comments on or before December 12, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Michael D. Basile, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–209, adopted October 1, 2008, and released October 6, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 4 and removing DTV channel 34 at Superior.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–25725 Filed 10–27–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0086; 92210–5008–3922–10–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Dusky Tree Vole (Arborimus longicaudus silvicola) 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 on a petition to list the dusky tree vole (*Arborimus longicaudus silvicola*) in all of its range as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). The petitioners also requested the Service to list either the north Oregon coast population of the red tree vole (*A. longicaudus*) as a Distinct Population Segment (DPS) or the red tree vole throughout all of its range because it is threatened or endangered in a significant portion of its range, if we determined that the subspecies, *A. l. silvicola*, was not a valid taxon.

We find that the petition presents substantial scientific or commercial information indicating that listing the dusky tree vole as a subspecies may be warranted. Therefore, with the publication of this notice we are initiating a status review of the species, including the evaluation of the north Oregon coast population of red tree vole and the red tree vole throughout its range, and we will issue a 12-month finding on our determination as to whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information you submit be received by us on or before December 29, 2008.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0086; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Paul Henson, Project Leader, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Portland, OR 97266; by telephone (503) 231–6179; or by facsimile (503) 231–6195. Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting

information concerning the status of the red tree vole (*Arborimus longicaudus*), a species that includes the dusky tree vole (*A. l. silvicola*). We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the red tree vole, inclusive of the dusky tree vole. We are seeking information regarding (1) the taxonomic validity of *A. l. silvicola*; (2) the discreteness and the significance of the red tree vole population on the north Coast of Oregon; and (3) that area constituting a significant portion of the species' range; including: (a) Information on the historical and current distribution of the red tree vole, inclusive of the dusky tree vole, throughout its range and the effects of past habitat management on that distribution; (b) information related to red tree vole population abundance, dynamics, and trends in this area; (c) genetic, morphological, behavioral, and other information relating to the taxonomy of the red tree vole, inclusive of the dusky tree vole; and (d) information relevant to whether any population of the red tree vole in western Oregon may qualify as a DPS in accordance with the ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act'' (Service 1996) (the policy is available at *http://www.fws.gov/endangered/policy/pol005.html* or at the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**)).

We seek additional information on the distribution of the red tree vole to clarify the range of the three potential listable entities described by the petitioner: (1) The dusky tree vole subspecies; (2) the north Oregon coast population of the red tree vole, which occupies the same range as the dusky tree vole; and (3) the red tree vole throughout all of its range.

We are also seeking information pertaining to the following five threat factors used to determine if a species, as defined under the Act, is threatened or endangered pursuant to Section 4(a)(1) of the Act:

(a) The present or threatened destruction, modification, or curtailment of the species' 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 and threats to the species or its habitat.

If we determine that listing the dusky tree vole, listing the north Oregon coast DPS of the red tree vole, or listing the red tree vole throughout all of its range because it is threatened or endangered in a significant portion of its range, is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the species, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment during normal business hours at the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. Such findings are based on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species. We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process in making this 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

On June 22, 2007, we received a petition dated June 18, 2007, from the Center for Biological Diversity, Oregon Chapter of the Sierra Club, Cascadia Wildlands Project, Oregon Wild, Audubon Society of Portland, Noah Greenwald, and Amanda Garty (hereafter, ''the petitioners''). The petitioners requested that we list the dusky tree vole as a threatened or endangered species and to designate critical habitat for it. The petition clearly identifies itself as such, but it does not include the requisite identification information of addresses,

telephone numbers, and signatures of petitioners, as stipulated in 50 CFR 424.14(a). Nevertheless, we recognize the document as a petition. The petitioners assert that the dusky tree vole is a valid subspecies of the red tree vole, but they also note that recent scientific studies question the validity of this subspecies. The petitioners request if we find that the dusky tree vole is not a listable entity as a subspecies, that we either list the north Oregon coast population of the red tree vole as a DPS, or list the red tree vole because it is threatened or endangered in a significant portion of its range, including the north Oregon coast population.

On September 26, 2007, we sent a letter to Noah Greenwald, Center for Biological Diversity, acknowledging our receipt of the petition and providing our determination that emergency listing was not warranted for the species at that time. We also stated our intention to make an initial 90-day finding within 90 days of the date of our response letter. This notice constitutes our 90-day finding for the petition to list the dusky tree vole as a subspecies in all of its range, or, if the subspecies is not considered valid, to list the north Oregon coast population of the red tree vole as a DPS, or the red tree vole throughout all of its range because it is threatened or endangered in a significant portion of its range (inclusive of the range of the dusky tree vole).

