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May 2, 1990

Mr. John Turner, Director
U.S. Fish and Wildlife Service
Interior Building, Room 3012
18th and C Streets
Washington, D.C. 20240

Re: Additional Information in Support of Petition to List the
Trumpeter Swan as Threatened Under the Endangered
Species Act

Dear Mr. Turner:

I am writing you on behalf of the Idaho Chapter of the Wildlife Society ("TWS") regarding its petition to list the Rocky Mountain population of trumpeter swans as threatened under the Endangered Species Act.

In light of recent biological developments and the apparent conflict within the U.S. Fish and Wildlife Service ("FWS") between staff recommendations and upper-level management positions regarding TWS's petition, TWS feels compelled to provide you with additional information to support a finding that such a listing is clearly warranted. This letter identifies several pertinent items of which you should be aware and, hopefully, that your staff has informed you of, to make a proper, biologically sound decision in this matter.

First and foremost, recent evidence shows that the winter carrying capacity of trumpeter swans on the Henry's Fork of the Snake River ("Henry's Fork") was reached or exceeded this past winter. Except in those few areas that receive relatively high levels of human use, aquatic macrophytes in trumpeter swan wintering areas were nearly completely eaten by swans. Little is known of the ability of these crucial food sources to recover from this high level of utilization in time to support the bulk of the tri-state wintering swans next winter.

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The number of swans fed by Red Rocks Lake NWR ("RRLNWR") personnel increased to nearly 900 before refuge personnel ran out of feed and swans began to disperse to spring range. The Midwinter Tri-State Swan Survey conducted and prepared by RRLNWR personnel reached the following conclusions regarding these developments--conclusions with which TWS wholeheartedly concurs.

The obvious conclusion is that the high population of swans completely consumed the vegetation and moved to RRLNWR. Some returned to Harriman when Silver and Golden Lakes began to open up. If this trend continues, and there is no reason to suspect it will not, then Harriman and other local waters have reached and exceeded their carrying capacity. This, and the unprecedented crowding that resulted at RRLNWR, fulfilled earlier predictions that both critical winter habitat and the swans themselves are at considerable risk now from overcrowding and habitat destruction. (Emphasis in original).

A copy of these conclusions is attached for your reference as Exhibit A.

The Rocky Mountain Population ("RMP") Trumpeter Swan Subcommittee of the Pacific Flyway Council met in May 1989 to discuss the status of the RMP and to assess progress toward the goals and management procedures identified in the North American Management Plan for Trumpeter Swans ("NAMPTS"). Establishing new wintering sites is one of the top priority goals of the NAMPTS. The subcommittee rated overall progress toward this objective as "limited" and further concluded that "no progress" had been made toward the goal of developing a long-term strategy for effectively dealing with winter range expansion problems. A copy of the minutes of the subcommittee's meeting is attached for your reference as Exhibit B.

Furthermore, recent actions by FWS suggest that it is not committed to playing a lead role in trumpeter swan management and is either not willing or not able to provide critical funding to help implement various studies necessary for the long-term survival of the RMP of trumpeter swans. The Fish and Wildlife Foundation recently donated \$20,000 to help fund a range expansion study. Use of these funds was contingent on their being matched by other monies, which were eventually obtained from the Henry's Fork Foundation. However, FWS never committed any funds to supplement this grant and its matching money. The result was that the first year of winter range expansion studies had to be supported by private monies with no help from the FWS.

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This episode does not bode well for future FWS support of trumpeter swan management activities. It further supports TWS's position that the RMP of trumpeter swans is in jeopardy with little or no likelihood of reversing this situation under current management strategies.

In light of this apparent lack of commitment by FWS, lack of progress in developing a long-term strategy to deal with winter range expansion, uncertainty over Henry's Fork water flows, lack of serious state support and funding for range expansion and other studies, and the fact that the swan carrying capacity on the Henry's Fork has been reached or exceeded, listing of the RMP of trumpeter swans as threatened is more crucial than ever. Given these overwhelming facts, TWS firmly believes that a decision that listing of this population is not warranted would be irrational and in violation of the Endangered Species Act.

