submit two copies from which you have deleted the private information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter that provides the information specified in our confidential business information regulation, 49 CFR Part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES.**

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2000–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: January 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–1353 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–59–P

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 Mountain Quail as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the mountain quail *(Oreortyx pictus)* under the Endangered Species Act (Act) of 1973, as amended. We find the petition does not present substantial scientific or commercial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on January 10, 2003.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the U. S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 South Vinnell Way, Suite 368, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Bob Ruesink, Supervisor, Snake River Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone: 208/378–5243; facsimile: 208/378–5243; electronic mail: *Bob_Ruesink@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), 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 we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of our receipt of the petition, and the notice of the finding is to be published 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 424J). If we find that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate assessment process.

On March 28, 2000, we received a petition, dated March 15, 2000, from Rob Kavanaugh, Idaho Watersheds Project, Committee for Idaho's High Desert, and the Spokane Audubon Society requesting that the mountain quail *(Oreortyx pictus),* occurring in the northern and western Great Basin, the Interior Columbia Basin, and lands west to the Cascade Crest within Washington and Oregon, be listed as a threatened or endangered distinct population segment (DPS) under the Act (Kavanaugh *et al.* 2000). The petition clearly identified itself as such and contained the names and addresses of the petitioners.

Accompanying the petition was information related to the taxonomy, life history, demographics, translocations, genetics, habitats, threats, and the past and present distribution of mountain quail. The petitioners contend that mountain quail populations occurring in the proposed DPS have sustained a dramatic range contraction caused by extensive loss of riparian habitats, loss of woody vegetation associated with riparian habitats, loss of interfacing upland shrub habitats, loss of plant species diversity, and simplification of habitats. The petitioners claim that 80 to 90 percent of riparian habitats essential to the mountain quail in arid interior lands have been lost, fragmented, or altered. This is in contrast to the more humid coastal forests of Oregon, Washington, and California, where mountain quail populations are more abundant and widespread due to broad areas of continuous habitat. In order to determine if substantial information is available to indicate that the petitioned action may be warranted, we have reviewed the following: the subject petition, literature cited in the petition, information provided by recognized experts or agencies cited in the petition, and information otherwise available in Service files.

This 90-day petition finding is made in accordance with a settlement agreement that requires us to complete a finding by January 15, 2003

(*Committee for Idaho's High Desert et al.* v. *Badgley et al.* (Civ. No. 01–1834–JO)).

The petitioner's request is to list mountain quail populations found throughout historically occupied portions east of the Cascade Crest in Washington and Oregon, historically occupied portions of western Idaho, and historically occupied portions east of the California/Nevada border south to the proximate vicinity of the Palmetto Mountains of southwestern Nevada.

Mountain quail are members of the family of New World quail, Odontophorinae, within the Order Galliformes (Gutierrez *et al.* 1983). They were first described as *Ortyx picta* by D. Douglas in 1829, but the type specimen was lost and the type locality is unknown (Gutierrez and Delehanty 1999).

Five subspecies of mountain quail recognized by the American Ornithological Union have been described using phenotypic appearances and geographical residency (Gutierrez and Delehanty 1999, Vogel and Reese 2002). The five subspecies by geographical areas are: *Oreortyx pictus pictus,* a resident in mountain regions of extreme western Nevada, the western side of the Cascade Range in southern Washington and south to the Sierra Nevada and inner Coast Ranges of California; *O. p. palmeri,* found in the western Coast Range from Washington south to San Luis Obispo County, California; *O. p. eremophilus,* a resident from the southern Sierra Nevada and central and southern Coast Ranges of California south through the Transverse Peninsular, Mexico; *O. p. russelli,* found in the Little San Bernardino Mountains, California; and *O. p. confinis,* a resident on northern Baja California, Mexico, primarily Sierra Juarez and Sierra San Pedro Mountains (Gutierrez and Delehanty 1999).

Although these five subspecies are recognized by the American Ornithological Union, these designations are considered ambiguous. No quantitative estimates of morphological variation have been published, and genetic validity of these subspecies distinctions has not been substantiated through any peer-reviewed published studies. Gutierrez and Delehanty (1999) stated that these designations are based on ''poorly defined comparative and ill-marked plumage characters; therefore, both subspecies and subspecies range are considered dubious.'' Genetic analysis is needed to clearly establish whether there is subspecies designation across the geographic range of mountain quail (Vogel and Reese 2002).

