

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-210, adopted November 24, 2009, and released November 25, 2009. 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](mailto: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(i) [Amended]**

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alaska, is amended by adding channel 33 and removing channel 32 at Anchorage.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. E9-28986 Filed 12-2-09; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS-R6-ES-2009-0081; MO 922105 0082-B2]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Sprague's Pipit 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 Sprague's pipit (*Anthus spragueii*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Sprague's pipit may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before February 1, 2010. After this date, you must submit information directly to the North Dakota Field Office (*see FOR FURTHER INFORMATION CONTACT* section

below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for docket FWS-R6-ES-2009-0081 and then follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R6-ES-2009-0081; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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:**

Jeffrey K. Towner, Field Supervisor, North Dakota Field Office, 3425 Miriam Avenue, Bismarck, North Dakota 58501-7926, telephone (701) 250-4481, extension 508. If you use a telecommunications device for the deaf (TDD), please 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 review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on Sprague's pipit from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

- (1) The species' biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species or its habitat.
- (2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(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.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing the Sprague's pipit is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the Sprague's pipit, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific 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 section 3(5)(A) and section 4(b) of the Act.

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. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods 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 website. If you submit 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 supporting documentation that we received and used in preparing this finding will be available for you to review at <http://www.regulations.gov>, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, North Dakota Field 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 indicating that the petitioned action may be warranted. We are to base this finding on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. 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 scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12-month finding.

### Petition History

On October 10, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians (hereinafter referred to as the "petitioner") requesting that the Sprague's pipit be listed as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(a). In a December 5, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we had received a draft budget allocation to complete the 90-day finding for this species in Fiscal Year 2009. On January

28, 2009, we received a 60-day Notice of Intent (NOI) to sue from the petitioner stating that the Service was in violation of the Act by failing to take action under section 4(b)(3)(A) of the Act. On August 20, 2009, the petitioner filed a complaint on the Service's failure to complete the 90-day finding. This finding addresses the October 10, 2008, petition.

### Previous Federal Actions

There have been no previous Federal actions concerning this species.

### Species Information

The Sprague's pipit is a small passerine of the family Motacillidae that is endemic to the Northern Great Plains (Robbins and Dale 1999, p. 1). The genus *Anthus* contains over 21 species. It is one of the few endemic birds of the North American grasslands. The Sprague's pipit is about 10–15 centimeters (cm) (3.9–5.9 inches (in.)) in length, and weighs 22–26 grams (g) (0.8–0.9 ounce (oz)), with buff and blackish streaking on the crown, nape, and underparts. It has a plain buffy face with a large eye-ring. The bill is relatively short, slender, and straight, with a blackish upper mandible. The lower mandible is pale with a blackish tip. The wings and tail have two indistinct wing-bars, and the outer retrices (tail feathers) are mostly white (Robbins and Dale 1999, p. 3–4). Juveniles are slightly smaller, but similar to adults, with black spotting rather than streaking (Robbins and Dale 1999, p. 3).

Sprague's pipits are generally ground feeders, eating primarily arthropods, although they may feed on seeds during migration and the wintering period (Audubon 2007, p. 3). When flushed, they have an undulating flight. The males have a territorial flight display that can last up to 3 hours (Robbins and Dale 1999, p. 22).

The nest is generally constructed in dense, relatively tall grass with a low forb density and little bare ground (Sutter 1997, p. 462). The nest is usually dome shaped. It is constructed from woven grasses and is generally at the end of a covered, sharply curved runway up to 15 cm (5.9 in.) long which may serve as heat-stress protection (Sutter 1997, p. 467; Dechant *et al.* 2003, p. 2). The female lays four to five eggs (Wells 2007, p. 297), which she incubates for 11 to 17 days. It is thought that females do most or all of the incubation (Sutter *et al.* 1996, p. 695), but both parents may feed the young (Wells 2007, p. 297). Parental care may continue well past fledging (Sutter *et al.* 1996, p. 695). The female will renest if

the first nest fails and some females have been documented to double brood (Sutter *et al.* 1996, p. 694). However, long intervals between nesting attempts suggest that the breeding pairs produce an average of only 1.5 clutches per year (Sutter *et al.* 1996, p. 694).