Several arguments have been raised by various parties for not listing the RMP of trumpeter swans as threatened. TWS is aware of some concerns that listing may take away some management options from the states and that listing may interfere with white bird hunting seasons in several states. The first argument concerning the availability of management options disregards the actual provisions of the Endangered Species Act and may be more a concern about states' rights than about biologically sound management. As you know, threatened status does not preclude active management of a listed species. The extensive management actions undertaken on behalf of whooping cranes, an endangered, rather than threatened species, as well as several other endangered species should be enough to dispel this argument. Secondly, "states' rights" is certainly not a relevant issue since the Endangered Species Act requires that listing decisions be based on a species' biology.

White bird hunting is also not an issue. First, provisions of incidental take can be written into a listing package to deal with this potential problem during an internal Section 7 consultation between FWS personnel handling endangered species and migratory bird concerns. The listing package could also include a public education program for implementation in affected areas. Hunting seasons are still held within the ranges of the whooping crane and Aleutian Canada goose, in spite of their protected status. Season dates and area closures could also be used to minimize this potential problem.

Also, and most importantly, potential conflicts with hunting seasons are not supposed to enter into a decision of whether or not to list a species or population as threatened or endangered. The Endangered Species Act clearly specifies the five factors to be used to determine eligibility for listing under the ESA, and the potential effects of listing on white bird hunting seasons is not one of them. As stated in TWS's petition, TWS feels that the RMP of the trumpeter swan does meet four of these five criteria. Meeting only one

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criterion is sufficient for determining that a species or population is threatened or endangered.

Finally, TWS directs your attention to the North American Management Plan for Trumpeter Swans, which identified several problems that threaten the existence of the Rocky Mountain population. These include: 1) the population's extreme vulnerability to catastrophic losses during the winter from starvation and habitat destruction; 2) poor nest success and low brood survival; and 3) inadequate water flows below Island Park Dam on the Henry's Fork, a critical wintering area. These are some of the same problems identified in TWS's petition to list the RMP as threatened.

The trumpeter swan subcommittee minutes (Exhibit B) noted in 1989, "that because of these problems the RMP likely qualifies for either "threatened" or "endangered" status by the U.S. Fish and Wildlife Service even though both the tri-state and interior Canada subpopulations are increasing." The subcommittee considers the RMP to be extremely vulnerable to catastrophic loss and believes that this threat persists because serious management problems identified in the NAMPTS remain unresolved. See Exhibit B for details of the subcommittee meeting.

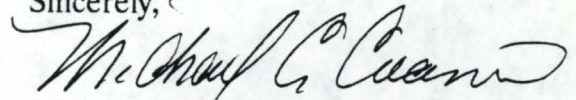
The issue of adequate winter flows in the Henry's Fork has also not been resolved. Even if a permanent solution to this problem is reached, and such a solution appears to be a long way off, it would not address the problem that **the winter carrying capacity of the Henry's Fork has apparently been reached or exceeded.** Nor would an agreement on winter flows address the numerous other problems of the RMP described in the NAMPTS and in TWS's petition, all of which contribute to the uncertain future of the RMP of trumpeter swans.

In conclusion, TWS fully expects you to make your decision regarding its petition based on the biological facts and on the criteria set forth in the Endangered Species Act for making such determinations. Furthermore, you should be aware that the Idaho Chapter of The Wildlife Society, whose membership consists of your professional peers, is prepared to pursue this matter to whatever extent necessary to ensure that your decision regarding TWS's petition is made on sound biological grounds and in a timely manner. Finally, TWS

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requests a personal response to this letter from you so that it can be assured that you are personally aware of its contents and of its determination to pursue this matter to its proper conclusion.

