

controlling Utah prairie dogs are limited to activities associated with translocation efforts by trained and permitted individuals complying with current Service-approved guidance, trapping intended for lethal removal, and shooting. Actions intended to drown or poison Utah prairie dogs are prohibited. Under the provisions of paragraph (g)(2) of this section and permitted by the Utah Division of Wildlife Resources, direct or intentional take is limited to agricultural land and private property near conservation land as follows:

(i) *Agricultural land.* (A) Take may be permitted only on agricultural land being physically or economically affected by Utah prairie dogs, and only when the spring count on the agricultural lands is five or more individuals; and

(B) The land must:

(1) Meet the general classification of irrigated, dryland, grazing land, orchard, or meadow;

(2) Be capable of producing crops or forage;

(3) Be at least 2 contiguous ha (5 contiguous ac) in area (smaller parcels may qualify where devoted to agricultural use in conjunction with other eligible acreage under identical legal ownership);

(4) Be managed in such a way that there is a reasonable expectation of profit;

(5) Have been devoted to agricultural use for at least 2 successive years immediately preceding the year in which application is made; and

(6) Meet State average annual (per-acre) production requirements.

(ii) *Private property near conservation land.* (A) Take may be permitted on private properties within 0.8 km (0.5 mi) of Utah prairie dog conservation land.

(B) Conservation lands are defined as non-Federal areas set aside for the preservation of Utah prairie dogs and are managed specifically or primarily toward that purpose. Conservation lands may include, but are not limited to, properties set aside as conservation banks, fee- title purchased properties, properties under conservation easements, and properties subject to a safe harbor agreement (see § 17.22.). Conservation lands do not include Federal lands.

(iii) *Permitted take on agricultural lands and private property near conservation land.* (A) The Utah Division of Wildlife Resources will ensure that permitted take does not exceed 10 percent of the estimated rangewide population annually.

(B) On agricultural lands, the Utah Division of Wildlife Resources will limit permitted take to 7 percent of the estimated annual rangewide population and will limit within-colony take to one-half of a colony's estimated annual production.

(C) In setting take limits on properties neighboring conservation lands, the Utah Division of Wildlife Resources will consider the amount of take that occurs on agricultural lands. The State will restrict the remaining permitted take (the amount that would bring the total take up to 10 percent of the estimated annual rangewide population) on properties neighboring conservation lands to animals in excess of the baseline population. The baseline population of neighboring lands is the highest estimated population on that property during the 5 years prior to establishment of the conservation property.

(D) Translocated Utah prairie dogs will count toward the take limits in paragraphs (g)(3)(iii)(B) and (g)(3)(iii)(C) of this section.

(4) *Incidental take.* Utah prairie dogs may be taken when take is incidental to otherwise-legal activities associated with standard agricultural practices on agricultural lands. These mortalities are in addition to the direct or intentional take provisions in paragraphs (g)(2) and (g)(3) of this section. Acceptable practices include plowing to depths that do not exceed 46 cm (18 in.), discing, harrowing, irrigating crops, mowing, harvesting, and bailing, as long as the activities are not intended to eradicate Utah prairie dogs.

(5) If the Service receives evidence that take pursuant to paragraphs (g)(2) through (g)(4) of this section is having an effect that is inconsistent with the conservation of the Utah prairie dog, the Service may immediately prohibit or restrict such take as appropriate for the conservation of the species.

\* \* \* \* \*

Dated: May 18, 2011.

**Jane Lyder,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R3-ES-2011-0028; MO 92210-0-0008]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Golden-Winged Warbler as Endangered or Threatened

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

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the golden-winged warbler (*Vermivora chrysoptera*) as endangered or threatened 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 golden-winged warbler may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the golden-winged warbler 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 the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before August 1, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date. After August 1, 2011, you must submit information directly to the Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might 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>. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS-R3-ES-2011-0028. Check the box that reads "Open for Comment/ Submission," and then click the Search

button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

*U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R3-ES-2011-0028; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:**

Field Supervisor, Wisconsin Ecological Services Office, U.S. Fish and Wildlife Office, 2661 Scott Tower Drive, New Franken, WI 54229-9565; by telephone (920-866-1725); or by facsimile (920-866-1710). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Request for Information**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted under section 4(b)(3)(B) of the Act, 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 golden-winged warbler (*Vermivora chrysoptera*) 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, such as information related to the hybridization between the golden-winged warbler and the blue-winged warbler (*Vermivora cyanoptera*);

(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, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as

amended (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.