Listable Entity Evaluation

Under Section 3(16) of the Act, we may consider for listing any species or subspecies of fish, wildlife, or plants, or any distinct population segment of vertebrate fish or wildlife which interbreeds when mature. Such entities are considered eligible for listing under the Act (and are, therefore, referred to as ''listable entities''), should they be determined to meet the definition of a threatened or endangered species. In this case, the petitioner has requested that we consider the following entities for listing, presented in priority order: (1) The dusky tree vole if it can be considered a valid subspecies of the red tree vole; (2) the north coast population of the red tree vole, which occupies the same range as the dusky tree vole as a DPS; or (3) the entire range of the red tree vole because it is threatened or endangered in a significant portion of its range. Each of these entities may be considered for listing under the Act (16 U.S.C. 1532(16)).

The petitioners describe the range of the dusky tree vole as extending ''throughout north coastal Oregon, in Clatsop, Tillamook and Lincoln Counties [citations omitted].'' In the absence of information to the contrary in the petition, we have assumed that this range description also applies to the presumed north Oregon coast DPS of the red tree vole, and includes all or part of the significant portion of the range of the red tree vole in which the petitioners believe threats exist such that listing may be appropriate.

The petitioners assert that the dusky tree vole is a subspecies of the red tree vole based on pelage color (Hall 1981, p. 788), and believe genetic work by Miller *et al.* (2006) may provide support for distinguishing genetic differences between the dusky tree vole and the red tree vole. The petitioners also note that Howell (1926, p. 35) described several physical differences between the dusky and red tree voles. The petitioners, however, acknowledge other work noting no differences between the taxa based on physical measurements, chromosomal analysis, and mitochondrial DNA (Johnson and George 1991, p. 12; Bellinger *et al.* 2005, p. 207). We note, as do the petitioners, that the taxonomic validity of the dusky tree vole as a subspecies is in question. Furthermore, we note that information readily available in our files does not support the petitioners' contention that the dusky tree vole is a recognized subspecies of the red tree vole (Integrated Taxonomic Information System 2007 (ITIS; *http://www.itis.gov*)).

The standard of review for a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' We determine that the petitioners have met the threshold for review in their characterization of the debate over the taxonomy of the dusky tree vole, and presented substantial information indicating that recognition of the dusky tree vole as a subspecies may be valid, although this does not constitute a final determination on the taxonomic validity of the dusky tree vole as a subspecies.

If we determine that the dusky tree vole does not warrant listing as a subspecies, the petitioner requested that we assess either whether the north coast population of the red tree vole, which occupies the same range as the dusky tree vole, warrants listing as a DPS, or whether the red tree vole warrants listing because it is threatened or endangered in a significant portion of its range. As appropriate, we will further evaluate these other entities in the status review.

Species Information

As a putative subspecies, the dusky tree vole is a member of the red tree vole taxon. Some of the scientific literature is specific to the dusky tree vole, but much of it describes the red tree vole and does not distinguish among subspecies. For that reason, available information on the red tree vole is presented below with the assumption that it may also apply to the dusky tree vole. If the information source makes distinctions between the two, they are noted, as appropriate. Published literature on the red tree vole also includes work conducted on the closely related Sonoma tree vole (*Arborimus pomo*). Prior to 1991, these two taxa were considered to be the red tree vole (Johnson and George 1991, entire). Where pertinent information is lacking or limited for the red tree vole, information on the Sonoma tree vole (*A. pomo*) is presented.

Information presented in this section is preliminary. We have reviewed the references cited by the petitioners, summarized that information, and have provided additional information from references cited within documents referenced by the petitioners. We have also included information obtained from our ITIS database.

Taxonomy and Description

Tree voles are small rodents, less than 8 inches (206 millimeters) long and weighing up to 2 ounces (50 grams) (Hayes 1996, p. 1; Verts and Carraway 1998, p. 301). Their coat color ranges from brownish red to bright brownish-red or orange-red (Maser *et al.* 1981, p. 201). The darker coat color is characteristic of the dusky tree vole (Bailey 1936, p. 198; Maser *et al.* 1981, p. 201). Melanistic (all black) forms of the dusky (Hayes 1996, p. 1) and red tree vole (Swingle 2005, p. 46) also occur, as do cream-colored red tree voles (Swingle 2005, p. 82).

Howell (1926, p. 35) described several physical differences between the dusky and red tree voles. These differences include coat color, as well as skull and dental characteristics. However, Howell (1926, p. 34) based his description of the red tree vole on the observations of 40 voles, 32 of which were from California. At least 28 of the California voles were collected from locales within the range of what is now considered the Sonoma tree vole (*e.g.*, specimens from Carlotta, located in Humboldt County (Howell 1926, p. 41). Hence, his description of the red tree vole and comparison to the dusky tree vole was from a collection that was comprised primarily of Sonoma tree voles.