Sincerely, <



Michael C. Creamer
Attorney for the Idaho Chapter
of the Wildlife Society

MCC:ls

Enclosures

cc: Congressman Richard Stallings
Galen Buterbaugh, FWS Denver
Marvin Plenert, FWS Portland
Chuck Lobdell, FWS Boise
Kemper McMaster, FWS Helena
M.R. Mickelson, Henry's Fork Foundation
Tom Franklin, The Wildlife Society

MEETING AGENDA
IDAHO TWS EXECUTIVE COMMITTEE
STATUS AND FUTURE ACTION ON TRUMPETER SWANS

- o Status of management plan
- o Status of range expansion
- o Plans for 1990-91 winter dispersal from Henry's Fork
- o Implications of 1989-90 winter eatout of Potomogeton at Henry's Fork
- o Review of FWS Federal Register notice on petition
- o Short- and long-term Fish and Wildlife Service (FWS) and State commitment of resources
- o Idaho Water Law and water purchase
- o Options available to Idaho TWS
 - Within Endangered Species Act
 - Resubmit petition, new information, question FWS conclusion and commitment
 - Petition for candidate status
 - Outside Endangered Species Act
 - Letter to Turner
 - Express our intent
 - Request flow chart of responsibilities and funding commitments as in recovery plans
 - Request details of water agreement
 - Request details of FWS^{\$} and for water purchase and approach to Idaho Water Law
 - Send FOIA to USBR (John Keys) about water agreement
 - Threaten law suite with options for FWS
 - Will backoff if we see long-term commitment to fund and implement management plan and a signed water agreement with a long-term financial commitment

- File Notice of Intent to file suit challenging FWS decision as arbitrary and capricious
 - Implications
 - Financial resources necessary
- o Decision by Executive Committee or course of action
- o Chuck's involvement

5/23/90

Trumpeter Swan - status meeting

Long Mile - Pacific Flyway Council Meeting results

2007 counted - midwinter count (direct count)

higher than expected after bad winter of '88-'89

transplant summary

61 moved to date - 43% still alive (last 5 yrs.)

Canadian pop. - (listed as rare - no legal status)

'89 prod. ↓

SE data -

6 pre-incubating

13-14 pr. on territories

avg. n below at of last week of April (prod. n)

Data
FWS

pushing for trust fund for water agreement (500 cfs) - 300 - 400 - 500 - 600 - 700 - 800 - 900 - 1000 - 1100 - 1200 - 1300 - 1400 - 1500 - 1600 - 1700 - 1800 - 1900 - 2000 - 2100 - 2200 - 2300 - 2400 - 2500 - 2600 - 2700 - 2800 - 2900 - 3000 - 3100 - 3200 - 3300 - 3400 - 3500 - 3600 - 3700 - 3800 - 3900 - 4000 - 4100 - 4200 - 4300 - 4400 - 4500 - 4600 - 4700 - 4800 - 4900 - 5000 - 5100 - 5200 - 5300 - 5400 - 5500 - 5600 - 5700 - 5800 - 5900 - 6000 - 6100 - 6200 - 6300 - 6400 - 6500 - 6600 - 6700 - 6800 - 6900 - 7000 - 7100 - 7200 - 7300 - 7400 - 7500 - 7600 - 7700 - 7800 - 7900 - 8000 - 8100 - 8200 - 8300 - 8400 - 8500 - 8600 - 8700 - 8800 - 8900 - 9000 - 9100 - 9200 - 9300 - 9400 - 9500 - 9600 - 9700 - 9800 - 9900 - 10000

not enough to maintain open water (ice free)

does maintain integrity of aquatic vegetation

office given that 500 cfs insufficient during cold weather

when blending required

Range expansion need was ~~not~~ recognized

USFWS said that if they had to buy water - would cost \$700,000/yr

to S.F. & 200-300,000 on N.F. & O.F.

water purchasing plan must be approved by Regt. Water Resources

- Division may not be approved by Regt. Water Resources

- Transplant operations - possibly 60 birds available from various sources

~~Discussed~~ egg transplant procedure - will not occur this yr. - low prod.