If, after the status review, we determine that listing the golden-winged warbler is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 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 golden-winged warbler, we request data and information on:

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

(2) Where such physical and biological 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 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

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 Web site. 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 is available for you to review at <http://www.regulations.gov>, or you may make an appointment during normal business hours at the Wisconsin Ecological Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) 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 provided in the petition, supporting information submitted with the petition, and information otherwise 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 the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial 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 conduct a species status review, which we subsequently summarize in our 12-month finding.

*Petition History*

On February 10, 2010, we received a petition, from Anna Sewell, requesting the golden-winged warbler be listed as endangered or threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In an April 16, 2010, letter to the petitioner Anna Sewell, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7)

of the Act was not warranted. This finding addresses the petition.

#### *Previous Federal Action(s)*

To date, no Federal actions have been taken with regard to the golden-winged warbler.

#### *Species Information*

The golden-winged warbler (*Vermivora chrysoptera*) is a neotropical migrant (breeding in North America and wintering in Central and South America) belonging to the Order Passeriformes and Family Parulidae (Sibley 2003, p. 429). It is classified as a discrete species by the American Ornithologists' Union (AOU 1998, p. 534). The golden-winged warbler is a small-sized passerine, weighing only 8.8 grams (g) (0.31 ounces (oz)). Total body length is 120.65 millimeters (mm) (4.75 inches (in)), with a wingspan of 190.5 mm (7.5 in). Diagnostic features include slate gray plumage on the chest, breast, nape and mantle, with contrasting yellow patches on the upper wing coverts (sets of small feathers that cover the upper wing area) and crown. An adult male in breeding plumage expresses a black throat patch and auriculars (groups of feathers that cover the sides of a bird's head where the bird's ear openings are located), with contrasting white supercilium (a plumage feature on the head) and malar region (around the cheeks). All of those features are less distinct in females. Both sexes can show a yellow wash on the mantle extending to secondary coverts (Confer 1992, not paginated; Sibley 2003, p. 429).

Golden-winged warblers breed across the north-central and eastern United States, expanding into southeastern Canada. The breeding range can be thought of as two distinct areas: The northern portion, which extends into southern Canada (southwestern Quebec, Ontario, Manitoba, and eastern Saskatchewan) and spreads south into Minnesota, Wisconsin, and Michigan, and the eastern portion, which includes parts of the Appalachians (Georgia, North Carolina, and Tennessee) and into Kentucky, Virginia, West Virginia, Pennsylvania, and New York, with low numbers in Connecticut, Vermont, and New Hampshire (InfoNatura 2007; Buehler *et al.* 2010, p. 8, 31). Breeding locations between the two distinct areas (Indiana, Ohio, and Illinois, and western New York) hold low numbers of birds (Sauer *et al.* 2008, not paginated; Buehler *et al.* 2006, not paginated). The northern and eastern breeding ranges are linked by a narrow corridor located in the St. Lawrence River Valley in north central New York (Buehler *et al.*

2010, p. 8). Wintering locations include areas in southern Central America and northern South America (Buehler *et al.* 2006, not paginated).

