread of Oregon white (Garry) oak (*Quercus garryana*) from the Willamette Valley in Oregon. Consequently, the species was more widely distributed in prehistoric times and has diminished in recent times along with the decrease in distribution of oak woodlands (WDW 1993). Western gray squirrels in Washington once ranged from southern Puget Sound south to the Columbia River, east along the Columbia River Gorge in the southern Cascades, and north along the eastern slopes of the Cascades to Lake Chelan. Documentation for western gray squirrels includes records for Whatcom, Pierce, Thurston, Grays Harbor, Lewis, Clark, Skamania, Klickitat, Yakima, Kittitas, Chelan, and Okanogan counties in Washington (WDW 1993; Washington Department of Fish and Wildlife 1998). The subspecies' range extensions into Chelan and Okanogan counties, beyond the range of Oregon white oak, may have resulted from plantings of walnut trees by early settlers. The range extension north into Okanogan County occurred since 1965 (WDW 1993). Currently, in Washington, only three geographically isolated western gray squirrels remain: one in Thurston and Pierce counties, one in Klickitat and Yakima counties, and one in Chelan and Okanogan counties (Bayrakci 1999; Linders 2000; WDW 1993).

#### *Distinct Vertebrate Population Segment*

We must consider any species for listing under the Act if there is sufficient information to indicate such action may be warranted. "Species" is defined by the Act as including any subspecies of fish and wildlife or plants, and any distinct population segment of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (National Oceanic and Atmospheric Administration-Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (61 FR 4722) to help us in determining what constitutes a distinct population segment (DPS). Under this policy, we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) Discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

The DPS analysis is a stepwise analysis; significance is considered only when discreteness of the population has been determined, and the conservation status is considered only when both discreteness and significance of the population have been established. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries. If the population is determined to be discrete, we determine significance by assessing the distinct population segment's importance and/or contribution to the species throughout its range. Measures of significance may include, but are not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population meets the discreteness and significance criteria for a distinct population segment, we evaluate the threats to determine if endangered or threatened status based on the Act's standards is warranted. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

In requesting to list the "Washington population(s)" of the western gray squirrel as threatened or endangered, the petition describes three small disjunct populations in Washington that "are separated by a distance of more than 300 km, and western gray squirrels are not likely to disperse more than 20 km." The degree of isolation of the three populations described in the petition suggest that individuals from the three populations would not naturally interbreed. The petition, however, provides sufficient information on each of the three Washington populations to indicate that we should consider whether one or more of these populations may meet the criteria for listing as a DPS. Threats to some populations of the subspecies include habitat modification and destruction due to fire suppression, logging, overgrazing, highway construction, and residential development. Other threats include fluctuating food supplies, disease, competition, road kills, and illegal shooting. The subspecies is listed as threatened by the State of Washington.

#### **Emergency Listing and Critical Habitat Designation**

Petitions for emergency listing and concurrent designation of critical habitat with the listing action, as requested in the petition to list the Washington population(s) of the western gray squirrel, are not expressly provided for by the Act. However, we may address the need for an emergency rule pursuant to section 4(b)(7) of the Act (16 U.S.C. 1533(b)(7)). In addition, the Act requests us to designate critical habitat concurrently with listing a species to the maximum extent prudent and determinable (16 U.S.C. 1533(a)(3)(A)).

We may issue an emergency rule to list a species if threats to the species constitute an emergency posing significant risk to its continued survival. We consider a species for emergency listing when the immediacy of the threat is so great to a significant portion of the total population that the routine listing

process is not sufficient to prevent large losses that may result in extinction.

Upon receipt of the petition, we reviewed the available information to determine if the existing and foreseeable threats represented an emergency to the western gray squirrel. The petition identified the proposed construction of the Cross-Base Highway in Pierce County as presenting an imminent and significant threat to the well-being of western gray squirrels in south Puget Sound. Consequently, the petitioners requested an emergency listing of the Washington population(s) of the western gray squirrel or, as an alternative, emergency listing the Puget Sound population "followed by consideration of the full Washington State distinct population segment."

The currently anticipated schedule for the proposed Cross-Base Highway indicates the Record of Decision will not be completed until August 2003. There is limited funding available for project development beyond the completion of the environmental documentation phase. Before construction can begin, the project will require 2 years for engineering design and 2 years for right-of-way acquisition. Although there will be some overlap in timing, Pierce County anticipates the necessary time for completion of the three phases will not be less than about 5 years (T.G. Ballard, County Engineer, Pierce County Public Works and Utilities, *in litt.*, 2002). Consequently, we have determined that the Cross-Base Highway does not present an imminent threat to the southern Puget Sound population of western gray squirrels, and an emergency listing is not warranted at this time. However, we would initiate an emergency listing if, at any time, we determine that an emergency listing of a species, including a DPS, is warranted.

#### Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of the best scientific and commercial information, we find the petition presents substantial information that there may be one or more distinct population segments of western gray squirrels in Washington for which listing may be warranted.

With the publication of this notice, we are initiating a status review of *Sciurus griseus griseus* to determine whether one or more of this subspecies' populations in Washington constitute a DPS, and if so, whether listing of such DPS(s) is warranted, not warranted, or warranted but precluded by other pending proposals.

#### Public Information Solicited

When we make a finding that sufficient 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. To ensure the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the western gray squirrel throughout the subspecies' (*Sciurus griseus griseus*) range in Washington, Oregon, California, and Nevada. Information on the status of the subspecies rangewide will assist us in determining if one or more of the Washington populations of western gray squirrels meet the distinct vertebrate population segment criteria, particularly the significance test, or constitute a significant portion of the range.

We request any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of this subspecies of western gray squirrel throughout its range in Washington, Oregon, California, and Nevada. We are seeking information regarding historic and current distribution, habitat use and habitat conditions, biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat. More specifically, for the three Washington populations of the western gray squirrel, we request any available information on: (1) The genetics of these populations, as they relate to each other and to the closest populations in Oregon; (2) the extent to which the two populations east of the Cascade Range are discrete from each other; (3) current status and trends of each of these populations; (4) the presence and status of the subspecies on additional public or private lands; (5) identification of current specific threats to each of the populations; and (6) any additional information that will support the DPS analysis of the significance, as defined in our DPS policy (see Distinct Vertebrate Population Segment section above), of each of these populations to the subspecies as a whole.

If you wish to comment, you may submit your comments and materials concerning this finding to the Manager, Western Washington Fish and Wildlife Office (see ADDRESSES section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular office hours. Respondents may request that we withhold a respondent's identity, as

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. 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

A complete list of all references cited herein is available upon request from the Western Washington Fish and Wildlife Office (see ADDRESSES section).

#### Author

The primary author of this document is Dr. Karolee Owens, of the Western Washington Fish and Wildlife Office (see ADDRESSES above).

#### Authority

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

Dated: October 17, 2002.

**Marshall P. Jones Jr.,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 100102D]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a