

Previous Federal Action

On December 30, 1982, we designated the mountain plover as a category 2 candidate species, meaning that more information was necessary to determine whether the species status was declining, stable, or improving (47 FR 58458). In 1990, we prepared a status report on the mountain plover indicating that Federal listing may be warranted (Leachman and Osmundson 1990). We elevated the mountain plover to a category 1 candidate species in the November 15, 1994, Animal Candidate Notice of Review (59 FR 58982). At that time, category 1 candidate species were defined as those species for which we had sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. In 1996, we redefined candidate species and eliminated category 2 and 3 candidate designations (61 FR 64481). Candidate species were defined using the old category 1 definition. The mountain plover retained its candidate species designation as reported in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398). On July 7, 1997, we received a petition to list the mountain plover as threatened from the Biodiversity Legal Foundation. The Service responded by notifying the petitioner that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing may be warranted. Therefore, no 90-day finding was required for the Biodiversity Legal Foundation's petition. We published a proposed rule to list the mountain plover as threatened on February 16, 1999 (64 FR 7587), and requested that comments be provided by April 19, 1999. We announced public hearings for the proposal on April 19, 1999, and concurrently extended the comment period to June 21, 1999 (64 FR 19108).

Higher priority listing actions precluded listing work on the mountain plover during Fiscal Years 2000 and 2001. On October 16, 2001, Earthjustice (representing the Biodiversity Legal Foundation, Biodiversity Associates, and Center for Native Ecosystems) submitted a 60-day Notice of Intent to sue to the Secretary of the Department of the Interior and the Service Regional Director for failure to meet listing deadlines for the mountain plover, as required by section 4(b)(6)(A) of the Act. The Service responded to Earthjustice on December 21, 2001, with a commitment to submit an amended listing proposal for the mountain plover by September 30, 2002. On October 7, 2002, we agreed to prepare a document

to reopen the public comment period for this listing decision by November 30, 2002; hence, the December 5, 2002, notice to reopen the comment period (67 FR 72396). On February 21, 2003, we extended the comment period to March 21, 2003 (68 FR 8487).

Summary of Comments Received on the Proposed Rules

In both the February 16, 1999, proposed rule (64 FR 7587) and the December 5, 2002, proposed rule (67 FR 72396), all interested parties were requested to submit factual reports or information that might contribute to the development of a final determination. Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Several newspaper articles appeared in Montana, Wyoming, and Colorado following our distribution of background materials to print media. We also solicited and received the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the biological and ecological information for the mountain plover. We received a total of 194 written comments on the 1999 proposed rule.

We distributed a press release to announce the 2002 proposed rule. We again solicited peer review of independent specialists regarding the listing proposal and special rule. We received a total of 65 written, e-mail, or telephone comments on the 2002 proposed rule.

In response to the 1999 proposed rule, public hearings were requested in Nebraska by the Forest Service; in Montana by the Phillips County Prairie Ecosystem Action Council, the Phillips County Board of County Commissioners, and Erin Crowder; and in Wyoming by the Park County Board of County Commissioners, Wheatland Irrigation District, Wyoming Farm Bureau Federation, Laramie County Conservation District, Platte County Resource District, Antelope Grange, Mountain Valley Livestock, Inc., Ultra Resources, and John and Phyllis Thalken.

Public hearings were held at the following locations and dates:

- Billings, Montana, May 26, 1999.
- Malta, Montana, May 25, 1999.
- Greeley, Colorado, May 25, 1999.
- Lamar, Colorado, May 26, 1999.
- Casper, Wyoming, June 2, 1999.

We received written and verbal comments from State and Federal elected officials, State and Federal agencies, nongovernmental organizations, and private citizens. We

received a total of 52 comments at the 5 public hearings. Of the total 246 written and verbal comments received on the 1999 proposed rule, 136 opposed, 41 supported, 53 expressed concern about the proposal, and 16 sought a list of the references or requested public hearings.

Following release of the December 5, 2002, proposed rule, we received requests for public meetings from Congressman Bob Filner representing the 50th District of California, the Oklahoma Farm Bureau, the Kansas Farm Bureau, and the Nebraska Farm Bureau. Following discussions with each of these individuals, we held public meetings at the following locations:

- El Centro, California, January 23, 2003.
- Elkhart, Kansas, February 5, 2003.

The Service distributed news releases announcing the meetings in El Centro, California, and Elkhart, Kansas, on January 16, 2003, and January 29, 2003, respectively. Notification of the Elkhart meeting also appeared on the local access television station within the Elkhart, Kansas, viewing area.

We received a total of 11 verbal comments from the 2 public meetings held in 2003. Of the total of 75 verbal and written comments received on the December 5, 2002, proposed rule, 25 comments opposed the listing proposal, 15 supported the proposal, 24 expressed concern, and 11 requested an extension of time or public hearing.

All written and verbal comments presented at the public hearings and received during the public comment period, including peer review comments, were considered in preparing this final determination. Most of the comments opposing the action criticized the quality of the science used to support the proposal, stated that we did not thoroughly address each listing factor, noted the potential for the Federal listing to restrict activities on both public and private lands, and suggested that listing should be delayed to allow other alternatives to work to conserve the species (*e.g.*, conservation agreements). Some comments also challenged the value of listing the species, and argued that listing the mountain plover will conflict with other species' conservation efforts and the implementation of other Federal programs. Other respondents supported listing because of the decline in the distribution and numbers of mountain plovers and the potential future natural or man-caused actions to result in further decline of the species, and also asked that critical habitat be designated. Each of the five peer reviewers (three in