Transmitters will be put on transplanted birds

Done Hunter will help monitor disease/poisoning situation of transplant operation

Discussed buying birds out of Red Bank/Therman in Nov/Dec

monitoring of results (intensive effort)

if ↓ total #s by 25% - would have insufficient forage

swamp n WT, NV, Ct - effect of white noise hunting

Expected amount FWS in next phase - no decision (will be included in total funding amount)

Flyway Council - concern with listing because of fear of red tape/
inactivity

Rule

biomass totally consumed
no forage available last winter (too many birds - too small an area)
mild winter / many birds - all biomass of forage consumed

Federal Register Notice - Chuck

Notices -

lots of "what if" statements but no evidence/data to support
① "Try" to purchase water (500 acs) - not enough ②

\$214,000 - no agreement at present to provide \$

p. 3 states that winter die-off was one-time event and that
population trend should continue to increase
potential for catastrophic die-off

Point not addressed - 40% of birds fed during winter - what
is status of population under this situation
all birds in some region - over 50% in 2 sites - winter
not only potential problem

Many topics that Society raised were ignored in response (Fed. Reg.) -
pop carrying capacity

water flow, no definite funding for water flow, state water law

Options to Chapter -

- ① resubmit petition - unsatisfactory decision
- ② petition for candidate status
- ③ request info on decisions - further information
- ④ legal action or at least threaten

support of large expansion program

3 ask pointed question on issues not address in DHS petition

DATES: Comments must be received on or before June 1, 1990.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza, West, SW, Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday, in room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268-5188.

SUPPLEMENTARY INFORMATION: Postal regulations generally require that postage be fully prepaid at the time mail matter is mailed. Proof of payment can be shown by affixing stamps or postage meter strips, by imprinting the appropriate postage meter indicia directly on the pieces, or by using a permit imprint. For matter bearing permit imprints, postage is required to be paid in full from an advance deposit account. For permit imprint mailings at bulk first-, third-, and fourth-class rates, the Postal Service calculates the amount of postage due from figures provided by the mailer on the appropriate mailing statement, PS Form 3602, *Statement of Mailing with Permit Imprints*, and PS Form 3605, *Statement of Mailing—Bulk Zone Rates*, and deducts that amount from the mailer's advance deposit account.

In the course of its revenue protection efforts, the Postal Service from time to time identifies mailings of bulk matter, which after a thorough review, are determined under the applicable regulations to have been ineligible for the rate claimed.

Such mailings include, but are not limited to, those for which checks accepted in payment of postage have been returned for insufficient funds, and those which are found upon subsequent investigation to have violated the cooperative mailing restrictions of § 625.5, Domestic Mail Manual. When such a determination is made, the Postal Service notifies the mailer of the deficiency and seeks to collect the amount due. A mailer is entitled to appeal any decision assessing a revenue deficiency to a higher administrative level in accordance with DMM 148.

Unfortunately, in a sufficient number of cases to cause concern, mailers have not paid assessed postage deficiencies after exhausting their right of appeal to a higher administrative level. In such cases, the collection of funds due to the Postal Service is unreasonably delayed and the Postal Service incurs additional administrative expenses. In some instances, the Postal Service must resort

to litigation to collect the amounts due. The proposed provisions will speed the collection of funds due to the Postal Service by allowing the amount due to be deducted from any advance deposit account the mailer maintains to pay postage on bulk permit imprint mailings. Payments to such an account by or on behalf of the mailer will be applied to the deficiency until it is paid in full.

Although exempt by 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553 (b), (c), the Postal Service invites public comments on the following proposed revisions of parts 145 and 148 of the DMM, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 408, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 148—REVENUE DEFICIENCIES

2. In part 148, add new § 148.3 to read as follows:

§ 148.3 Collection of Revenue Deficiencies.

After a final decision has been made regarding a revenue deficiency incurred on a bulk mailing at first-, third-, or fourth-class rates, the mailer will be given a grace period of 30 days in which to pay the deficiency. If any part of the deficiency remains unpaid at the end of 30 days, any funds in the mailer's advance deposit account and any subsequent payments to such an account by or on behalf of the mailer will be applied to the deficiency until the deficiency is paid in full. Postage on subsequent bulk permit imprint mailings will not be considered to be prepaid in full, and such bulk mailings by or on behalf of the mailer will not be accepted as fully prepaid, until the deficiency has been paid in full.