The mountain quail is the largest North American quail north of Mexico (Gutierrez and Delehanty 1999). Males are slightly larger than females (264 to 308 millimeters (10.5 to 11.5 inches) in length and approximately 235 grams (7.6 ounces) in weight), but size is not a reliable indicator of sex. The sexes are monomorphic (similar in appearance). An adult's plumage consists of white side bars and a chestnut throat-patch with black, below a brilliant slate-blue head and neck. The mountain quail also has a long slender straight head plume composed of two feathers.

Mountain quail occur in shrub-dominated communities that vary across habitat types throughout the range of the species (Vogel and Reese 1995, Gutierrez and Delehanty 1999). These habitats include chaparral, mixed desert scrub of the Mojave Desert, and early successional-stage shrub vegetation following fire, logging, and other disturbances. In the drier eastern portions of its range, mountain quail are normally found in steeper slope areas along riparian corridors consisting of mountain and riparian shrub communities. Within all habitat types, mountain quail are notable for their seasonal migrations between breeding and wintering areas (Vogel and Reese 1995, Delehanty 1997). These migrations vary from significant altitudinal migrations of up to 80 kilometers (50 miles) among populations that summer at high elevation (*i.e.*, Sierra Nevada, Cascade Range), to short altitudinal movements in low-elevation coastal areas to escape winter snows.

On the basis of several food habit studies summarized by Vogel and Reese (1995) and Gutierrez and Delehanty (1999), we know that mountain quail eat primarily plant material throughout the year. Invertebrate animal matter makes up approximately 0 to 5 percent of the diet, although young mountain quail up to 8 weeks of age eat up to 20 percent animal matter (ants, beetles, and other invertebrates). Plant material consumed includes perennial seeds, fruits, flowers, and leaves, annual forbs and legumes, and mushrooms. Gutierrez (1980) describes the mountain quail as a ''sequential specialist'' that concentrates on food resources as they become seasonally available and abundant. The species uses diverse food-capturing methods, including digging for subterranean bulbs of some plants (*e.g., Lithophragma spp., Brodiaea* spp.), and climbing shrubs and trees for fruits and seeds.

Similar to other quail species, mountain quail are able to breed at 1 year of age, although reproduction is dependent upon the condition of breeding birds and is strongly influenced by winter/spring rainfall. Pair formation is thought to occur during late winter and early spring with nesting normally occurring from March to July, depending upon local climate, altitude, and latitude (Gutierrez and Delehanty 1999). Both male and female form incubation patches. Mountain quail are unique in that females often lay two clutches averaging 11 to 12 eggs, with male birds incubating the first clutch and females the second. This phenomenon is termed simultaneous multi-clutching (Delehanty 1997). The incubation period averages 24 days (range 23 to 25 days) and estimates of nest success from a limited number of studies averaged over 55 percent (Vogel and Reese 1995). Substantial evidence suggests that males incubate and then brood recently hatched young (Delehanty 1997, Pope 2002). Many mountain quail coveys are assumed to be family groups comprised of adults and juveniles that remain together until the next year's breeding season.

Mountain quail are presumed to be short-lived and subject to high levels of predation similar to other New World quail. On the basis of limited data, sex ratios are assumed to be nearly 1:1 for adults (Vogel and Reese 1995). Because mountain quail inhabit dense habitats and rugged terrain, populations can vary annually. Population surveys are difficult to conduct, and long-term population size and density studies are lacking. Data from the few studies conducted over the years have revealed mountain quail densities ranging from 9 to 54 birds/100 hectares (ha) (9 to 54 birds/247 acres (ac)) at four study sites in northern California, 21 birds/100 ha (21 birds/247 ac) in coastal California, and 30 birds/100 ha (30 birds/247 ac) and 28 birds/100 ha (28 birds/247 ac) on Klamath Mountains and Sierra Nevada sites, respectively (as summarized by Vogel and Reese 1995).

Accipiters, particularly Cooper's hawk (Accipiter cooperi), sharp-shinned hawk *(Accipiter striatus),* and the northern goshawk *(Accipiter gentilis),* are major predators of adult and young mountain quail (Gutierrez and Delehanty 1999, Vogel and Reese 2002). Other known predators include great horned owl *(Bubo virginianus),* coyote *(Canis latrans),* bobcat *(Lynx rufus),* gray fox *(Urocyon cinereoargenteus),* and rattlesnake (*Crotalus* spp.). Significant predation occurs on chicks during several days following hatching and when coveys are limited to habitats near water (Vogel and Reese 1995).