For breeding sites, the golden-winged warbler depends mostly on early successional habitats. These are habitats that have previously undergone an amount of disturbance by a natural or human-caused event that creates a structurally diverse landscape. These habitats can occur in upland or lowland areas (Buehler *et al.* 2010, p. 2). Landscapes that consist of forest edge, shrubs, forests with open canopy, habitats with grassy openings, and wetlands with scattered trees can be viable nesting habitats (Rossell *et al.* 2003, p. 1099; Buehler *et al.* 2010, p. 10). Breeding sites have been documented in abandoned farmlands, powerline cuts, recently logged sites, and locations along stream borders (Confer 1992, not paginated; Service 2009, not paginated). Habitat tracts of 10–50 hectares (ha) (24–37 acres (ac)) can support several pairs and are preferred over both smaller and larger areas (Confer 1992, not paginated). Nest success measures vary throughout breeding range and within the breeding season; however, rough estimates are between 40 percent at sites in New York to approximately 75 percent at sites in North Carolina (Buehler *et al.* 2007, p. 1440; Buehler *et al.* 2010, p. 20–21). Population estimates are approximately 210,000 individuals globally (Partners in Flight PIF Landbird Database).

The diet of the golden-winged warbler consists of small bugs, larvae, and spiders (Service 2009, not paginated). Golden-winged warblers can lay three to six eggs, in nests that are low to the ground and concealed by vegetation (Buehler *et al.* 2007, p. 1440).

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

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 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 considering what factors constitute threats, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and, during the subsequent status review, we attempt to determine how significant a threat it is. The threat may be significant if it drives, or contributes to the risk of, extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. The identification of factors that could impact a species negatively may not be sufficient to compel a finding that substantial information has been presented suggesting that listing may be warranted. The information should contain evidence or the reasonable extrapolation that any factor(s) may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the golden-winged warbler, 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 claims that threats causing the present or threatened destruction, modification, or curtailment of the golden-winged warbler's habitat or range include habitat loss and modification. The petition suggests that loss of early successional habitat has contributed to declining population trends throughout the species' range (Petition, p. 11; Hunter *et al.* 2001; NatureServ Explorer). Golden-winged warblers require early successional landscapes originating from natural or anthropogenic disturbance. Prior to European settlement, early successional landscapes occurred via stochastic events such as natural fires and storms, and through disturbances to landscapes from other species (for example, bison, elk, and beaver habitat modifications) (Petition, p. 11; Hamel *et al.* 2005). After European settlement in the

19th century, conversion of natural landscapes to agriculture resulted in the suppression of natural fires and a decrease in natural land disturbance. Golden-winged warblers shifted from using naturally created, early successional breeding habitat, to early successional habitat created by anthropogenic means (Petition, p. 12; Klaus and Buehler 2001). Within recent decades there has been a decrease in early successional habitat due to reforestation of the eastern United States, development, and changes in agricultural practices. The petition claims that the golden-winged warbler now breeds within a matrix of human-developed landscape (urban/suburban development, agriculture, and reforestation practices), thus leading to its decline in what was historically viable breeding habitat (Petition, p. 12; NatureServe2010).

The petition also claims that golden-winged warblers now rely on human interference to create early successional habitat that consists of shrubs, open canopy, habitats with forested edge, and/or grassy patches (Petition, p. 12; Klaus and Buehler 2001). The petition claims that in the United States, the decline in availability of habitat used by golden-winged warblers and other early successional habitat-dependent species (such as grassland birds) is increasingly becoming a concern (Petition, p. 13; Motzkin and Foster 2004). Although the petition (Petition, p. 14) states that habitat modification or loss is the primary obstacle for golden-winged warbler stabilization, Confer *et al.* (2003) state that other factors must be involved in population declines, because in areas where ample suitable habitat exists, such as in Massachusetts, the warblers have become extirpated;.

#### Evaluation of Information Provided in the Petition and Available in Service Files

Information provided by the petitioner and readily available in our files indicates the golden-winged warbler may be declining rangewide due to loss, degradation, and modification of early successional habitat. Forest maturation, land development, wetland destruction and loss, and lack of natural events that create viable breeding sites contribute to the reduction of available nesting habitat (Buehler *et al.* 2006, p. 1; Buehler *et al.* 2010, p. 118).