The red tree vole was first described from a specimen collected in Coos County, Oregon (True 1890, p. 303–304), and originally placed in the genus *Phenacomys.* The dusky tree vole was first described from a dead specimen found in Tillamook County (Howell 1921, entire). The dusky tree vole was originally classified as a distinct species, *Phenacomys silvicolus;* Miller (1923, p. 400, as cited in Hayes 1996, p. 1) later renamed it *P. silvicola.* Johnson (1968, p. 27; 1973, p. 243) suggested separating the tree voles from the genus *Phenacomys,* and putting them into their own genus, *Arborimus.* There is no agreement on the generic classification of tree voles, with some authors continuing to use *Phenacomys* (*e.g.*, Verts and Carraway 1998, pp. 309–311), while others refer to *Arborimus* (*e.g.*, Hayes 1996, entire). The specific name, *longicaudus,* however, is not in dispute. For the purposes of this finding, we use the generic classification, *Arborimus,* adopted by the petitioners.

Johnson (1968, p. 27) concluded from his analysis of blood proteins and hemoglobin of the dusky and red tree voles that the named forms of *Arborimus* should be combined into a single species. Hall (1981, p. 788) cited Johnson (1968, p. 27) as suggesting a ''subspecific relationship of the two taxa,'' and others have cited Johnson as well in supporting the classification of the dusky tree vole as a subspecies (*e.g.*, Maser and Storm 1970, p. 64; Johnson and George 1991, p. 1). However, Bellinger *et al.* (2005, p. 207) suggested that subspecific status may not be warranted based on a lack of detectable genetic differences and a lack of consistently verifiable morphological differences between the dusky and red tree voles. Miller *et al.* (2006, entire) found genetic discontinuities in the red tree vole along north-south and east-west gradients within its range, but remained silent on its taxonomic status. Information in our files does not refer to the dusky tree vole as a subspecies of the red tree vole (information retrieved 19 December 2007, from the ITIS database).

Range and Distribution

The *Arborimus* genus is endemic to the humid coniferous forests west of the crest of the Cascade Mountains in Oregon and northwestern California (Maser 1966, p. 7). The red tree vole occurs in western Oregon from the Cascade crest to the Pacific coast (Hayes 1996, p. 2; Verts and Carraway 1998, pp. 309–310), with a geographic range covering approximately 16.3 million acres across multiple ownerships (USDA and USDI 2007, p. 287).

The southern boundary of the red tree vole's range grades into the range of the Sonoma tree vole, which has only recently been classified as a separate species from the red tree vole (Johnson and George 1991, p. 12). Johnson and George (1991, pp. 11–12) concluded that the range break between these two species is the Klamath Mountains along the Oregon-California border. Murray (1995, p. 26), however, considers the boundary to be the Klamath River, which would extend the red tree vole's range into northwestern California.

The northern extent of the red tree vole's distribution is spotty, with collection records along the Columbia River at Cascade Locks (Maser 1966, p. 15). The red tree vole has not been found north of the Columbia River (Verts and Carraway 1998, p. 309). Its distribution in Clatsop and Columbia Counties in northwestern Oregon is less certain, with a single specimen recorded from central Clatsop County (Verts and Carraway 1998, pp. 310, 546). The red tree vole range includes the west slope of the Cascade Mountains (Corn and Bury 1986, p. 405), with the known eastern-most limit occurring in the Columbia River Gorge at Mitchell Point, about 2 miles west of Hood River, Oregon (USDA and USDI 2007, p. 289).

Surveys conducted for red tree voles by Federal land management agencies as part of the Survey and Manage program under the Northwest Forest Plan have provided additional information on the distribution of the red tree vole (USDA and USDI 2007, p. 289). These surveys indicate that red tree voles are uncommon or absent in much of the North Coast Range and North Cascades of Oregon. Forsman *et al.* (2004, p. 300) also reached the same conclusion based on remains of red tree voles in northern spotted owl (*Strix occidentalis caurina*) pellets, though data were sparse from these regions as compared to the rest of the red tree vole's range. Based on surveys, the eastern limit of red tree vole distribution in southwestern Oregon includes Josephine County and a narrow band along the western and northern edges of Jackson County (USDA and USDI 2007, p. 289).

Red tree voles are generally restricted to lower elevation coniferous forests, although a few records of this species above 4,265 feet (1300 meters) have been reported (Manning and Maguire 1999, entire; Forsman *et al.* 2004, p. 300). Red tree voles may be limited to lower elevations because their nests don't provide adequate insulation, and foraging along snow and ice-covered branches may be more difficult (Hamilton 1962, p. 503).

The limits of the range of the dusky tree vole are even less clear than the red tree vole. Johnson and George (1991, p. 12) describe its range as restricted to the west slope of the Coast Range in Tillamook and Lincoln Counties, Oregon. However, Maser (1966, p. 16) summarized collection and nest records for the dusky tree vole that were from locations east of the Coast Range crest down to the western edge of the Willamette Valley in Washington, Yamhill, Polk, Benton, and Lane Counties. Brown (1964, p. 648) mentions four dusky tree voles collected near Molalla in Clackamas County. Howell (1926, p. 34) refers to second-hand information as ''unmistakable evidence'' of red tree voles being found in old nests near Bonneville, in far eastern Multnomah County, and then goes on to say, ''Though this sign may possibly have been of *longicaudus*, it is considered more likely to have been of *silvicola*.'' However, he does not describe the ''unmistakable evidence,'' nor does he elaborate on why he concluded that it was indicative of the dusky tree vole. Maser (1966, p. 8) observed that tree voles historically collected north of Eugene and west of the Willamette Valley were typically classified as the dusky tree vole, while those collected north of Eugene and east of the Willamette Valley were almost all identified as red tree voles.