Rangewide, mountain quail are distributed in five western states,

including California, Washington, Oregon, Nevada, and Idaho, as well as Baja Norte, Mexico (Gutierrez and Delehanty 1999, Crawford 2000). They are also found in small disjunct populations as introduced birds on Vancouver Island, British Columbia, and on several islands within the San Juan Islands of Washington (Vogel and Reese 1995, Gutierrez and Delehanty 1999). Vogel and Reese (1998) quote R.D. Mallette (date unknown) that in the early 1970s, mountain quail were ''widely distributed over approximately 45 percent of the state [California] in suitable habitat in the mountainous areas from Mexico to the Oregon borders.'' Within the United States, California contains the largest populations and the widest distribution of this species. Mountain quail are legally hunted in many counties of California (California Department of Fish and Game 2002).

In Nevada, the historic range of mountain quail in the Great Basin is poorly understood, with very little information available on their native distribution (Vogel and Reese 1995, Gutierrez and Delehanty 1999, Crawford 2000). Several authors, quoted by Vogel and Reese (1995), reported that mountain quail were common on both slopes of the Sierra Nevada mountains (including Nevada) in the 1920s and ''a sparse resident in the mountainous areas of western Nevada.'' Guitierrez and Delehanty (1999) report that mountain quail occupy spur ranges of the eastern Sierra Nevada Range in western Nevada and are found in the higher foothill areas to the Sierra Crest where suitable habitat occurs. They also occur as small, scattered populations in the ''Toiyobe, Desatoya, Jackson, and Santa Rosa Ranges of northern Nevada.'' In addition, Vogel and Reese (2002) present anecdotal evidence of mountain quail releases in the State, beginning in the 1870s and continuing into the 1930s or early 1940s.

Since the 1940s, hunter surveys and harvest reports indicate that populations have undergone local extinctions throughout their historic range in Nevada (Brennan 1994). From the 1950s to the 1980s, extensive range fires, invasive plants, reservoir construction, and livestock overgrazing have impacted or eliminated large areas of mountain quail habitat and as a consequence, mountain quail numbers and distribution have declined in many areas of Nevada. However, based on recent Nevada Division of Wildlife (NDOW) surveys, mountain quail have remained stable in the eastern Sierra Nevada mountains of Nevada (Vogel and Reese 2002). Since 1986, NDOW has released mountain quail into areas that they believe historically supported mountain quail, currently contain mountain quail, and/or sustain suitable habitat. From 1986 to 2002, a total of 1,293 birds have been translocated to Nye, Churchill, Pershing, Washoe, Elko, and Lander counties in Nevada (Vogel and Reese 2002). All of these mountain quail were captured from outside the petitioned DPS at the China Lakes Naval Air Weapons Station in the Mojave Desert of California (Vogel and Reese 2002).

In Idaho, general information regarding the native distribution of mountain quail is ambiguous, although some evidence suggests mountain quail were present prior to European settlement. Three studies cited in Vogel and Reese (2002) describe possible archeological evidence of mountain quail in Idaho prior to the 1800s. Gruhn (1961) documented one specimen of mountain quail from bones in Wilson Butte Cave, Jerome County, south-central Idaho; Murphey (1991) reported a possible mountain quail pictograph found at the Jarbidge rock site, Jerome County, southwestern Idaho; and Rudolph (1995) identified mountain quail bones from the Hetrick site in the Weiser River Valley, Washington County. The pictograph is an abstract rendition that portrays a gallinaceous-like bird with prominent barring on the side of the body, heavy bill and feet, and top-knot, which is short and curved over the top of the head as in California quail (*Callipepla californica*) (Crawford 2000). The mountain quail bone material was identified using comparative techniques of bones known to be mountain quail. The possible mountain quail bone material collected from these two archaeological sites may be positively verified by protein synthesis analysis and dated using radiometric techniques (Miller, Faunal Analysis and CRM Services, pers. comm. 2002). Crawford (2000) suggests that these birds may represent remnant populations from Pleistocene glaciation.