In the north-central breeding range, long-term trends (1966–2007) estimate populations to be decreasing by 1.4 percent per year (Sauer *et al.* 2008, not paginated). In this breeding region, Minnesota, Wisconsin, and Michigan

together hold approximately 69 percent of the global breeding population of golden-winged warblers (Buehler *et al.* 2010, p. 31). Long-term trends (1966–2007) for Michigan estimate a population decline of 8.1 percent per year, with numbers relatively stable in Minnesota and Wisconsin. In the north-central breeding range, nests are found in wetland and upland shrub habitats consisting of old fields and pastures, clearcuts, and regenerating aspen tracts. The major threats to populations in the north-central breeding range include habitat loss, wetland drainage, and habitat succession (Buehler *et al.* 2010, p. 35).

In Canada (Manitoba, Ontario, Quebec, and Saskatchewan), long-term Breeding Bird Survey (BBS) data from 1966–2007 (Buehler *et al.* 2007, p. 144; Sauer *et al.* 2008, not paginated) indicate a relatively stable breeding population. This region supports approximately 18.2 percent of the global breeding population. Limited, short-term data collected over the last 10 years suggest a 4 percent per year population decline (Sauer *et al.* 2008, p. 1). More data are needed to accurately predict population trends for this region.

The Northeast supports 11 percent of the total global breeding population (Buehler *et al.* 2010, p. 74). In this breeding range, long-term trend information (1966–2007) from BBS data indicates an 8.8 percent per year decline in populations. More recent data from the past 25 years (1980–2007) estimate the same negative trend, at a loss of 6.2 percent per year (Sauer *et al.* 2008, p.1). Loss of early successional habitat and fragmentation of existing habitat contribute to the decline of populations in the Northeast region. Tens of millions of hectares of habitat has been lost as abandoned farmland passes through early successional to late successional stages (Confer *et al.* 2003, p. 142). This advancement in forest succession is taking place in many areas of the Northeast. Forest regeneration without regular natural disturbance, such as fire, results in dense canopy lacking open patches and low shrub layers. Landscapes with these characteristics are structurally different than forests that are regularly undergoing natural disturbance (Buehler *et al.* 2010, p. 118), and these dense forest habitats do not support golden-winged warblers. In the Northeast breeding range specifically, close associations with the blue-winged warbler (*Vermivora cyanoptera*) could also be contributing to the decline of golden-winged warblers. Breeding golden-winged warbler pairs in the Northeast overlap with blue-winged

warbler breeding pairs, and these interactions can lead to golden-winged warblers either being pushed out of territories or to hybridization between the two species. More research is needed to understand if these interspecific interactions may be a threat to the golden-winged warbler (golden-winged and blue-winged warbler hybridization is discussed under factor E (Other natural or manmade factors affecting its continued existence)).

In the southeastern breeding range, populations are too low to estimate decade-long trends; however, long-term trend information (1966–2007) from BBS data indicate a 7.3 percent decline per year (Sauer *et al.* 2008, p. 1). This region only supports 1.4 percent of the global breeding population (Buehler *et al.* 2010, p. 58). Research indicates that the decline of early successional habitat has led to the extirpation of golden-winged warblers in the southern districts of Cherokee National Forest, Tennessee (Klaus *et al.* 2005, p. 232). In areas of hardwood forests previously occupied by breeding pairs, early successional habitat has declined because of the occurrence of natural forest succession without the intervention of forest harvest or natural disturbance (Klaus *et al.* 2005, p. 232). Habitat loss may be the cause of population declines in the southeastern breeding range, because other potential threats such as blue-winged warbler interactions are not as common in this region.

Deforestation events have increased in golden-winged warbler wintering grounds, specifically the montane oak forests in Central and South America (Buehler *et al.* 2007, p. 4). The population dynamics of golden- and blue-winged warblers on wintering grounds lends support to the assertion that interspecific competition does not appear to be occurring in this region. Golden-winged warblers occupy areas that are further south and mostly separated from those of blue-winged warblers, with limited overlap occurring in northern Panama, Costa Rica, Honduras, Nicaragua, and Guatemala (Confer 1992, not paginated; Buehler *et al.* 2010, p. 120). Although it is unclear if the loss of overwintering habitat affects survival, overall golden-winged warbler population declines may be related. Potential threats to the species on wintering grounds need to be examined to determine if changes in wintering habitat are limiting to golden-winged warbler population viability.