Home Range and Dispersal

The only published data on home range sizes and dispersal comes from red tree voles radio-collared in the southern Coast Range and southern Cascades of Douglas County in southwestern Oregon (Swingle 2005, pp. 51–63, 84–89). Of 52 radio-collared red tree voles, 20 had home ranges consisting of their nest tree and a few adjacent trees, whereas the remainder occupied up to 6 different nests spaced up to 431 feet (131 meters) apart in different trees (Swingle 2005, p. 52). Home range sizes did not differ among sexes nor among voles occurring in young and old forests (Swingle 2005, p. 56). Dispersal distances of subadults ranged from 10 feet to 246 feet (3 meters to 75 meters) (Swingle 2005, p. 63).

Habitat

Red tree voles are primarily and predominantly associated with conifer forests (Hayes 1996, p. 3) and use a variety of tree species. Red tree voles are principally associated with Douglas-fir (Jewett 1920, p. 165; Bailey 1936, p. 195), feeding on Douglas-fir needles and nesting in Douglas-fir trees. Red tree vole nests have also been documented in Sitka spruce (*Picea sitchensis*) (Jewett

1920, p. 165), grand fir (*Abies grandis*), western hemlock (*Tsuga heterophylla*), Pacific yew (*Taxus brevifolia*), and two non-conifers, bigleaf maple (*Acer macrophyllum*) and golden chinquapin (*Castanopsis chrysophylla*) (Swingle 2005, p. 31). While red tree vole nests have been documented in non-conifers, data indicate their principal diet consists of conifer needles (Howell 1926, p. 52) (see Diet section for further discussion). Dusky tree voles in the North Coast Range are also associated with Sitka spruce and western hemlock forests (Walker 1930, pp. 233–234). While Booth (1950, as cited in Maser 1966, p. 42) noted that dusky tree voles live mainly in Sitka spruce and hemlock trees rather than Douglas-fir, Maser (1966, p. 42) contended that they are not restricted to Sitka spruce and Douglas-fir habitat based on his data and earlier observations by Howell (1921) and Jewett (1930, pp. 81–83) as referenced by Maser (1966, p. 42).

Although it occurs and nests in younger, second-growth forests (Jewett 1920, p. 165; Brown 1964, p. 647; Maser 1966, p. 40; Corn and Bury 1986, p. 404), the red tree vole tends to be more abundant in older forests (Corn and Bury 1986, p. 404; Carey 1989, p. 157; Aubry *et al.* 1991, p. 293). Carey (1991, p. 8) reported that this species seems to be especially well-suited to the stable conditions of old-growth Douglas-fir (*Pseudotsuga menziesii*) forests. However, Swingle (2005, pp. 78, 94) found red tree voles nesting in young forests (22 to 55 years old) as frequently as older forests (110 to 250 years old) and concluded that young forests may be more important than originally thought, and perhaps especially critical for tree vole persistence in areas where old forests have been largely eliminated.

Trees containing tree vole nests are significantly larger in diameter and height than those without nests (Gillesberg and Carey 1991, p. 785; Meiselman and Doyle 1996, p. 36 for the Sonoma tree vole). Live, old-growth trees may be optimum tree vole habitat because primary production is high and leaves are concentrated, allowing maximum food availability. In addition, old-growth canopy buffers weather changes and has high water-holding capacity, providing fresh foliage and a water source (Gillesberg and Carey 1991, pp. 786–787).

Howell (1926, p. 40) reported that ''considerable'' expanses of land without suitable trees are a barrier to tree vole movements. However, there are a few records of red tree voles captured in early successional forest stages, such as clearcuts (Corn and Bury 1986, p. 405; Verts and Carraway 1998, p. 310), and infrequent observations of them crossing roads (Swingle 2005, p. 79), suggesting that ''small forest gaps'' (Swingle 2005, p. 79) may not be much of an impediment to tree vole movement. The point at which forest gaps become large enough to impede tree vole movement is not known.

