

Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the proposed rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments. This proposed rule does not affect the UIC Program on Indian Tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

**List of Subjects in 40 CFR Part 147**

Environmental protection, Intergovernmental relations, Water supply.

Dated: May 13, 1999.

**John H. Hankinson, Jr.,**

*Regional Administrator, Region 4.*

For the reasons set out in the preamble, 40 CFR part 147 is proposed to be amended as follows:

**PART 147—[AMENDED]**

1. The authority citation for part 147 continues to read as follows:

**Authority:** 42 U. S. C. 300h; and 42 U. S. C. 6901 *et seq.*

**Subpart B—Alabama**

**§ 147.50 [Removed]**

2. Section 147.50 is removed.

[FR Doc. 99-12747 Filed 5-18-99; 11:31 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Baird's Sparrow as Threatened With Critical Habitat**

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Baird's sparrow (*Ammodramus bairdii*) as threatened, and to designate critical habitat, under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial information indicating that listing of this species as threatened may be warranted.

**DATES:** The finding announced in this document was made on May 13, 1999.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, North Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 1500 East Capitol Avenue, Bismarck, North Dakota 58501. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Al Sapa, at the above address, or telephone (701) 250-4481.

**SUPPLEMENTARY INFORMATION:**

**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 demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly initiate a review of the status of the species.

We initiated a status review for the Baird's sparrow when it was categorized as a Category 2 species in the Animal Notice of Review published in the **Federal Register** on November 21, 1991 (56 FR 58804). At that time, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. Designation of Category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596). We completed the Baird's Sparrow Status Assessment and Conservation Plan (Jones and Green 1998) in April 1998. Based on the results of the Assessment, we recommended no change in the status for this species and it remains on our list of Nongame Migratory Bird Species of Management Concern. This designation does not confer legal protection but is intended to stimulate a coordinated effort by Federal, State, and private agencies to develop and implement comprehensive and integrated approaches for management.

On July 1, 1997, we received a petition dated June 26, 1997, from the Biodiversity Legal Foundation, to list the Baird's sparrow (*Ammodramus bairdii*) as threatened, and to designate critical habitat, pursuant to the Act. We acknowledged receipt of the petition on July 23, 1997, and indicated to the petitioner that our Listing Priority Guidance for fiscal year 1997, published in the December 5, 1996, **Federal Register** (61 FR 64475), would preclude working on the 90-day finding at that time. The fiscal year 1997 Guidance designated the processing of listing

petitions as a Tier 3 activity, i.e., of lower priority than the completion of emergency listings (Tier 1) and the processing of pending proposed listings (Tier 2). We indicated that, as these higher-priority activities were accomplished we would proceed with a 90-day finding on the Baird's sparrow petition.

The petitioner requested the current status of its petition in March 1998, and we responded that we were in a position to start responding to petitions, and that we intended to prepare a 90-day finding by June 29, 1998. Subsequently, higher priority listing issues prevented us from meeting that completion date.

The petitioner asserted that historically the Baird's sparrow was abundant and widespread in the northern Great Plains, but that today the species is mainly restricted to small islands of remaining native prairie surrounded by an agricultural mosaic. Also, the petitioner stated that the small remnant breeding populations of the sparrow are threatened by the ongoing loss of suitable grassland habitat, extensive agricultural practices (such as livestock grazing, haying, irrigation, and the use of pesticides), collisions with communication towers, the invasion of exotic species, and fire suppression.

The Baird's sparrow is a grassland specialist endemic to the northern North American prairie. Its behavior and ecology was shaped by the historical conditions of the Great Plains, and the health of its populations are dependent on the conditions of native prairie (Samson and Knopf 1996). The habitat of the Baird's sparrow consists of upland prairies of mixed-grass or tallgrass habitat types. The Baird's sparrow nests in North and South Dakota, Montana, Minnesota, Alberta, Manitoba, and Saskatchewan. Common grasses found in its habitat are *Bouteloua gracilis* (blue grama), *Stipa comata* (needle-and-thread), and *Andropogon scoparius* (little bluestem). In the breeding season Baird's sparrows prefer native grasslands, but they also nest in smaller numbers in hayfields, seeded pastures (Sutter et al. 1995), weedy stubble fields and retired croplands (Kantrud and Kologiski 1983, Stewart 1975, De Smet and Conrad 1989, Davis 1994), wheat fields (Land 1968), and in dry wetland basins (Goossen et al. 1993). The Baird's sparrow winters primarily in northern Mexico, although some individuals may be found in southwestern Texas, southeastern Arizona, and occasionally southern New Mexico (Jones and Green 1998).