PART 625—ADDITIONAL CONDITIONS FOR SPECIAL BULK RATES ELIGIBILITY

3. In part 625, add new § 625.53 to read as follows:

§ 625.53 Revenue deficiencies.

Revenue deficiencies for cooperative mailings in violation of DMM §§ 625.51 or 625.52 are to be assessed and

collected in accordance with the provisions of 148.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-9668 Filed 4-21-90; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition to List the Rocky Mountain Population of the Trumpeter Swan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife. The petitioner did not present substantial information that listing the Rocky Mountain population of the trumpeter swan (*Cygnus buccinator*) as threatened may be warranted.

DATES: The finding announced in this notice was approved on March 23, 1990.

ADDRESSES: Questions or comments concerning this finding should be sent to: Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above office at 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Olin E. Bray at the Denver address (303/236-7398 or FTS 776-7398).

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 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. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published

promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

Petition: The Service has received and made a 90-day finding on the following petition:

A petition dated April 7, 1989, was received from the Idaho Chapter of The Wildlife Society on May 12, 1989. The petition requested the Service to list the Rocky Mountain population of the trumpeter swan as a threatened species. The petition defines the Rocky Mountain population as all known breeding flocks in the Greater Yellowstone area (the tri-State subpopulation), and in Alberta, British Columbia, Northwest Territories, southeastern Yukon, and Saskatchewan (the Interior Canada subpopulation).

Prior to settlement of North America by Europeans, the trumpeter swan was a migratory species that ranged across most of the United States and Canada. The species was extirpated from most of its historical range by about 1900. A remnant population of trumpeter swans survived in western Canada and the Greater Yellowstone area, and provided the nucleus to rebuild trumpeter swan numbers in North America. Trumpeter swan numbers have increased since restoration efforts for the species began earlier in the century. Most of the trumpeter swans in the Rocky Mountain population winter in the tri-State area. Surveys in February 1989, documented the highest number of trumpeter swans (approximately 1,750) on the wintering grounds since restoration efforts began.

The petition states that although population numbers have been increasing, the Rocky Mountain population of trumpeter swans is extremely vulnerable to severe declines, due in part, to its restricted winter distribution. A single event of disease or adverse environmental conditions at one or more of the limited number of wintering sites could result in severe population impacts. As evidence of the trumpeter swan's vulnerability, the petition documented the loss of at least 50 birds (carcasses collected) last winter presumably due to extremely cold weather and low water flows. Other threats listed in the petition included continued loss or curtailment of habitat due to inadequate water flows, human activity and loss of wetlands; inadequate regulatory mechanisms; and mortality from lead poisoning, powerline collisions, and accidental shootings.

Service Information: The Rocky Mountain population of trumpeter swans is believed to be distinct from other populations of trumpeter swans; the Pacific Coast population and the

interior population. There was some question as to whether the Rocky Mountain population was distinct from the Pacific Coast population, but there are no band return data or observations of collared birds to suggest interbreeding between the two populations (pers. comm.: Danny Bystrack, Rod King, and Carl Mitchell, U.S. Fish and Wildlife Service; Dave Moody, Wyoming Game and Fish Department).

Winter habitat is believed to be the limiting factor in Rocky Mountain population trumpeter swan restoration efforts (U.S. Fish and Wildlife Service 1984). Approximately 500 trumpeters (about 30 percent of the Rocky Mountain population) winter on the Henrys Fork of the Snake River (Henrys Fork) at or near Harriman State Park, Idaho. Insufficient water flows to maintain ice-free conditions during extremely cold weather have resulted in the loss of feeding areas for trumpeters. Hazing efforts during November and December of 1988 to move trumpeters away from Harriman State Park prior to extremely cold weather were unsuccessful. For reasons unknown at this time, trumpeters do not leave Harriman State Park and migrate to other wintering areas when the Henrys Fork freezes over. Therefore, the lack of sufficient flows results in the curtailment of important winter habitat.