Reproduction

Red tree vole litter sizes are among the smallest compared to other rodents of the same subfamily, averaging 2.9 young per litter (range 1 to 4) (Maser *et al.* 1981, p. 205; Verts and Carraway 1998, p. 310). Swingle (2005, p. 71) documented females breeding throughout the year, with most reproduction occurring between February and September. Red tree voles are capable of breeding and becoming pregnant immediately after a litter is born (Brown 1964, pp. 647–648), resulting in females potentially having two litters of differently aged young in their nests (Swingle 2005, p. 71). However, the frequency of breeding and the number of litters born to a female in a year are unknown. Young tree voles develop more slowly than do non-arboreal vole species (Howell 1926, pp. 49–50; Maser *et al.* 1981, p. 205). Tree vole nests are located in the tree canopies and are constructed from twigs, resin ducts discarded from feeding, lichens, feces, and conifer needles (Gillesberg and Carey 1991, p. 785).

Diet

Tree voles are unique in that they specialize on conifer needles as their principal diet, with Douglas-fir needles the primary species consumed (Howell 1926, p. 52; Benson and Borell 1931, p. 230; Maser *et al.* 1981, p. 205). However, tree voles will consume needles from other conifers, such as Sitka spruce, western hemlock, grand fir, bristlecone fir (*Abies bracteata*), and introduced conifers (Jewett 1920, p. 166; Howell 1926, p. 52; Walker 1930, p. 234; Benson and Borell 1931, p. 229). Walker (1930, p. 234) observed a captive dusky tree vole that preferred hemlock needles over spruce or fir needles. He also observed that dusky tree vole nests tended to be constructed of conifer twigs of the same species of tree in which the nest was located. This led him to suggest that young dusky tree voles may feed solely on the needles of the tree in which they live and develop a forage preference for needles from that conifer species. Tree voles are known to also eat bark, cambium, and lichen (Wight 1925, p. 283; Maser 1966, p. 144).

Tree voles appear to obtain water from their food and from fog or dew that forms on conifer needles, lichen, and moss (Maser 1966, p. 148; Maser *et al.* 1981, p. 205; Carey 1996, p. 75). In keeping captive Sonoma tree voles, Hamilton (1962, p. 503) noted that it was important to keep leaves upon which they feed moist, otherwise the voles would lose weight and die. This may explain the distribution of tree voles being limited to more humid forests (Howell 1926, p. 40; Hamilton 1962, p. 503).

Mortality

Many different species feed on tree voles, including carnivorous mammals (Maser 1966, p. 124; Alexander *et al.* 1994, p. 97; Swingle 2005, p. 69) and a variety of raptors (Maser 1965; Forsman and Maser 1970; Reynolds 1970; Forsman *et al.*, 1984, p. 40; Graham and Mires 2005, p. 39). Other documented predators include the Steller's jay (*Cyanocitta stelleri*) (Howell 1926, p. 60) and the gopher snake (*Pituophis catenifer*) (Swingle 2005, p. 69). In addition, Maser (1966, p. 164) found evidence of tree vole nests being torn apart by northern flying squirrels (*Glaucomys sabrinus*), raccoons (*Procyon lotor*), western gray squirrels (*Sciurus griseus*) and Douglas' squirrels (*Tamiasciurus douglasii*), potentially in search of young voles. Swingle (2005, p. 69) observed weasels (*Mustela* spp.) to be the primary predator of red tree voles.

Other mortality sources include disease, old age, storms, forest fires, and logging (Maser *et al.* 1981, p. 206). Carey (1991, p. 8) claimed that forest fires and logging are far more important mortality factors than predation in limiting vole abundance.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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 making this finding, we evaluated whether information on threats to the red tree vole and the

dusky tree vole presented in the petition and available in our files at the time of the petition review constitute substantial scientific or commercial information such that listing the species may be warranted. Our evaluation of this information is discussed below. Unless clearly stated that the information is from our files, all threats described below and their effects on the red tree vole and the dusky tree vole are as described in the petition.

A. Present or Threatened Destruction, Modification or Curtailment of the Species' Habitat or Range

According to the petition, tree voles depend on trees for their survival and are considered to have the narrowest niche of all arboreal mammals in the Pacific Northwest (Carey 1996, p. 75). Our files indicate that, while primarily dependent on older Douglas Fir, they are secondarily capable of using several tree species and younger stands. They are considered among arboreal mammals to be the most vulnerable to habitat loss and fragmentation (Huff *et al.* 1992). Due to their low mobility and poor dispersal capability, tree voles are unable to respond to loss of forests from logging (Maser *et al.* 1981; Carey 1989, 1991; Hayes 1996) and other habitat-removing disturbances such as development (USDA and USDI 2000), recreation, and roads. Maser *et al.* (1981, p. 206) claim that clear-cut logging has nearly eliminated entire tree vole populations in many areas and is responsible for local population disappearances and the widely scattered population distribution that currently exists. The petitioners assert that low reproductive rates do not allow tree vole populations to bounce back as readily from declines. The petitioners also state that based on the tree vole's association with old-growth forest and the loss of that habitat through timber harvest, fire, and other disturbances, the historical distribution of the species was likely more extensive than it is today (USDA and USDI 2000). As tree vole populations are reduced and become more isolated, inbreeding becomes a threat if genetic interchange does not occur (USDA and USDI 2000).