During the breeding season, Sprague's pipits prefer large patches of native grassland with a minimum size of approximately 72 acres (29 hectares) (Davis 2004, pp. 1130, 1134–1135). They are much less common or not present in areas with introduced grasses than in areas containing native prairie (Madden 1996, p. 104). Nests are located in areas with relatively tall, dense cover (Dieni and Jones 2003, p. 392), dominated by grasses and sedges (Sutter 1997, p. 464). They will use nonnative replanted grassland if the vegetative structure is suitable, but strongly prefer native prairie (Dechant *et al.* 2003, pp. 1, 4). The species prefers to breed in well-drained open grasslands, and avoids grasslands that contain even low densities of shrubs (Wells 2007, p. 297). Sprague's pipits can be found in light to moderately grazed areas (Dechant *et al.* 2003, p. 4), but in North Dakota, a greater abundance of Sprague's pipits have been reported from moderately to heavily grazed areas (Kantrud 1981, p. 414). However, these descriptions are relative; vegetation described as lightly grazed in one study may be called heavily grazed in another (Madden *et al.* 2000, p. 388). The species is rarely found in cultivated areas (Owens and Myres 1973, p. 705). They appear to avoid roads, presumably because the ditches are often replanted with non-native species (Sutter *et al.* 2000, p. 114). Migration and wintering ecology are poorly known, but migrating and wintering Sprague's pipits are found in grassland, pastures, and fallow cropland (Wells 2007, p. 297).

The native prairie habitat that Sprague's pipits use is disturbance dependant. Without disturbance (historically grazing by bison or fire, today more often grazing by cattle or mowing for hay), the species mix changes and grasslands are ultimately overgrown with woody vegetation (Grant *et al.* 2002, p. 808). While Sprague's pipits prefer areas that are regularly disturbed (Madden 1996, p. 48), their preference for vegetation of intermediate height means that they will not use a mowed or burned area until the vegetation has had a chance to grow which may be late in the following breeding season (Dechant *et al.* 2003, pp. 1–2. Kantrud 1981, p. 414).

#### *Historic and Current Distribution*

The species was described as abundant in the late 1800's (Coues 1874, p. 42; Seton 1890, p. 626). Currently in the United States, Sprague's pipits breed throughout North Dakota, except for the easternmost counties; in northern and central Montana east of the Rocky Mountains; in northern portions of South Dakota; and in northeastern Minnesota. In Canada, Sprague's pipits breed in southeastern Alberta, the southern half of Saskatchewan, and in southwest Manitoba. Their wintering range includes south-central and southeast Arizona, Texas, southern Oklahoma, southern Arkansas, northwest Mississippi, southern Louisiana, and northern Mexico. There have been sightings in Michigan, western Ontario, Ohio, Massachusetts, and Gulf and Atlantic States from Mississippi east and north to South Carolina. Sprague's pipits have also been sighted in California during fall migration (Robbins and Dale 1999, p. 6).

Sprague's pipit is included on a number of Federal, State, and nongovernmental organization lists as a sensitive species. For example, its status is listed as vulnerable on the International Union of Conservation Networks Red List (International Union of Conservation Networks 2008). It has a NatureServe Global Rank of G4, indicating that the population is apparently secure (NatureServe 2008). The species is ranked as yellow on the Audubon 2007 watch list, indicating that it is "either declining or rare. These typically are species of national conservation concern" (Audubon 2007, p. 2). Partners in Flight also has placed Sprague's pipit on its yellow list, indicating that the species is a species of conservation concern at the global scale, a species in need of management action, and a high priority candidate for rapid status assessment (Rich *et al.* 2004).