Although not documented, the actual loss of trumpeters on the Henrys Fork in February 1989, is estimated to be as high as 200 birds (Carl Mitchell, pers. comm.). Even though the documented loss of birds at or near Harriman State Park was fairly low considering total population numbers, the estimated loss is approximately 11 percent of the population. Certain flocks appear to have endured much of that loss. The Grand Prairie flock, the largest Canadian flock in the population, had an estimated overwinter death rate of 48 percent this past winter, compared to an average rate of 24 percent (Rocky Mountain Population Trumpeter Swan Subcommittee).

Production levels for Rocky Mountain population trumpeters in Canada have been increasing in recent years. In 1989 following the previous winter's die off, the number of pairs in the Grand Prairie flock was 18 percent below 1988 levels, and the number of nests was 18 percent below 1988 levels. Production was below that in 1988, but above the 5-year average. Production levels were below average for Montana and Idaho (Rocky Mountain Population Trumpeter Swan Subcommittee), and slightly above average for Wyoming (Dave Moody, pers. comm.).

The congregation of approximately 30 percent of the population in a small area at Harriman State Park and large congregations at Red Rock Lakes National Wildlife Refuge and other wintering areas within the tri-State area leave the trumpeters vulnerable to disease.

Management efforts currently underway (U.S. Fish and Wildlife Service 1984) are attempting to expand trumpeter swan winter range within a 150-mile radius of the tri-State wintering area, and initial results appear promising. Successful range expansion could alleviate the need for continued emphasis on water flows at Harriman State Park. It would decrease the population's vulnerability to disease. Regions 1 and 6 of the Service are committed to increasing efforts to expand the winter range of the Rocky Mountain population of the trumpeter swan. The Refuges and Wildlife Divisions in both Regions have increased their range expansion programs. The program is currently progressing quite well, especially in Wyoming where the State has taken a very active role. However, range expansion is a long term process, and without a sufficient minimum flow in the Henrys Fork, curtailment of feeding areas at Harriman State Park will continue to be a threat to trumpeter swan winter habitat until range expansion efforts are completed.

To address the threat of insufficient minimum flows in the Henrys Fork to maintain the swans wintering there, a committee consisting of personnel from the Service, Bureau of Reclamation, Idaho Department of Fish and Game, and Idaho State University met to establish the minimum flow needed to maintain adequate winter habitat for swans on the Henrys Fork. They established a minimum flow figure of 500 cfs below the Buffalo River. Assuming an average flow of 200 cfs from the Buffalo River, 300 cfs would have to be released from Island Park Reservoir (on the Henrys Fork) to maintain the 500 cfs minimum flow.

Subsequent to the establishment of the 500 cfs minimum flow, the historic flow records for the past 16 years (1974-1989) at the Island Park gaging station were reviewed. This review showed that there was sufficient water to maintain the 500 cfs minimum flow during 8 to 16 years. During the other 10 years, additional water would have to have been released to maintain the 500 cfs. It is believed that sufficient water would have been available for purchase and thus released during most of those 10 years.

A review of the midwinter trumpeter swan survey results for the past 18 years show that the number of swans counted increased from 709 in 1974, to a high of 1,743 in 1989. Some of this increase is probably due to an increase in survey effort, but it is believed that during this period, the Rocky Mountain population has maintained an upward trend. At a meeting in January 1990, Service waterfowl biologists indicated that the effects of last winter's die off and lower production in 1989 will only be temporary and that the upward trend of the population should continue.

Now that the minimum flow level has been established, the Service has made a commitment to make every effort to purchase the necessary water during those winters when the minimum flow below the Buffalo River drops below 500 cfs. Since the Service is committed to try to purchase the necessary water to maintain a minimum flow of 500 cfs during the winter, it is believed that the major threat to the population has been alleviated. By removing this threat, it will provide the Service with the necessary time to expand the winter range of the species to where it is sufficiently widespread that a catastrophic event in any one part of the population's range will not threaten the existence of the population.