The petitioner asserted that mid-grass prairie habitat continues to be converted

to cultivation and other uses at an alarming rate. However, there were no recent acreage figures provided to support that argument. The petition recognized that the Baird's sparrow's breeding range included large tracts of U.S. Forest Service, Bureau of Land Management, and other Federal lands on the northern plains, and this provides the potential for implementation of specific management measures to conserve the species.

Estimates of the remaining mixed grass prairie are wide-ranging. Mixed grass prairie has declined 60–99 percent in acreage in the prairie provinces and North Dakota (Sampson and Knopf 1996), with over 90 percent of the grasslands in Canada converted to agriculture. The most conservative estimates in North Dakota are that approximately 8 million acres of the habitat remain (U.S. Geological Survey 1993). Others estimate that as many as 12–15 million acres of the northern mixed grass prairie type still exist in North Dakota (Klopatek et al. 1979). Overall, we believe that current Baird's sparrow population estimates and trends indicate that native prairie acreage in the Northern Great Plains is sufficient to support a stable population. There are significant large tracts of this habitat on Federal land that are managed with light to moderate grazing pressure as a conservation measure for Baird's sparrow.

Population data are unreliable from many parts of the Baird's sparrow range, and conflict in other areas. However, populations are likely to be greater than earlier believed, and remain high in many portions of the range (Jones and Green 1998). The population in North Dakota is estimated to be from 171,000 to 279,000 breeding pairs (Igl and Johnson 1997), based on the most recent North American Breeding Bird Survey (BBS) data. Our analysis indicates that historic population trends have been negative, but populations of the species currently appear to be stable. The BBS data indicate that this sparrow's population declines were persistent and steep (in mean annual percent change per year) in the continental population for the period of 1966–1979 for all areas except Montana (Sauer et al. 1996). However, for the period 1980–1996, with a larger sample size of survey routes, the trends leveled out in most geographic areas. During this period, there was a nonsignificant increase for the entire survey area of 1.1 percent per year, and significant increases in the Glaciated Missouri Plateau region (mainly North Dakota). The average trend over the 30 years (1966–1996) of the BBS shows Baird's sparrow

population trends to be stable (Sauer et al. 1996, Jones and Green 1998).

Susceptibility to human disturbance is a factor in Baird's sparrow distribution. Disturbances caused by plowing, brushing, burning, movement of livestock, grazing, haying, and mowing can result in the abandonment of an area and lead to reproductive failure (Jones and Green 1998). However, the species can coexist with light to moderate grazing pressure on native prairie (Cartwright et al. 1937, Lane 1968, Sampson and Knopf 1996) and the currently stable population trend for Baird's sparrow implies that the survival of the species is not threatened by these habitat disturbances at this time.

Predation can be a major cause of reproductive failure in Baird's sparrows (Davis and Sealy in press), as it is with most small birds. Predation frequencies ranged from 26–46 percent for nests in southwestern Manitoba to 50–71 percent in southern Saskatchewan (Davis 1994). Davis and Sealy (in press) reported predation by the striped skunk (*Mephitis mephitis*) and the thirteen-lined ground squirrel (*Spermophilus tridecemlineatus*). Richardson's ground-squirrels (*S. richardsoni*) depredated eggs, nestlings, and fledglings at a site in Alberta (Mahon 1995). Other potential predators include American crow (*Corvus brachyrhynchos*), northern harrier (*Circus cyaneus*), and western plains garter snake (*Thamnophis radix haydeni*) (Davis and Sealy in press).

Baird's sparrow nests are commonly parasitized by brown-headed cowbirds (*Molothrus ater*). Davis and Sealy (in press) found that 36 percent of 74 nests in southwestern Manitoba were parasitized with an average of two cowbirds eggs (range 1–4). Significantly fewer young were fledged from successful parasitized nests than from successful nonparasitized nests, resulting in an average cost of 1.1 Baird's sparrow fledglings per parasitized nest. Egg removal by cowbirds was likely the primary cause of lowered productivity in parasitized nests. These levels of predation and nest parasitism are comparable to other grassland passerine birds, and we find no evidence to indicate that the level of documented predation is a threat to the species based upon its stable population trend.

