



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[4500090022]

### Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions to List a Species and Remove a Species from the Federal Lists of Endangered and Threatened Wildlife and Plants

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

**ACTION:** Notice of 12-month petition findings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list a species as an endangered or threatened species and remove a species from the Federal Lists of Endangered and Threatened Wildlife and Plants (List or Lists) under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to add the beaverpond marstonia to the Lists or remove the southwestern willow flycatcher from the List. However, we ask the public to submit to us at any time any new information that becomes available relevant to the status of either of the species listed above or their habitats.

**DATES:** The findings in this document were made on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Detailed descriptions of the basis for each of these findings are available on the Internet at <http://www.regulations.gov> under the following docket numbers:

Species	Docket Number
Beaverpond marstonia	FWS-R4-ES-2017-0090

Southwestern willow flycatcher	FWS-R2-ES-2016-0039
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Supporting information used to prepare these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

<b>Species</b>	<b>Contact Information</b>
Beaverpond marstonia	Don Imm, Field Supervisor, Georgia Ecological Services Field Office, 706-613-9493, ext. 230
Southwestern willow flycatcher	Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 602-242-0210

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**SUPPLEMENTARY INFORMATION:**

**Background**

We are required to make a finding whether or not the petitioned action is warranted within 12 months after receiving any petition we determined contained substantial scientific or commercial information indicating that the petitioned action may be warranted (section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) (“12-month finding”). We must make a finding that the petitioned action is: (1) not warranted; (2) warranted; or (3) warranted but precluded. “Warranted but precluded” means that (a) the petitioned action is warranted, but the immediate proposal of a regulation

implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the *Federal Register*.

### **Summary of Information Pertaining to the Five Factors**

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines “endangered species” as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and “threatened species” as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may meet the definition of a threatened species or an endangered species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of a threatened species or an endangered species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the beaverpond marstonia and southwestern willow flycatcher meet the definition of “endangered species” or “threatened species,” we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal

governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment form for the beaverpond marstonia and the 12-month finding assessment for the southwestern willow flycatcher contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or threatened species. This supporting information can be found on the Internet at <http://www.regulations.gov> under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for each of the findings in this notice.

**Beaverpond marstonia (*Marstonia castor*)**

*Previous Federal Actions*

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy, requesting that the beaverpond marstonia be listed as an endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the *Federal Register* (76 FR 59836) concluding that the petition presented substantial information indicating that listing the beaverpond marstonia may be warranted. Subsequently, we entered into a stipulated settlement agreement with the Center for Biological Diversity that required us to submit a 12-month finding to the *Federal Register* by December 31, 2017. This notice constitutes the 12-month finding on the April 20, 2010, petition to list the beaverpond marstonia under the Act.

*Summary of Finding*

The beaverpond marstonia is a freshwater snail in the Hydrobiidae family. The tan-colored shell of the beaverpond marstonia is less than 4 millimeters (mm) (0.2 inches (in)) in length. The species has been found at only three creeks in Georgia, and, like other members of its family, it has limited dispersal capabilities and a narrow distribution in a local drainage system.

Little is known about the biology and ecology of the beaverpond marstonia, but in the creeks where it was located, it was found primarily by clumps of vegetation in shallow, clear water with a slight current. In this fragile habitat, the beaverpond marstonia relies on fine particulate organic matter and aquatic microorganisms as its primary food sources.

The beaverpond marstonia was last observed in 2000. Repeated surveys for the species, starting in 2014 through March of 2017, in the locations where it was previously found and in surrounding areas with similar habitat have yielded no specimens. Based on both the results of repeated species surveys by qualified species experts at all three historical locations and suitable habitat in surrounding areas, the best available science indicates there are no extant populations of beaverpond marstonia.

Therefore, we believe the beaverpond marstonia to be extinct. As a result, the beaverpond marstonia does not fall within the statutory definition of either a threatened species or an endangered species and, accordingly, does not warrant listing under the Act. A detailed discussion of the basis for this finding can be found in the beaverpond marstonia species assessment form and other supporting documents (see **ADDRESSES**, above).