The degradation of migratory stopover sites could impact fitness of individuals, or more directly cause mortality

(Buehler *et al.* 2010, p. 120). Other anthropogenic factors could impact individuals along migratory routes or at stopover sites. One report compiled data from 47 studies that monitored bird strikes at communication towers and found that golden-winged warbler mortality was identified at 15 towers, which accounted for 542 individuals (Shire *et al.* 2000, p.8).

BBS data indicate that the golden-winged warblers' breeding range has been shifting for the last 150 years and population numbers have declined (Confer *et al.* 2003, p. 142; Sauer *et al.* 2008, p. 1; Buehler *et al.* 2010, p. 24). Breeding populations in other States may become extirpated (Connecticut, South Carolina, Georgia, Indiana, Illinois, and Rhode Island) (Confer 1992, not paginated; Buehler *et al.* 2010, p. 25) and, already, the golden-winged warbler has not been verified to be breeding in Massachusetts (USGS North American Breeding Bird Atlas Explorer).

Golden-winged warblers require specific habitat characteristics found in early successional landscapes for nesting, and loss of this habitat may continue to reduce populations by limiting fecundity and, therefore, reproductive success, leading to population declines. In general, we expect golden-winged warbler populations to continue to decline, as a response to the reduction in breeding areas due to destruction, modification, and curtailment of early successional habitats. Loss of overwintering habitat and degradation of migratory stopover sites may also contribute to continuing population declines by reducing survival or reducing overall fitness, which can translate to reduced fecundity.

#### Summary of Factor A

In summary, the petition and information in our files identifies the loss of early successional habitat by changes in agricultural practices, forest maturation, land development, wetland destruction and loss, and lack of natural disturbance events as potential threats to the golden-winged warbler. Furthermore, winter habitat is affected by increasing deforestation and migrating individuals are impacted by the increasing number of communication towers. Therefore, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information to indicate that the golden-winged warbler may warrant listing due to the present or threatened destruction, modification, or

curtailment of the species' habitat or range.

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

##### Information Provided in the Petition

The petition did not present any information with respect to Factor B.

##### Evaluation of Information Provided in the Petition and Available in Service Files

The information in our files does not indicate any threat to golden-winged warbler due to overutilization for commercial, recreational, scientific, or educational purposes. Therefore, we find that the petition and information readily available in our files does not provide substantial scientific or commercial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the golden-winged warbler such that the petitioned action may be warranted. However, we will further investigate the potential threat of overutilization for commercial, recreational, scientific, or educational purposes in our status review for this species.

#### *C. Disease or Predation*

##### Information Provided in the Petition

The petition did not present any information with respect to Factor C.

##### Evaluation of Information Provided in the Petition and Available in Service Files

Our files indicate that, although nest predation may be a leading cause of nest loss for golden-winged warblers, there is not enough data indicating that nest predation rates are limiting factors in population declines (Buehler *et al.* 2010, p. 125). Therefore, the information in our files does not indicate any threat to golden-winged warblers due to disease or predation. We find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the golden-winged warbler such that the petitioned action may be warranted. However, we will further investigate the potential threat of disease or predation in our status review for this species.

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

##### Information Provided in the Petition

The petition claims that the only way to ensure protection for the golden-winged warbler is to mandate Federal

protection across the species' entire North and South America range (Petition, pp. 22–23). The petition suggests that existing regulatory mechanisms do not adequately protect the golden-winged warbler. State regulations provide the species protection from only the sale or take of individuals; in addition, State regulations are insignificant because they protect the species at localized areas only, versus the entire range, and do not address habitat protection or conservation (Petition, pp. 16–23).