The petitioner reported that several States have identified the Sprague's pipit in various rankings indicating that it is sensitive including: Arizona (species of greatest conservation need), Minnesota (endangered), Montana (species of concern), New Mexico (species of greatest conservation need, vulnerable), North Dakota (Level I species in greatest need of conservation), and South Dakota (Level III—modest conservation priority but low abundance score) (WildEarth Guardians 2008, pp. 31–32).

Due to its cryptic coloring and secretive nature, the Sprague's pipit has been described as "one of the least known birds in North America"

(Robbins and Dale 1999, p. 1), and specific range-wide surveys for the species have not been conducted. However, long-term estimates of Sprague's pipit abundance have come from the Breeding Bird Survey (BBS), a long-term, large-scale survey of North American birds that began in 1966. The BBS is generally conducted by observers driving along set routes, stopping every half-mile to sample for birds. Since there is some evidence that Sprague's pipits avoid roads (Sutter *et al.* 2000, p. 114), roadside surveys may not be the best measure of abundance of Sprague's pipits. Nonetheless, the methods of the BBS have been consistent through time, and the BBS provides the best available trend information at this time. The available information suggests that the population is in steep decline (Peterjohn and Sauer 1999, p. 32), with a 79 percent decrease from 1966 through 2005 rangewide (approximately 4.1 percent annually) (Wells 2007, p. 296).

#### **Evaluation of Information for This Finding**

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, 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 90-day finding, we evaluated whether information regarding threats to the Sprague's pipit, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

##### *Information Provided in the Petition*

The petition outlines numerous assertions regarding the present or threatened destruction, modification, or curtailment of the Sprague's pipit's habitat or range, including:

(1) The loss of native prairie throughout the Northern Great Plains range of the species as a result of agricultural conversion, invasion of exotic plants, haying practices, livestock grazing, and fire suppression;

(2) Changes in prairie management since European colonization that have allowed shrub, tree, and weed encroachment throughout the prairie;

(3) The infrastructure associated with oil and gas exploration and extraction;

(4) The proliferation of roads throughout the Sprague's pipit's range, which reduce the amount of suitable habitat available for their use; and

(5) Ongoing fragmentation of prairie habitat that may leave grassland areas too small for Sprague's pipit use.

#### Response

We generally find that the information presented by the petitioner appears to be reliable and substantial in regard to the amount of habitat modification and alteration that has occurred within the range of the Sprague's pipit. Sprague's pipits do not nest in cropland (Owens and Myres 1973, p. 697; Wells 2007, p. 297), so widespread conversion from prairie to cropland negatively impacts the species because it reduces the amount of habitat available for nesting. Between 2006 and 2007 alone, as corn prices increased by more than one dollar a bushel, approximately 15 million additional acres (6 million hectares) were planted in corn in the United States, although this was not necessarily all newly plowed areas and not all within the range of the Sprague's pipit (U.S. Department of Agriculture 2009, p. 2).

Land cover images of the Great Plains in the United States and Canada indicate that only 30 percent of prairie habitat remains from pre-colonial times (Samson *et al.* 2004, p. 7); this remnant prairie habitat is not all necessarily located within the range of the Sprague's pipit. Although Sprague's pipit will use nonnative replanted grassland under some circumstances (Higgins *et al.* 2002, pp. 46–47; Dechant *et al.* 2003, p. 3), the species is generally closely associated with native prairie (Owens and Myres 1973, p. 705; Davis 2004, pp. 1138–1139; McMaster *et al.* 2005, p. 219).

Sprague's pipits are strongly tied to native prairie (land which has never been plowed) (Owens and Myres 1973, p. 708), in general avoiding cropland and land in the Conservation Reserve Program (a program whereby marginal farmland is replanted with grass) (Higgins *et al.* 2002, pp. 46–47). However, it is not clear that they avoid areas with exotic plant species. While

Sprague's pipits appear to favor large grassland areas, vegetation structure is a better predictor than species composition of songbird occurrence (Davis 2004, pp. 1135, 1137). Other studies also have suggested that the vegetation structure, rather than its specific composition, may influence which species are present (Naugle *et al.* 2000, p. 2; Ribic *et al.* 2009, p. 239).