As described in the petition, although primarily associated with old-growth forest, tree voles have also been found in young forests (Maser 1966; Corn and Bury 1986; Gillesberg and Carey 1991; Swingle 2005) in association with structural complexity such as tree deformities, increased canopy cover, interconnected tree crowns, broken tops, or dense limb whorls. In landscapes where old forests have been mostly eliminated, such stands may play an important role in dispersal and persistence of tree vole populations (Swingle 2005, p. 94). Consequently, both old-growth and younger forests with structural complexity may play key roles in regards to the species' persistence.

The petitioners claim that most of the land within the range of the dusky tree vole is managed for timber production, with 28 percent managed by the Oregon Department of Forestry at the Clatsop and Tillamook State Forests, 41 percent owned and managed by private timber industry, 11 percent owned by other private entities, and 16 percent administered by the Forest Service and the Bureau of Land Management (BLM). Timber harvest through clearcutting and thinning, as well as intensive forest management practices that include short rotations and even-aged, single-tree species plantations, have significantly reduced and isolated tree vole populations, increasing their risk of extinction (USDA and USDI 2000). Moreover, unlike other red tree vole populations, the dusky tree vole forages on the needles of spruce and hemlock trees. Replanting following logging and fire has resulted in the conversion of many spruce and hemlock stands in the range of the dusky tree vole to single-species plantations of Douglas-fir, dramatically altering the species' forage base.

The petitioners contend that habitat of the red tree vole, inclusive of the dusky tree vole, is also threatened by the development of homes, hotels, and resorts in western Oregon, particularly on the Oregon coast. Given the infrequent observations of tree voles crossing roads, the petitioners believe that existing roads continue to fragment tree vole habitat and isolate populations. Human population growth in western Oregon has been rapid in the past 100 years and is expected to continue at a rate above the national average (ODF 2001). Between 1990 and 2000, human populations in Clatsop and Tillamook Counties grew by 7 percent and 12.5 percent, respectively (U.S. Census Bureau 2006). Tourism is a significant component of the economy in the north Oregon coast area, bringing with it a demand for more development such as resorts, hotels, restaurants, and recreation (ODF 2001).

The petitioners assert that old-growth forest habitat loss and fragmentation has substantially impacted and reduced the distribution and abundance of the dusky tree vole in all of its range and the red tree vole throughout its range in western Oregon. Information in our files is consistent with this assertion, although we also acknowledge that both old-growth and younger forests with structural complexity may play key roles in regards to the species' persistence. Therefore, we conclude that the petitioners have presented substantial information to indicate that the present or threatened destruction or modification of habitat or range may present a threat to the dusky tree vole in all of its range and the red tree vole throughout its range in western Oregon.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Neither the petition nor information in our files presents information indicating that overutilization of red tree voles, inclusive of the dusky tree vole, for commercial, recreational, scientific, or educational purposes is a threat. Therefore, we find that the petition does not present substantial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the dusky tree vole in all of its range or the red tree vole throughout its range in western Oregon.

C. Disease or Predation

Neither the petition nor information in our files presents information indicating that disease or predation are significant threats to the red tree vole, inclusive of the dusky tree vole. Therefore, we find that the petition does not present substantial information to indicate that disease or predation may present significant threats to the dusky tree vole in all of its range or the red tree vole throughout its range in western Oregon.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioners cite USDA and USDI (2000) as the basis for concluding that most dusky tree vole habitat throughout the north Oregon coast is owned by private logging companies or is managed by the State to the extent that there are no specific regulations to protect or enhance the dusky tree vole as part of their forest management activities. As discussed above under Factor A, the petitioners assert that existing forest management in the north Oregon coast area is not conducive to tree vole persistence because it does not protect sufficient amounts of older forest used by tree voles.

The petitioners assert that buffer requirements and tree retention standards on State and private forest lands in the north Oregon coast area do not provide adequate protection for dusky tree voles. They state that current

tree retention standards do not provide for the maintenance of sufficient canopy closure needed by dusky tree voles and are not sufficient to protect individuals or populations. They further note that riparian buffers may provide some habitat protection, but such areas are likely to be fragmented and not large enough to support dusky tree vole populations. Required buffers around the nests of some protected bird species such as the bald eagle and the northern spotted owl may incidentally protect some individual voles. However, because nest tree buffers do not target dusky tree vole populations, cover a small and fragmented portion of the landscape, and, in some cases, are only in effect as long as the site is occupied by the target species, the petitioners conclude that these buffers are unlikely to protect viable populations of dusky tree voles.

The petitioners assert that requirements on the Tillamook and Clatsop State Forests to maintain 25 percent older forest structure are inadequate because they fail to protect existing dusky tree vole populations and they do not ensure that tree vole habitat is distributed such that populations will be connected. Rather, under current regulatory mechanisms, older forest stands will likely occur as scattered, isolated parcels. Currently, private timber companies and the State are not funding or conducting dusky tree vole surveys or providing protection for habitat that is currently occupied.