## **Southwestern Willow Flycatcher (*Empidonax traillii extimus*)**

### *Previous Federal Actions*

The southwestern willow flycatcher was listed as an endangered species under the Act on February 27, 1995 (60 FR 10694). On August 20, 2015, we received a petition from The Pacific Legal Foundation (representing The Center for Environmental Science, Accuracy, and Reliability, Building Industry Legal Defense Fund, California Building Industry Association, California Cattlemen's Association, New Mexico Business Coalition, New Mexico Cattle Growers Association, New Mexico Farm and Livestock Bureau, and New Mexico Wool Growers Inc.), requesting that the southwestern willow flycatcher be removed from the Federal List of Endangered and Threatened Wildlife under the Act. On March 16, 2016, we published a 90-day finding in the *Federal Register* (81 FR 14058) concluding that the petition presented substantial information indicating that removing the southwestern willow flycatcher may be warranted based on information related to the taxonomic status. This notice constitutes the 12-month finding on the August 19, 2015, petition to remove the southwestern willow flycatcher from the List.

### *Summary of Finding*

The southwestern willow flycatcher is a small, neotropical migrant bird that grows to about 15 centimeters (cm) (6 in) in length. During its breeding season from about May to September, this subspecies of willow flycatcher is found in the southwestern United States in parts of California, Nevada, Utah, Colorado, Arizona, New Mexico, and Texas.

The southwestern willow flycatcher breeds in areas from near sea level to over

2,600 meters (m) (8,500 feet (ft)) in vegetation alongside rivers, streams, or other wetlands. It establishes nesting territories, builds nests, and forages in mosaics of relatively dense and expansive growths of trees and shrubs, near or adjacent to surface water or underlain by saturated soil. The subspecies eats a wide range of terrestrial and aquatic invertebrates including flying and ground- and vegetation-dwelling insects.

We evaluated the subspecies classification and all relevant stressors under the five factors, including any regulatory mechanisms and conservation measures addressing these stressors. In our evaluation of the subspecies classification, we considered information provided in the petition suggesting that the southwestern willow flycatcher is not a valid subspecies, reports and literature (including more recent quantitative data), the professional opinion of a broad group of ornithological organizations, and additional analyses of recent flycatcher studies evaluating diagnostic subspecies characteristics. We found that the southwestern willow flycatcher is a valid subspecies and that the following threats are acting on the subspecies such that it continues to meet the definition of an endangered species under the Act: habitat loss and modification caused by dams and reservoirs, diversion and groundwater pumping, invasive plants and beetles, river management, urbanization, agricultural development, livestock grazing and management, fire and fire management, cowbird parasitism, and recreation (Factor A); other natural or manmade factors including drought and the effects of climate change, vulnerability of small or isolated populations, and genetic effects (Factor E); and cumulative effects of these threats. The existing regulatory mechanisms are not adequate to ameliorate these threats (Factor D). Therefore, we find that removing the southwestern willow flycatcher from the List is not warranted. A detailed discussion of the basis for



this finding can be found in the southwestern willow flycatcher 12-month finding assessment and other supporting documents (see **ADDRESSES**, above).

### **New Information**

We request that you submit any new information concerning the taxonomy, biology, ecology, status of, or stressors to, the southwestern willow flycatcher. We further request that you contact us as soon as possible if new information becomes available suggesting specimens of beaverpond marstonia have been located. Please contact the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor the species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

### **References Cited**

Lists of the references cited in the petition findings are available on the Internet at *<http://www.regulations.gov>* in the dockets listed above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

### **Authors**

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

**Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 3, 2017.

James W. Kurth,  
Deputy Director,  
U.S. Fish and Wildlife Service,  
Exercising the Authority of the Director,  
U.S. Fish and Wildlife Service.

Billing Code 4333–15

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