Even in areas that remain in native prairie, management changes, including fencing, augmentation of water sources, replacing bison with cattle as the primary herbivore, and fire suppression, all have changed the landscape (Knopf 1994, pp. 248–250; Weltzin *et al.* 1997, pp. 758–760). Much of the prairie is now grazed more uniformly and is often overgrazed, leading to a decline in species diversity and an increase in woody structure (Walker *et al.* 1981, pp. 478–481; Towne *et al.* 2005, pp. 1550–1558). Fire suppression has allowed suites of plants, especially woody species, to flourish, especially in the winter range (Knopf 1994, p. 251; Samson *et al.* 1998, p. 11). These changes have led to steep declines in many grassland bird species, including the Sprague's pipit (Knopf 1994, pp. 251–254; Grant *et al.* 2004, p. 812; Lueders *et al.* 2006, pp. 602–604).

It should be noted that substituting cattle for bison alone does not necessarily lead to a change in grassland vegetation. In a study comparing native prairie stocked with moderate levels of cattle or bison, Towne *et al.* (2005, pp. 1552–1558) found that while there were some differences in the grazing habits of the two species, after 10 years the diversity and plant density in the two areas were similar. They suggest that the vegetation differences many studies find between cattle and bison are due to different herd management and grazing intensity, rather than an inherent difference in the effect of the two herbivores on vegetation. Ranchers currently allow cattle to graze at high densities compared to the historic grazing densities of bison, which could lead to a greater probability of overgrazing in grasslands. However, one study (Lueders *et al.* 2006, p. 602) found that Sprague's pipits were more common on areas grazed by cattle. The management regimes (*i.e.*, fire regimes, grazing densities) and sampling intensities of studies conducted on the two areas were quite disparate, precluding firm conclusions.

Fire suppression since European settlement throughout the Sprague's pipit's range has impacted the composition and structure of native prairie, favoring the incursion of trees and shrubs in areas that were previously

grassland (Knopf 1994, p. 251). This change of structure negatively impacts Sprague's pipits, which avoid grasslands containing even moderate densities of shrubs (Wells 2007, p. 297). Fire and grazing may differentially affect the vegetative species composition of grasslands, so eliminating fire from the landscape has likely changed the overall composition of the prairie. Trees and shrubs can be eliminated through grazing or regular mowing, although these management practices may result in selection for yet a different suite of grassland plant species (Owens and Myres 1973, pp. 700–701).

Mowing (*i.e.* haying) in the breeding range could negatively impact Sprague's pipits by directly destroying nests, eggs, nestlings, and young fledglings, and by reducing the amount of available nesting habitat for a certain amount of time. While Sprague's pipits occasionally will renest if the first nest fails or if nestlings from the first clutch fledge early enough in the season, long intervals between nesting attempts suggest that renesting is relatively uncommon (Sutter *et al.* 1996, p. 694). Thus, early mowing can negatively impact reproductive success for the year. Even mowing done later in the season after nests have hatched may impact the availability of breeding habitat the following year, because Sprague's pipits will not use areas with short grass until later in the season when the grass has grown (Owens and Myres 1973, p. 708; Kantrud 1981, p. 414). On the other hand, as noted above, mowing can improve Sprague's pipit habitat in the long term by removing trees and shrubs (Owens and Myres 1973, p. 700). Nest success of ground-nesting birds is already low, with an estimated 70 percent of nests destroyed by predators (cited in Davis 2003, p. 119). In addition to nest and egg loss due to predation, some Sprague's pipit nests are parasitized by brown-headed cowbirds (*Molothrus ater*) dropping the percent of successful nests even further (Davis 1994, p. 15; Peterjohn and Sauer 1999, p. 39).