Today, mountain quail in Idaho occur at the extreme northeastern edge of their range-wide distribution. Mountain quail were translocated successfully in Idaho beginning in the late 1800s (Crawford 2000, Vogel and Reese 2002). For example, as summarized by Crawford (2000), mountain quail were translocated to Kootenai County using birds captured from western Washington in 1897. Other mountain quail were translocated to Ada, Owyhee, and Lincoln counties in the 1920s, although the origin of these birds is generally unknown. Mountain quail were present in the 1930s throughout the central and southwestern areas of Idaho (Vogel and Reese 1998). In the 1950s, they were still found along riparian areas in central and southwestern Idaho, but overall numbers had declined since the 1930s, particularly in Nez Perce and Latah counties. Various causes of decline have been identified. Vogel and Reese (1998) cited a paper by T.B. Murray (1938) that suggested that drought and habitat alterations reduced mountain quail numbers by more than 50 percent in western Idaho, and that suitable food and cover were also reduced by more than 50 percent from the turn of the century until the 1930s.

During the 1980s, numbers declined steadily, and the only remaining populations that exist now are in the lower Salmon and Snake River drainages and the foothill and mountain areas of the Boise River drainage (Robertson 1989). Although mountain quail have been infrequently sighted in these areas since the 1980s, recent mating call surveys in several areas of the Boise River drainage found no evidence of their presence (Kniesel 2002). The hunting season for mountain quail in Idaho was closed in 1984.

The first recorded information on mountain quail in Oregon was of a specimen collected in 1806 by Reubin Field, a member of the Lewis and Clark expedition (Jackle *et al.* 2002, Pope 2002). During the same expedition, two other mountain quail were collected near Rooster Rock State Park, Multnomah County, along the Columbia River. Mountain quail translocations began as early as 1860 in the Pacific Northwest, with one reference that all mountain quail in the Willamette Valley of Oregon resulted from introductions (Crawford 2000). These translocations, combined with natural and subsequent movement patterns, may have accounted for more recent (post-1900) distributions of mountain quail in many parts of eastern Oregon and into western Idaho (Jackle *et al.* 2002). Vogel and Reese (1995) reported that historically mountain quail occupied more extensive areas in Oregon than they did in the early 1900s, primarily because of the ''open burns and logged-over areas that have replaced enormous areas of the original dense forest of the Pacific Northwest.'' Recently logged areas in the Cascades, Coast Range, and Klamath mountains provide excellent shrub habitat for mountain quail and may have allowed some populations on the west slope of the Cascades to expand their range (Vogel and Reese 1995). Gabrielson and Jewett (1940), as referenced by Vogel and Reese (1995), reported mountain quail in suitable

habitat throughout the Coast and Cascade Ranges and the Rogue, Umpqua, and Willamette valleys of western Oregon. In contrast, populations in eastern Oregon occupy riparian shrub habitats that have declined from historic levels. Current data indicate that mountain quail are found in low densities in Union, Wallowa, Wasco, and Wheeler counties, and are moderately abundant in Crook, Deschutes, Grant, Jefferson, and Klamath Counties (Vogel and Reese 2002).

Crawford (2000) concludes that the distribution and abundance of mountain quail remained relatively constant during the mid-twentieth century throughout Oregon. But within the past 25 years, populations outside of the early historic distribution have suffered substantial declines, whereas populations in the Coast and Cascade Ranges of Oregon continue to remain abundant. These downward trends in populations have prompted Pope (2002) and Jackle *et al.* (2002) to undertake comparative studies by of populations found west of the Cascade Crest (which are stable or abundant) with populations found in central and eastern Oregon. Both studies have demonstrated that an effective restoration effort for mountain quail is feasible using wild birds trapped in western Oregon and released in central and eastern Oregon. However, translocations programs will be more effective when evaluated through post-release monitoring. Oregon still maintains a hunting season in western and northeastern Oregon for mountain quail.

In Washington, following translocations of mountain quail from the 1860s to the early 1900s, historical accounts reported mountain quail west of the Cascade Mountains and in the Blue Mountains in southeastern Washington (Crawford 2000). Mountain quail are currently found throughout portions of western Washington with the strongest population found on the Olympic Peninsula (Washington Department of Wildlife (WDW) 1993; Ware, Washington Department of Fish and Wildlife, pers. comm. 2002). They have been recorded in the past in Mason, Kitsap, Pierce, King, Thurston, Clark, Skamania, Garfield, Columbia, Asotin, and Walla Walla Counties, although the precise delineation of the species's distribution is poorly understood (WDW 1993) and they may be extirpated from Asotin, Garfield, and Columbia Counties (Ware pers. comm. 2002). As noted in Crawford (2000), translocations also took place on Whidbey Island, San Juan Island, and elsewhere in Washington.

