

1999, two in 2002) indicated that the proposed rule contained sufficient scientific information to support proposed listing. We have consolidated similar comments, organized them by central themes, and provide our responses below.

Listing Decision Statute Issues

Comment 1: The Service has violated statutory intent by not complying with 'the best information available' standard, has inappropriately 'piggybacked' a new proposal on the 'stale' 1999 proposal, and has shown deferential treatment to environmental organizations, evidenced by the settlement agreement with Earthjustice.

Response 1: This final determination presents a significant amount of new information that has become available since the 1999 proposed rule, including new information that caused us to discount Breeding Bird Survey (BBS) trends as statistically insignificant, and to reconsider what we earlier proposed as threats on agricultural lands on the breeding grounds. The settlement agreement does not reflect preferential treatment, but rather an appropriate means to resolve litigation where the final determination was overdue.

Comment 2: E-mails, personal communications, and letters do not meet the 'best information available' standard as described in Service policy (59 FR 34271).

Response 2: Our policy, as cited above, requires that we evaluate all scientific and other information available, which may include both published and unpublished materials, in the development of a listing action. We review the information, regardless of origin, and determine whether it is reliable, credible, and represents the best information available regarding the species under review. We must document our evaluation of any information we use in reaching our decision, whether it supports or refutes that decision.

Biased Decision Issues

Comment 3: Several commenters stated that our analysis of the mountain plover population trend data, grassland conversion statistics, oil and gas development projections, prairie dog population data, and other issues, are specific examples of the Service's use of 'selective science.' The commenter believe the Service has 'selected science' to defend a listing position in the proposed rules, while ignoring information that defends the withdrawal of the listing proposal.

Response 3: During the two public comment periods in 2002 and 2003, we

received numerous comments from affected States and other interested parties. We have based our decision on our review of all the pertinent information we received. This determination includes new and additional information, including research results, that was not available for the proposed rule.

Comment 4: The multiple-clutch breeding system of the mountain plover influences the annual fluctuation in the population, and prepares the mountain plover for a changing environment.

Response 4: Multiple-clutching is believed to be a strategy that allows the mountain plover to respond to abundant prey (Graul 1973) which can, therefore, result in annual fluctuations in mountain plover numbers at individual breeding locations. We agree that annual fluctuations in mountain plovers may be in response to prey, but the affect of multi-clutching on population trends is unknown.

Comment 5: The Service understated the effects of predation on mountain plovers, did not consider the invasion by red fox (*Vulpes vulpes*), and did not describe what is going to be done to reduce predation effects on mountain plovers. Predation has a much greater effect on the mountain plover population than losses on croplands.

Response 5: We have revised the section on predation to include red fox as a potential predator, and assess the implications of predation to mountain plover conservation. However, red fox are not typically associated with habitats occupied by mountain plovers.

Comment 6: The Service has not identified or quantified actual threats and, therefore, has not shown that mountain plovers have declined or are at risk.

Response 6: The commenter is correct that we have not quantified the threats to the mountain plover or the number of individuals lost as a result of each threat. We have based our determination to withdraw on the wide distribution of the mountain plover and the relative security of the species from present or foreseeable threats across its current range.

Habitat Characteristics Issues

Comment 7: Mountain plovers are not at risk when nesting on croplands. Current agricultural practices are beneficial to the mountain plover.

Response 7: In the 1999 proposed rule, we stated that agricultural practices on cultivated lands may contribute to the decline of mountain plovers. Research has confirmed that some nests are lost to some cultivation practices (Dreitz and Knopf, in litt.

2003). As reported in this final determination, preliminary research findings from Colorado suggest that nesting success on cultivated lands does not differ significantly from nesting success on grassland nesting sites (Dreitz and Knopf, in litt. 2003). We agree that nesting success on some croplands is similar to that found on grasslands, but the relative influence of each landscape on mountain plover population recruitment has not been determined.

Comment 8: Cultivated lands provide habitat where none existed before.

Response 8: Cultivated lands have replaced grasslands within the historic breeding and wintering range of the mountain plover. Hatching success on cultivated lands and grasslands appears to be similar in the southern portion of the breeding range.

Comment 9: Mountain plovers are an adaptable species, and have effectively shifted from grasslands to cultivated lands in many breeding and wintering areas. Cultivated lands, not grasslands, are now the most important habitat for mountain plovers at both breeding and wintering locales.

Response 9: See response to Comments 7, 8, and 21.

Comment 10: The role of insect availability has not been thoroughly evaluated, particularly given that livestock dung is less abundant than bison dung, and the prevalence of dung influences insect abundance. Also, systemic insecticides are used on cattle, which reduces insect availability.

Response 10: We agree that the role of insect availability has not been thoroughly evaluated. However, no information has been provided to show that insect abundance or diversity have been significantly modified by the replacement of bison with domesticated livestock, or that the use of systemic pesticides influences insect abundance or composition.

Comment 11: Mountain plover habitat is provided by several factors such as low moisture, drought, herbivory, fire, and grazing. In Montana, unique soil types are the key element in defining suitable mountain plover habitat. Prairie dog colonies are not the only suitable habitat.

Response 11: We agree that numerous factors can provide suitable mountain plover habitat. We agree that soils are important to providing the vegetation and bare ground required by nesting mountain plovers. For example, Beauvais and Smith (2003) stated that poor soil, low precipitation, and wind scour help provide the proportion of bare ground needed by nesting mountain plovers in the Jack Morrow