In the United States, approximately 5 percent of Sprague's pipit breeding, migratory, and wintering range (not including Texas for which data are not available) is encroached on by oil and gas wells or active leases (WildEarth Guardians 2008, p. 20). Much of the Sprague's pipit's breeding range overlaps with major areas of oil production in Montana and North Dakota. Oil production spiked in 2007 (the most recent year for which this information is available), with 494 drilling permits issued in 2007 in North

Dakota, compared with only 146 permits issued in 2006 (North Dakota Petroleum Council 2008). Sprague's pipits have shown avoidance of oil wells up to 300 meters (984 feet) (Linnen 2008, pp. 1, 9–11), so wells, especially at high density, may decrease the amount of habitat available for nesting.

Each well pad requires associated new road construction, often involving several miles (kilometers) of new road for each pad. Several researchers have noted that Sprague's pipits avoid roadsides (Sutter *et al.* 2000, p. 114; Linnen 2006, pp. 1, 6–9; Linnen 2008, pp. 9–13). This observed avoidance may be due to the shortness of mowed vegetation, or the reduction of suitable vegetation along the right-of-way (Sutter *et al.* 2000, p. 114).

Birds that nest near a habitat edge, such as a road, may experience lower nest success because they may be more likely to be parasitized by cowbirds (Davis 1994, p. i) and because roads may serve as travel routes for predators (Pitman *et al.* 2005, p. 1267). Roads enable the spread of exotic species as propagules can be inadvertently transported along roads while the ground disturbance provides sites where they can readily germinate (Trombulak and Frissell 2000, p. 24; Simmers 2006, p. 7). Furthermore, the dust and chemical runoff from roads selects for tolerant species to grow nearby, changing the plant composition even if the right-of-way was not actually disturbed and reseeded (Trombulak and Frissell 2000, p. 23). Simmers (2006, p. 24) found that even 20 years after reclamation, the nonnative seeds generally used on the reclaimed roadbed were still dominant in the area. Furthermore, these nonnatives spread into the nearby prairie, suggesting long-term impacts of road construction extending beyond the original footprint of the roadway (Simmers 2006, p. 24).

Wind energy development has been exponentially increasing in recent years, with increases of more than 45 percent in 2007 and more than 50 percent in 2008 (Manville 2009, p. 1). Like oil, wind projects may fragment the native habitat with turbines, roads, transmission infrastructure, and associated facilities. A recent white paper examining the potential impacts of the wind industry on fish and wildlife determined that wind farms may adversely impact grassland songbirds, a group that is already in decline (Casey 2005, p. 4, Manville 2009, p. 1). Several of the States where the Sprague's pipit nests or winters are listed in the top 20 States for wind

energy potential (American Wind Energy Association 1991).

Sprague's pipits appear to be area sensitive, preferring larger grassland patches, although the exact amount of habitat required is not known (Davis 2004, pp. 1135–1139). Davis (2004, p. 1139) found that the strongest predictor of Sprague's pipit presence was the amount of grassland within an 800-meter (2,500-foot) radius circle. An increase in all of the factors discussed above (*i.e.*, cropland, trees and shrubs, oil and gas facilities, and roads) may negatively influence Sprague's pipits' use of an area.

#### Summary of Factor A

Sprague's pipits have undergone a sharp decline in the past 50 years as much of the once vast prairie habitat has been converted to other uses. One of the major causes of decline seems to be the loss of native grassland habitat throughout the species' range. On the basis of our evaluation, we determined that the petition presents substantial information that listing the Sprague's pipit as a threatened or endangered species may be warranted due to present or threatened destruction, modification, or curtailment of its habitat or range.

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

##### Information Provided in the Petition

The petitioner asserts that there is no evidence that overutilization for commercial, recreational, scientific, or educational purposes is a threat at this time.

##### Response

As noted above, Sprague's pipit has not been extensively studied for scientific purposes (*e.g.*, Robbins and Dale 1999). A review of the literature provided in the petition or readily available in our files suggests that while a limited number of studies involve close observation or handling of Sprague's pipit adults, nests, or young (*e.g.*, Sutter *et al.* 1996, pp. 694–696; Davis 2003, pp. 119–128; Dieni and Jones 2003, pp. 388–389), most research that includes the Sprague's pipit relies on passive sampling (*i.e.*, point counts) rather than active manipulation. Such passive sampling is unlikely to have negative impacts on Sprague's pipits.