##### Evaluation of Information Provided in the Petition and Available in Service Files

In Canada, golden-winged warblers are protected under the Migratory Bird Convention Act of 1916 and by the Schedule One of Canada's Species at Risk Act. The Committee of the Status of Endangered Wildlife in Canada (COSEWIC) lists the bird as threatened in Quebec, Ontario, and Manitoba. In the United States, under the Migratory Bird Treaty Act of 1918, as amended, it is unlawful to take, capture, kill, or possess migratory birds, their nests, eggs, and young. These protections extend to the golden-winged warbler. The Service has identified the golden-winged warbler nationally as a Bird of Conservation Concern, which is a designation assigned to the species by the Division of Migratory Bird Management. This designation indicates that the species is one which, without additional conservation actions, is likely to become a candidate for listing under the Act.

The Service also identifies the species as a bird of management concern at the Bird Conservation Region (BCR) scale (developed by the North American Bird Conservation Initiative) in regions 12 (Boreal Hardwood Transition Zones), 13 (Lower Great Lakes/St. Lawrence Plain), 23 (Prairie Hardwood Transitions Zones), and 28 (Appalachian Mountains) (Service 2008, pp. 28, 29, 39, 44). Partners in Flight ranks the golden-winged warbler as a Watch List Species in need of immediate management action (Buehler *et al.* 2010, p. 127 cited from Rich *et al.* 2004). The golden-winged warbler is listed as a Species of Global Concern on the Audubon Society's species watch list (The National Audubon Society, not paginated). The International Union for Conservation of Nature (IUCN) lists golden-winged warblers as Near Threatened on their Global Continental Conservation Status list (BirdLife International 2008). These various classifications, however, are not regulatory in nature.

The golden-winged warbler is State-listed as threatened, endangered, or of special concern in some areas of its range. Regulatory protections for State-listed species vary by individual States, but in general, State-listed species do not receive the same level of protection, especially with regard to habitat loss, afforded to Federally listed species. The Service is leading a cooperative effort with Federal and State agencies, researchers, universities and other nongovernment organizations to determine the extent of threats to the golden-winged warbler population. Developed in 2003, the Golden Winged Warbler Working Group consists of Federal, State, and nonprofit entities. The Working Group prioritizes research and monitoring activities, investigates hybridization range and species genetics, develops habitat classification measures and management priorities, and works with the Natural Resource Conservation Service (NRCS, U.S. Department of Agriculture) to integrate species-specific management into legislation such as the Farm Bill (Buehler *et al.* 2007, p. 1442). The working group conducts a variety of conservation efforts and research throughout the species' range. These collaborative efforts were initiated separately from the petition for listing this species under the Act, and solely because of the interest of the cooperating organizations in improving the status of this species, which is widely recognized as a species of conservation concern.

#### Summary of Factor D

The petition and information in our files suggest that individual State-level protections are not adequately protecting the warbler, as evidenced by declining population trends in all breeding areas and declining habitat trends on the wintering grounds. In addition, the existing regulatory mechanisms do not provide habitat conservation or protection measures, nor do they directly address management incentives for the golden-winged warbler. The formation of the Golden Winged Warbler Working Group is leading the development of conservation initiatives; however, this group does not have authority to implement wide-scale population-level protection. Declining population trends in all breeding areas, as well as declining habitat trends on the wintering grounds of golden-winged warbler, continue, and existing legislation does not protect the golden-winged warbler or its habitat throughout the species' range. Therefore, we find that the information provided in the

petition, as well as other information readily available in our files, presents substantial scientific or commercial information to indicate that the golden-winged warbler may warrant listing due to the inadequacy of existing regulatory mechanisms.