The Baird's sparrow is protected from take under the Migratory Bird Treaty Act in the United States, the Migratory Bird Convention Act in Canada, and the Convention for the Protection of Migratory Bird and Game Mammals in Mexico. Additionally, the Baird's sparrow is on the Service's list of

Nongame Migratory Bird Species of Management Concern and is the subject of numerous research efforts and conservation actions across its range. We reviewed information during the processing of this petition to indicate that the level of concern generated by these designations has been sufficient to generate heightened research and management interest in the Baird's sparrow. The Service will continue to promote these efforts to improve the biological status of the Baird's sparrow. Our current programs that benefit the Baird's sparrow include grassland easements, technical assistance to ranchers grazing native prairie and research and monitoring of grassland species.

### Finding

We reviewed the petition, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, we find the petition does not present substantial information that listing this species may be warranted. While the species has experienced major declines since European settlement of the prairies and the conversion of native prairie to agriculture, population trend data for this species over the last 16 years show their populations are stable. There are an estimated 171,000 to 279,000 pairs of Baird's sparrows in North Dakota (Igl and Johnson 1997). We have found no evidence to suggest that the millions of acres of breeding habitat for this species in North Dakota, Montana, and Canada face immediate threat of conversion from grassland to other agricultural uses. Canada removed the Baird's sparrow from its national list of threatened species in 1997 after a 1994 survey estimated 500,000 to 2 million pairs of Baird's sparrow in Saskatchewan (Davis et al. 1996). The petition provided no evidence to indicate that conditions on the wintering grounds threaten the continued existence of Baird's sparrow. The Baird's sparrow remains a species of special concern and the BBS and other range-wide and local surveys will continue to monitor its status.

### References Cited

You may request a complete list of all references cited herein, as well as others, from the Service's North Dakota Field Office (See ADDRESSES section).

### Author

Michael Olson (see ADDRESSES section) prepared this document.

### Authority

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

Dated: May 13, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99-12844 Filed 5-20-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 648

[I.D. 050599A]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of experimental fishery proposals; request for comments.

**SUMMARY:** NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of two experimental fishing proposals. EFPs would allow vessels to conduct operations otherwise restricted by regulations governing the Northeast Multispecies Fishery, and would exempt vessels from days at sea (DAS), mesh sizes, and other gear restrictions. The first experimental fishery proposal would involve fishing for, retention and landing of silver hake (whiting), spiny dogfish, and red hake with small mesh in the Gulf of Maine/Georges Bank Regulated Mesh Area. This experiment was previously approved during the 1998 fishing season and is referred to as the Raised Footrope Whiting Trawl Experimental Fishery (Raised Footrope Trawl Experiment). The requested time period of the Raised Footrope Trawl Experiment would be modified this year taking place from June through August, instead of September through December. The second experimental fishery request is for a supplemental gear testing experiment to support the goals and objectives of the Raised Footrope Trawl Experiment. Regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fisheries.

**DATES:** Comments on this notification must be received by June 7, 1999.

**ADDRESSES:** Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fisheries."

**FOR FURTHER INFORMATION CONTACT:** Bonnie Van Pelt, Fishery Management Specialist, 978-281-9244.

**SUPPLEMENTARY INFORMATION:** The Massachusetts Division of Marine Fisheries (MADMF) submitted an application on March 31, 1999, to refine the investigations of a previously approved small mesh experimental fishery with these two proposals. The first proposal would require the use of modified trawls (raised footrope) in six distinct areas including all of Cape Cod Bay, areas outside Cape Cod Bay, lower Massachusetts Bay, and southern and western edges of Stellwagen. This would be the third full year that the experimental fishery has operated (1995 and 1996 were pilot studies); whereby, October and November have traditionally been the most active months of participation according to sea sampling data and logbook reporting.

This experiment is designed to assess the effectiveness of a raised footrope small mesh otter trawl in reducing bycatch of regulated multispecies—primarily flatfish and other bottom dwelling species—in the silver hake (whiting) fishery. The experimental area in Cape Cod Bay was identified by the MADMF as an important area for whiting fishing by vessels primarily fishing out of Provincetown, Gloucester, and Chatham, Massachusetts. The experiment has experienced sporadic changes in bycatch which appear to be temporal and site-specific in nature. The proposed experimental fishery would allow MADMF and NMFS to consider new data on the bycatch of regulated multispecies at times not previously sampled, as well as additional information on those areas and times sampled in years past.

The second proposal submitted by MADMF would provide for a supplemental gear testing experiment to support the objectives of the Raised Footrope Trawl Experiment by continuing last year's investigation of various different refinements to the "sweep-less" trawl gear. These gear trials will only slightly modify the standard raised footrope design and it is expected that the "sweepless" trawl design will mitigate impacts to the habitat and further reduce bycatch of bottom dwelling species.