##### Summary of Factor B

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Sprague's pipit as a threatened or endangered species may be warranted due to the

overutilization for commercial, recreational, scientific, or educational purposes. Additionally, we do not have substantial information in our files to suggest that overutilization for commercial, recreational, scientific, or educational purposes may threaten the Sprague's pipit. However, we will evaluate all factors, including threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

#### C. Disease and Predation

##### Information Provided in the Petition

(1) The petitioner asserts that while disease does not appear to be a major threat at this time, it may become a threat due to changes in habitat distribution resulting from climate change and ensuing concentration of birds.

(2) The petitioner asserts that predation and cowbird nest parasitism cause up to 70 percent of grassland bird nest failures, including nest failures of Sprague's pipits. Cowbird parasitism may be generally lower for Sprague's pipits than for other grassland birds because of Sprague's pipit's tendency to avoid edge habitat. However, if Sprague's pipits are forced to use more edge habitat due to habitat fragmentation, cowbird parasitism may increase in the future.

##### Response

We are not aware of information to indicate that disease poses a significant threat to Sprague's pipits at this time. The petitioner suggests that botulism may pose a risk if habitat fragmentation and climate change cause birds to be more concentrated on the remaining habitat. While habitat fragmentation may negatively impact Sprague's pipit as discussed in Factor A, botulism is primarily associated with waterfowl (United States Geological Survey 1999, p. 274), and so would not be expected to impact Sprague's pipit. Other diseases, such as avian influenza and West Nile virus may impact the Sprague's pipit, but we are not aware of any information indicating that those diseases pose a risk at this time.

The Intergovernmental Panel on Climate Change (2007, p. 51) suggests that the distribution of some disease vectors may change as a result of climate change. However, the Service has no information at this time to suggest that any specific disease may become problematic to Sprague's pipit.

Predation is thought to destroy up to 70 percent of grassland bird nests (in Davis 2003, p. 119). We assume that the

predation rate of Sprague's pipits is similar. The species' tendency to choose taller vegetation and to build a covered nest with a runway presumably is at least in part an attempt to avoid being seen by predators (Sutter 1997, p. 467). Cowbird parasitism also leads to nest failures, because the cowbirds remove or damage host eggs and cowbird young outcompete the hosts for resources (Davis 2003, pp. 119, 127). Cowbird parasitism generally is thought to be higher in small remnant grassland plots near habitat edges (Davis 1994, p. i; in Linnen 2008, p. 4), so the Sprague's pipit's preference for larger tracts of grassland, when these are available, may make the species less susceptible to cowbird parasitism. However, continued loss and fragmentation of native grassland may be causing increased levels of cowbird parasitism that is as yet undetected.

#### Summary of Factor C

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Sprague's pipit as a threatened or endangered species may be warranted due to disease or predation. While the level of predation for all grassland birds is high, we do not have information at this time to suggest that predation or cowbird parasitism is impacting Sprague's pipits at a level that threatens the species. Because Sprague's pipits select large grassland patches for nesting, they may be less susceptible to cowbird parasitism than other grassland species. Additionally, we do not have substantial information in our files to suggest that disease or predation threaten the Sprague's pipit. However, we will evaluate all factors, including threats from disease and predation, when we conduct our status review.

#### D. The Inadequacy of Existing Regulatory Mechanisms

##### Information Provided in the Petition

The petitioner asserts that the regulatory mechanisms to protect the Sprague's pipit in the United States are inadequate.

(1) Sprague's pipits are protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which prohibits hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest or egg thereof, unless specifically permitted (*i.e.*, for waterfowl hunting). The petitioner indicates that the MBTA does not protect bird habitat.