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

##### Interactions With Blue-Winged Warbler Information Provided in the Petition

The petition claims that golden-winged warblers are being displaced by the expansion of blue-winged warblers, resulting in golden-winged warblers being pushed north into Ontario and west into Minnesota (Petition, p. 15; Hamel *et al.* 2005). The expansion of blue-winged warblers into golden-winged warblers' habitat may be correlated with loss of early successional habitat (Petition, p. 15; NatureServe 2010). The range of the golden-winged and blue-winged warblers overlap considerably, and data from one study found that golden-winged warblers nesting near blue-winged warblers laid fewer eggs (Petition, p. 15; Confer *et al.* 2003, p. 141).

##### Evaluation of Information Provided in the Petition and Available in Service Files

Data from the last 150 years document the replacement of golden-winged warblers with blue-winged warblers in areas of the Northeast (Buehler *et al.* 2010, p. 75). The expansion of blue-winged warblers may result in the displacement of golden-winged warblers, a decrease in productivity, or an increase in hybridization events (Confer *et al.* 2003, p. 141; Buehler *et al.* 2010, p. 121).

The golden-winged warbler is closely related to the blue-winged warbler, and interbreeding between the two species occurs, producing fertile young (Confer 1992, not paginated; Buehler *et al.* 2010, p. 5). The two hybrids that can result from the cross-mating of the two species are Brewster's warbler and Lawrence's warbler. The Brewster's warbler is a first-generation hybrid, meaning a cross between golden-winged and blue-winged parents. It holds the dominant traits of both parents (white ventral plumage of the golden-winged warbler but overall coloration of the blue-winged warbler). Brewster's hybrids can back-cross with golden-winged or blue-winged warblers to produce viable offspring (Gough and Sauer 1997, not paginated). The Lawrence's warbler is a cross between a Brewster's warbler and a golden-winged warbler, or a

Brewster's warbler and a blue-winged warbler. The Lawrence's warbler displays the recessive traits (feather coloration of the golden-winged, with yellow plumage of the blue-winged) (Gough and Sauer 1997, not paginated; Buehler *et al.* 2010, p. 5).

The population-level impacts of interactions between golden-winged and blue-winged warblers, and variables contributing to hybridization events, are unclear. In two hybridization zones, nest success rates for the golden-winged warbler were lower in New York at sites that had documentation of species hybridization compared to sites in North Carolina that had no evidence of hybridization (Klaus and Buehler 2001, p. 300). This suggests that in areas where the two species occur together, reproductive efforts of golden-winged warblers may be suppressed due to hybridization. However, in New York there are areas of overlap where the two species are sympatric and co-exist without detected impacts to golden-winged warbler productivity (Confer and Larkin 1998, p. 213).

The degree of hybridization may vary within different geographic locations. For example, interspecific interactions between blue-winged and golden-winged warblers may be more pronounced in the northeastern United States, where populations overlap considerably (Buehler *et al.* 2010, p. 118). In upland areas of New York and Pennsylvania, golden-winged warblers might be limited by habitat loss in addition to blue-winged warbler hybridization, while populations in North Carolina may be limited only by habitat loss (Buehler *et al.* 2007, p. 1440). In some areas of the southeastern United States, the golden-winged warbler population has declined in the absence of blue-winged warblers (Buehler *et al.* 2010, p. 121). Therefore, other factors likely contribute to declines of golden-winged warbler populations in the southeastern breeding range.

More research is needed to fully understand the possible effects of hybridization on the golden-winged warbler. The information in the petition and in Service files provides limited data on golden-winged and blue-winged warbler interactions. We find the information provided in the petition discusses one possible threat, the possible reduction of golden-winged warbler productivity due to blue-winged warblers occupying golden-winged warbler breeding sites. Information in Service files indicates that interspecific interactions, such as species hybridization, may be a threat to the golden-winged warbler, especially in

specific geographic locations. Both the petition and Service files recognize that blue-winged warblers are expanding into golden-winged warblers' range and that this expansion could be correlated with the loss of early successional habitat. Although the effects of interspecific interactions (reduced breeding productivity or hybridization) between the blue-winged and golden-winged warbler remain unclear, we find that the information provided in the petition, as well as other information readily available in our files, presents substantial scientific or commercial information to indicate that the golden-winged warbler may warrant listing due to other natural or manmade factors affecting the species' continued existence due to these factors.