The petitioners assert that with only 16 percent of the forest land within the range of the dusky tree vole on Federal land (USDA and USDI 1994, 2000, 2004), protection measures on these lands provide little benefit to the dusky tree vole or its habitat. All Federal lands in the north Oregon coast area within the range of the dusky tree vole are managed as the North Coast Range Adaptive Management Area, of which nearly 70 percent is managed as Late-Successional Reserves (LSRs). Although LSRs are managed to maintain and restore late-successional forest conditions, some thinning and salvage logging activities are still occurring within them that may impact dusky tree vole populations. Outside of LSRs, the dusky tree vole receives some protection on Federal land from the Survey and Manage Program, which requires surveys and protection of known occupied sites. However, this Program, which is implemented on Forest Service and BLM lands within the Northwest Forest Plan area, is scheduled to be discontinued (see discussion below).

The petitioners state that, based on USDA and USDI (2000), over 70 percent of the known occupied sites and 47 percent of the known and suspected range of the red tree vole (inclusive of the range of the dusky tree vole) are on Federal lands. Data from our files indicate that 35 percent of red tree vole habitat, (inclusive of the range of the dusky tree vole) on Federal land in Oregon is in a reserve allocation on Federal lands (*e.g.* LSRs, Wilderness Areas and other Congressionally and administratively withdrawn areas), and 27 percent of the known and suspected range of the species, across all ownerships, is in reserve land allocations (USDA and USDI 2000, pp. 385–386). However, the petitioners cite the USDA and USDI (2000, p. 386) as the basis for concluding that only about 34 percent of the land base in reserve allocations is in an older age condition that provides good tree vole habitat.

Outside of Federal lands, the petitioners assert that, like the dusky tree vole, the red tree vole is not adequately protected by existing regulatory mechanisms on private lands where clearcut logging, heavy thinning, and short rotations are the primary silvicultural activities. The petition concludes that there is little State-owned land in central and southern Oregon such that State land management will have little effect on red tree voles.

The petition notes that the red tree vole, inclusive of the dusky tree vole, is vulnerable to the impacts of logging because of its dependence on trees for food and shelter, its limited dispersal ability, and low reproductive rates (Maser *et al.* 1981; Carey 1991; USDA and USDI 2000). Although red tree vole populations outside the range of the dusky tree vole are larger than the dusky tree vole population, local populations of the red tree vole are small and isolated (USDA and USDI 2000). The greatest amount of logging in Oregon over the next 50 years is projected to occur in the southern portion of the red tree vole's range, where it is considered the most widespread (USDA and USDI 2000; Haynes 2003, in Zhou *et al.* 2005). In addition, a recent settlement agreement between the Bureau of Land Management (BLM) and counties in western Oregon could lead to a substantial increase in logging throughout western Oregon.

Our files indicate that since we received the petition, the Forest Service and the BLM have signed Records of Decision to eliminate the Survey and Manage Guidelines throughout the range of the red tree vole, which includes the range of the dusky tree vole (USDA 2007; USDA and USDI 2007; USDI 2007). Although the dusky tree vole would be included under the Forest Service and BLM Special Status Species Program (SSSP) in the North Coast Range (USDA and USDI 2007), the petitioners did note before the Survey and Manage Program was discontinued that the SSSP will not have a substantial impact on the protection and recovery of the dusky tree vole because of limited Federal ownership and because survey and mitigation measures under the SSSP program are optional. As part of its Record of Decision to discontinue the Survey and Manage program, the Forest Service did add mitigation measures requiring pre-project clearances and managing known red tree vole sites in the north Cascades range (north of Highway 22) because of limited habitat in this area (USDA 2007); this area does not include the range of the dusky tree vole, as described by the petitioners. While the Forest Service and BLM have signed decision documents discontinuing the Survey and Manage program, their ability to implement those decisions has been challenged in court (*Conservation Northwest, et al.* v. *Mark E. Rey, et al.*, No. C–04–844P).

The petition asserts that much of the red tree vole's habitat in Oregon, inclusive of the range of the dusky tree vole, is not subject to adequate, current regulatory mechanisms that protect it from loss and fragmentation. The petitioners note that only a portion of current tree vole habitat in Oregon is protected on Federal lands within reserves established under the Northwest Forest Plan. Information in our files is consistent with these assertions in that we note 35 percent of red tree vole habitat, (inclusive of the range of the dusky tree vole) on Federal land in Oregon is in a reserve allocation on Federal lands, with the remaining 65 percent subject to possible land disturbing activities. For these reasons, we conclude that the petitioners have presented substantial information to indicate that existing regulatory mechanisms may be inadequate to protect the red tree vole throughout its range in western Oregon, inclusive of the range of the dusky tree vole.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioners noted fire, population size, genetic isolation, and life history traits as threats in this category. The specific life history traits included narrow habitat requirements, low mobility, low dispersal ability, and low reproductive potential. As these traits were addressed above in sections discussing previously mentioned threats and no new information was presented

by the petitioners for this threat category, the previous discussions are not repeated here.