(2) The petitioner reports that Sprague's pipit is listed as a State endangered species in Minnesota, and the Committee on the Status of Endangered Wildlife in Canada listed the Sprague's pipit as a threatened species in 2000. The species is on a number of watch lists from nongovernmental and quasi-governmental (supported by the government but privately managed) organizations. The petitioner states that, while these lists highlight concerns about the species, they do not provide substantial protection. The species enjoys no special protection throughout most of its range.

##### Response

As the petitioner points out, while the Sprague's pipit is protected under the MBTA, this protection does not extend to the species' habitat. Habitat can be legally destroyed as long as it does not result in the direct take of birds protected by the MBTA.

As discussed under Factor A, a substantial amount of new oil and gas production is occurring in the breeding range of the Sprague's pipit. Currently, no regulatory mechanisms exist for many of these activities to ensure that drilling and associated activities avoid nesting habitat. In addition, we know of no regulatory mechanisms that protect this species' habitat outside of the breeding season.

Similarly, few regulations exist regarding the siting of wind farms in relation to wildlife resources. While the Service has developed interim guidelines for siting wind farms (Service 2003, pp. 1–57) to reduce impacts to wildlife and wildlife habitat, the guidelines are voluntary and are not consistently applied (or applied at all) on private land with no Federal nexus (Manville 2009, p.1). Special permits are required for wind energy development on National Wildlife Refuge System wetland and grassland easements. State permits are not required for wind farms in North Dakota or South Dakota unless they are larger than 100 megawatts, and no State permit is required in Montana (Association of Fish and Wildlife Agencies and U.S. Fish and Wildlife Service 2007). We are aware of no specific requirements in these State regulatory systems that protect migratory birds or their habitats.

As noted in Factor A, favorable market prices often encourage farmers to plow new land for crop production. There are no regulatory mechanisms that govern conversion of native grassland to cropland when migratory birds will be impacted.

##### Summary of Factor D

On the basis of our evaluation, we find that there is substantial information in the petition and readily available in our files to indicate that listing the Sprague's pipit as a threatened or endangered species may be warranted due to the inadequacy of existing regulatory mechanisms, particularly regarding the effects of habitat loss and fragmentation due to energy development and farming practices.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

##### Information Provided in the Petition

The petitioner asserts that several other factors may affect the Sprague's pipit's continued existence including the following:

(1) The Sprague's pipit is sensitive to drought throughout its range;

(2) Climate change is likely to increase drought, changing the habitat to make it less suitable for the Sprague's pipit; and

(3) Activities to eradicate and harass birds in croplands, particularly programs to reduce the impacts of blackbirds on sunflower fields, are a threat to the Sprague's pipit.

##### Response

In a short-term (3-year) study looking at drought and post-drought period in western North Dakota, George *et al.* (1992, pp. 275, 278–279) found that Sprague's pipit numbers declined in periods of drought, although they rebounded once the drought ended. By contrast, a study comparing numbers from the BBS to moisture levels in eastern and northern North Dakota found that Sprague's pipit numbers actually increased during dry periods (Niemuth *et al.* pp. 213–217). However, amount of moisture was a relative descriptor and not constant between studies. There is generally more precipitation in eastern versus western North Dakota (Niemuth *et al.* p. 216), so a dry period in the eastern part of the State may be roughly equivalent to a normal period in the western part.

Sprague's pipits prefer areas with relatively tall grass. Extreme drought may lead to poor grass growth and thus less optimal habitat (Dieni and Jones 2003, pp. 393–395). While the species can increase in abundance after a short-term drought ends, climate change may lead to drier conditions in much of the Sprague's pipit's range (Johnson *et al.* 2005, pp. 869–871), which may have more lasting impacts on the habitat and thus the population (George *et al.* 1992, pp. 281–283).