After review of the petition, accompanying documentation, references cited therein, and other information obtained, the Service found that the petition presented information insufficient to conclude that the requested action may be warranted.

References Cited

Rocky Mountain Population Trumpeter Swan Subcommittee. 1989. Report to the Pacific Flyway Study Committee. Idaho Department of Fish and Game. 2pp.

U.S. Fish and Wildlife Service. 1984. North American Management Plan for Trumpeter Swans. Prepared by the Trumpeter Swan Subcommittees for the Flyway Councils, Canadian Wildlife Service, and U.S. Fish and Wildlife Service. Office of Migratory Bird Management, Washington, DC 82pp.

Author

This notice was prepared by Olin E. Bray (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: April 19, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-9684 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of the Silver Rice Rat for Listing as a Vertebrate Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a review period to receive information on the potential listing of the silver rice rat (known both as *Oryzomys argentatus* and *Oryzomys palustris natator*) as a threatened or endangered vertebrate population pursuant to the Endangered Species Act of 1973, as amended (Act). The silver rice rat was described as a species endemic to the lower Florida Keys, Monroe County, Florida, in 1978. Subsequent taxonomic revision of U.S. rice rats concluded that the silver rice rat did not merit specific or subspecific designation. In 1987, the Service rejected a petition to list the species because of the uncertainty concerning its taxonomic status. Subsequent legal challenge has raised the issue of whether or not the silver rice rat qualifies for listing as a vertebrate population as defined by the Act, regardless of its taxonomic rank. The Service solicits information and comments on potential listing of this animal as a vertebrate population, as well as comments on general standards that should be used to define vertebrate populations under the Act.

DATES: Comments from interested parties must be received by July 25, 1990.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32218.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley at the above address (904/791-2580; FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The silver rice rat was described as a new species, *Oryzomys argentatus*, in 1978 by Drs. Numi Spitzer (now Goodyear) and James D. Lazell, Jr. (Spitzer and Lazell 1978). At that time, the rat was known only from a single site in a fresh water marsh on Cudjoe Key, in the lower Florida Keys of Monroe County, Florida. The site was threatened by filling. Subsequently, it was learned that rice rats had been trapped on nearby Raccoon Key in 1978. On March 12, 1980, the Center for Action on Endangered Species petitioned the Service to list the silver rice rat as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). On July 14, 1980 (45 FR 47365), the Service published its acceptance of the petition, and 90-day finding that there was substantial evidence warranting a listing proposal.

The Service's Southeastern (Atlanta, Georgia) Regional Office (Region) believed that further status information should be obtained prior to proposing the silver rice rat for listing. Accordingly, a contract was let to Numi Spitzer in 1980 to survey other lower Florida Keys for the silver rice rat. She found the rat to occur on nine of the lower keys (Spitzer 1982). The Region contracted with Ms. Spitzer to carry out further status survey work in the middle and upper keys in 1983. She found that rice rats were absent from these keys (Goodyear 1984). The nearest mainland Florida populations of rice rats to the silver rice rat are apparently about 90 miles distant through the keys or 30 miles distant over water.

In 1988, Drs. Henry Setzer and Steven Humphrey of the Florida Museum of Natural History advised the Service's Jacksonville Field Office that their taxonomic work on U.S. rice rats, then in progress and subsequently published (Humphrey and Setzer 1989), indicated that the silver rice rat was not distinguishable from mainland Florida rice rats at either the specific or subspecific level. These authors believe that the silver rice rat is only a peripheral population of the *Oryzomys palustris natator*, a subspecies common in salt water and fresh water marshes throughout the Florida peninsula. Drs. Goodyear and Lazell had in the meantime (Goodyear and Lazell 1987) defended their view that the silver rice rat was a distinct species.

As a result of the Humphrey, Setzer finding, the Region requested that any decision on proposing the silver rice rat be delayed until the taxonomic issue could be resolved, and recommended