The petition notes that, while the fire regime of the North Coast Range of Oregon is infrequent, with fires occurring at intervals of 300 to 400 years, the fires that do occur tend to be stand-replacing (Agee 1993; ODF 2001). High-severity fires have a similar impact on red tree voles as logging by removing trees and directly impacting populations (Carey 1991, p. 8). In addition, the proliferation of even-aged, high-density single species plantations resulting from clearcutting may be increasing fire risk because such areas more effectively carry fire than uneven-aged stands (USDA and USDI 1994; DellaSalla *et al.* 1995; Morrison *et al.* 2000).

The petitioners assert that small, isolated populations of the dusky tree vole place the species at risk of extirpation because of inbreeding depression and demographic and environmental stochasticity (USDA and USDI 2000), leading to irreversible population crashes (Lehmkuhl and Ruggiero 1991, p. 37). Low numbers of dusky tree vole sites and low abundance at known sites indicate the species numbers may be at dangerously low levels (USDA and USDI 2000, 2003; Forsman *et al.* 2004; ONHIC 2004). Stochastic events that put small populations at risk of extinction include variation in birth and death rates, fluctuations in gender ratio, inbreeding depression, and random environmental disturbances such as fire, wind, and climatic shifts (Gilpin and Soule 1986). Genetic inbreeding due to small, isolated populations may already be occurring as evidenced by the occurrence of cream-colored and melanistic tree voles (Swingle 2005). The petitioners assert that because dusky tree vole populations are already isolated, declining populations will not be rescued through genetic interchange and population augmentation. In addition, the petitioners assert that due to narrow habitat requirements, low reproductive rates, and low mobility, dusky tree voles are at an increased risk of extirpation because they are from small populations that are especially vulnerable to anthropogenic and stochastic events (Maser *et al.*1981; Carey 1991; USDA and USDI 2000).

The petition asserts that the dusky tree vole may be threatened by intrinsic population factors that make it especially vulnerable to anthropogenic and stochastic events. Information in our files relative to the potential impacts of stochastic events on small populations is consistent with this assertion. For these reasons, we conclude that the petitioners have presented substantial information to indicate that other natural or manmade factors may be affecting the continued existence of the dusky tree vole.

Finding

We have reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition. Based on this review, we find that the petition presents substantial information indicating that listing one of the following three entities as threatened or endangered may be warranted: (1) The dusky tree vole subspecies of the red tree vole; (2) the north Oregon coast DPS of the red tree vole, whose range corresponds to that of the dusky tree vole; or (3) the red tree vole in a significant portion of its range. This conclusion is based on information that indicates the species' continued existence may be affected by loss and fragmentation of old-growth forest habitat from timber harvest, development, and roads (Factor A); inadequate protection from threats by regulatory mechanisms (Factor D); and other natural or manmade factors such as increased fire severity, small population size, and genetic isolation (Factor E). The petition did not contain information indicating that Factors B and C are considered a threat to this species. As a result of this finding, we are initiating a status review of the species, including an evaluation of the north Oregon coast population of red tree vole and the red tree vole throughout its range. At the conclusion of the status review we will issue a 12-month finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not the Service believes a proposal to list the species is warranted.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that although there are apparent threats to the species, they do not appear to be of such a magnitude as to pose an immediate and irreversible threat to the species such as to warrant emergency listing at this time. However, if at any time we determine that emergency listing of the dusky tree vole is warranted, we will seek to initiate an emergency listing.

References Cited

A complete list of all references cited herein is available, upon request, from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is the staff of the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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, 2008.

Kenneth Stansell,

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

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–008; 92220–1113–0000; ABC Code: C6]

RIN 1018–AW37

Endangered and Threatened Wildlife and Plants; Designating the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and Removing This Distinct Population Segment From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On February 8, 2007, we, the U.S. Fish and Wildlife Service (Service), published a proposed rule to establish a distinct population segment (DPS) of the gray wolf (*Canis lupus*) in the Northern Rocky Mountains (NRM) of the United States and to remove the gray wolf in the NRM DPS from the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act) (72 FR 6106). On February 27, 2008, we issued a final rule establishing and delisting the NRM gray wolf DPS (73 FR 10514). Several parties filed a lawsuit challenging our final rule and asking to have it enjoined. On July 18, 2008, the U.S. District Court for the District of Montana enjoined the Service's implementation of the final delisting rule, after concluding that Plaintiffs were likely to prevail on merits of their claims. In light of this decision, we asked the court to vacate the final rule and remand it to us. On October 14, 2008, the court issued an order vacating our February 27, 2008, final rule (73 FR 10514) and remanding