There is some variability between models in projecting the effect of future climate change on Sprague's pipit habitat. One model projected that the Sprague's pipit's breeding range would experience a wetter climate by the end of this century (United States Global Change Research Program Great Plains 2009, p. 125). In contrast, another model suggested that much of the remaining suitable habitat for Sprague's pipit nesting would likely become drier due to climate change (Johnson *et al.* 2005, p. 871). Temperatures in the wintering range are also expected to rise, while precipitation is projected to decline (United States Global Change Research Program: Southwest 2009, p. 125). Substantial landscape changes are therefore expected in the wintering range (United States Global Change Research Program: Southwest 2009, p. 131). These changes in temperature and precipitation throughout the species' range may have a large impact on ecosystems (United States Global Change Research Program Great Plains 2009, p. 126; United States Global Change Research Program: Southwest 2009, p. 131) and thus the Sprague's pipit.

Long-term effects of global climate change on Sprague's pipit habitat could have significant, deleterious effects, and should be monitored in the future. However, the climate change models are based on projections with some uncertainty (Johnson *et al.* 2005, p. 869), and current data may not be reliable enough at the local level for us to draw conclusions regarding the degree to which climate change would affect Sprague's pipit and its habitat.

The petitioner states that harassment of birds from cropland may negatively impact the birds' energy stores during migration, when they may already be low on reserves (Hagy *et al.* 2007, pp. 62, 69). Also, the petitioner contends that poisoning of sunflower fields with grain bait used to kill blackbirds may impact Sprague's pipits, which have been documented in sunflower fields during migration (Hagy *et al.* 2007, p. 66). Sprague's pipits primarily feed on arthropods, including those in sunflower fields (Hagy *et al.* 2007, p. 66). However, the impacts of harassment and poisoning on Sprague's pipits are unlikely to be substantial. Some sunflower growers harass birds, primarily several species of blackbirds that feed on their crops. Any Sprague's pipits that are present in sunflower fields could be incidentally harassed out of those fields along with blackbirds and any other species present. There have been experimental efforts in the past to selectively poison blackbirds that feed

on sunflowers; however, these efforts have been limited to date and not applied on a systematic, widespread basis. Therefore, we deem the potential impacts of harassment and poisoning on Sprague's pipits to be primarily speculative and likely minimal at this time.

#### *Summary of Factor E*

We find the information presented in the petition and readily available in our files on the subject of climate change to be insufficiently specific to the Sprague's pipit; however, the Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate is unequivocal (IPCC 2007, p. 15). We intend to investigate the effects of climate change on the Sprague's pipit and its habitat further in the status review for the species.

While all of the following factors may negatively impact the Sprague's pipit, on the basis of our evaluation of the material provided in the petition and available in our files, we determined that the petition does not present substantial evidence indicating that listing the Sprague's pipit may be warranted based on drought, climate change, harassment, or poisoning of cropland.

#### **Finding**

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the Sprague's pipit throughout all or a significant portion of its range may be warranted. This finding is based on information provided under Factors A and D. Because we have found that the petition presents substantial information that listing the Sprague's pipit may be warranted, we are initiating a status review to determine whether listing the Sprague's pipit under the Act is warranted. We will issue a 12-month finding as to whether the petitioned action is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a

substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the Sprague's pipit. You may submit information regarding the Sprague's pipit by one of the methods listed in the **ADDRESSES** section until the date shown in the **DATES** section of this document. After this date, you must submit information directly to the North Dakota Field Office (**SEE FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date. The petitioner requested we designate critical habitat for this species. If we determine in our 12-month finding that listing the Sprague's pipit is warranted, we will address the designation of critical habitat at the time of the proposed listing rulemaking.

#### **References Cited**

A complete list of references cited is available on the Internet at <http://regulations.gov> and upon request from the North Dakota Field Office (**SEE FOR FURTHER INFORMATION CONTACT**).

#### **Author**

The primary authors of this notice are the staff members of the North Dakota Field 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: November 19, 2009.

**Sam D. Hamilton,**

*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-2008-0111] [MO 92210 50083 B2]**

### **Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered**

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

**ACTION:** Notice of a 12-month petition finding.

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