#### Brown-headed Cowbird Nest Parasitism Information Provided in the Petition

The petition states that brown-headed cowbirds (*Molothrus ater*) are parasitizing golden-winged warbler nests, with evidence suggesting that the rate of parasitism reduces fledgling success (Petition, p. 15). The study cited in the petition was conducted in New York and found a 50 percent loss in fledgling success in nests with brown-headed cowbird eggs. However, the small sample size of nests (34 nonparasitized nests and 7 parasitized nests) may lead to statistical error (Confer *et al.* 2003, p. 141). This study found that fledgling rate in nonparasitized nests was high (68 percent), while fledgling rate in parasitized nests was low (32 percent), and that this difference is enough to warrant concern about brown-headed cowbird parasitism limiting golden-winged warbler fledgling success (Confer *et al.* 2003, p. 141). The petition concludes that nest parasitism, coupled with other factors, leads to reduced fledgling success (Petition, p. 15).

#### Evaluation of Information Provided in the Petition and Available in Service Files

The rate of cowbird parasitism varies within the range of golden-winged warblers. Golden-winged warbler nests, especially in agricultural landscapes, experience moderate rates of parasitism (Confer 1992, not paginated). In a sample size of nests found in the eastern United States, central Michigan, central New York, and eastern New Jersey, 11 of 113 nests were parasitized (Coker and Confer 1990, p. 551). In nests found in New York, from 1988 to 1994, 30

percent had at least one cowbird egg or chick, which reduced fledgling success by 17 percent (Confer *et al.* 2003, p. 138). Although brown-headed cowbirds were present, cowbird parasitism was not recorded in nests of golden-winged warblers in areas of Tennessee and North Carolina (Klaus and Buehler 2001, p. 29) and was not apparently impacting golden-winged populations in West Virginia or Ontario (Buehler *et al.* 2010, p. 23). At breeding sites in north central New York, cowbird parasitism was correlated with a reduction in incubated eggs and a reduction in the proportion of incubated eggs that hatched; however, parasitism did not significantly affect nestling success rate (Confer *et al.* 2003, p. 138).

Although there is evidence indicating golden-winged warblers are susceptible to brown-headed cowbird parasitism, it has not yet been determined if brown-headed cowbird parasitism has a substantial impact on golden-winged warbler nest success rates throughout the species' breeding range. Brown-headed cowbird parasitism may be a greater concern for warblers nesting in the northeast United States, compared to warblers in the north central breeding range.

We find that, based on information in the petition, as well as other information readily available in our files, we are unsure of the impact cowbird parasitism may have on the golden-winged warbler. However, we will further investigate the potential impacts of cowbird parasitism in our 12-month status review.

#### Finding

On the basis of our analysis under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the golden-winged warbler throughout its entire range may be warranted. This finding is based on information provided under Factors A (present or threatened destruction, modification, or curtailment of the species' habitat or range), D (the inadequacy of existing regulatory mechanisms), and E (other natural or manmade factors affecting the species' continued existence). Specifically, we find that the following may pose threats to the golden-winged warbler throughout all or a significant portion of its range, such that the petitioned action may be warranted: Habitat modification and loss of early successional habitat (Factor A);

inadequacy of existing regulatory mechanisms (because existing regulations only provide protection from the sale or take of individuals at localized areas, rather than the entire range, and do not address habitat protection or conservation) (Factor D); and interactions with blue-winged warblers (Factor E). We determine that the information provided under Factors B (overutilization for commercial, recreational, scientific or educational purposes) and C (disease or predation) is not substantial.

Because we have found that the petition presents substantial information indicating that listing the golden-winged warbler may be warranted, we are initiating a status review to determine whether listing the golden-winged warbler under the Act 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.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Wisconsin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this notice are the staff members of the Wisconsin Ecological Services 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: May 4, 2011.

#### Rowan W. Gould,

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

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