Little evidence suggests that mountain quail were native to Washington (WDW 1993, Vogel and Reese 1995). Vogel and Reese (1995), in their research on the topic of native status, found that many authors believed that the Columbia River was the northern limit of the species' range, and that mountain quail were introduced to Washington. Birds from multiple sources were translocated into Washington resulting in mixing of various subspecies. Current distributions in western Washington have remained stable, but populations in eastern Washington have been in a severe decline, as reported by Vogel and Reese (2002). Washington maintains a hunting season for mountain quail in the western part of the State only.

The petitioners requested that we list those populations of mountain quail east of the Cascade Crest and Sierra Mountain Ranges within Washington, Oregon, Idaho, and Nevada as a threatened or endangered DPS of the species under the Act. Under our DPS policy (61 FR 4722; February 7, 1996), we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) A population segment's discreteness from the remainder of the taxon; (2) the population segment's significance to the taxon to which it belongs; and (3) ''[t]he population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?).'' If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated on the basis of the five listing factors established by the Act to determine if listing it as either threatened or endangered may be warranted.

A population segment of a vertebrate species may be considered discrete if it satisfies either of the following conditions. The first condition is whether the species' population is markedly separated, or isolated, from other populations of the same taxon ''as a consequence of physical, physiological, ecological, or behavioral factors.'' When these four factors are evaluated, ''[q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation.'' The second condition, which does not apply here, is whether the population segment be ''delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.''

In determining the discreteness, or isolation, of mountain quail populations found within the proposed DPS, one of the factors we consider is physical separation from the rest of the taxon. The petitioners did not provide substantial information, either through text description, map attachments, or references in the petition, to demonstrate that the populations of mountain quail along the western border of the proposed DPS are physically isolated from nearby eastern populations in Oregon and Nevada.

Although mountain quail are associated with separate locations within the proposed DPS on a landscape consisting of various mountain ranges and intervening valleys, they are able to move between these areas (Gutierrez and Delehanty 1999; Pope, Oregon State University, pers. comm. 2002). No physical barrier appears to exist that would preclude the movement of birds across this landscape and hypothetical boundary separating the petitioned and non-petitioned areas and prevent mountain quail populations from intermixing. For example, the current distribution of mountain quail, as depicted in the petition, shows contiguous distribution between California and Nevada, and also between Oregon and California. Exceptions to this continuity exist: some populations in the extreme eastern range of mountain quail are presently disjunct from natural exchange with mountain quail outside the petitioned area. For example, current distributions of mountain quail are disjunct in some areas of Idaho and northern Nevada. However, when we consider the proposed DPS boundaries as delineated by the petitioners, there is a blend of both disjunct populations and continuous population areas that do not meet the discreteness standard under our DPS policy.

Further complicating the question of discreteness is the documented translocation of mountain quail from areas outside and within the proposed DPS geographical area during the past 130 years (Vogel and Reese 1995, 1998; Jobanek 1997; Crawford 2000; Jackle *et al.* 2002). Crawford (2000) in his review of the subject found documented releases of mountain quail in western Idaho and throughout Oregon and Washington. Vogel and Reese (2002) in their review of Nevada found anecdotal evidence that ''sportsmen, ranchers, and miners released mountain quail across the state beginning in the 1870s and continuing to the 1930s or early 40s.'' In their review of the distribution of 18

species of gallinaceous birds of North America, Aldrich and Duvall (1955) noted that mountain quail were native to the Pacific coastal region of the extreme western United States. They state that mountain quail were established after introductions into the mountains of eastern Washington, western Idaho, eastern Oregon, and central Nevada.

During the past 20 years, information addressing translocations of mountain quail by State agencies has been better documented than it had been in prior years. For example, a total of 1,293 mountain quail have been released in Nevada counties, including Nye, Churchhill, Pershing, Washoe, Elko, and Lander, since 1986 (Vogel and Reese 2002). All birds were captured at the China Lakes Naval Weapons Station, Mojave Desert, California, an area that is outside and west of the proposed DPS geographical area. In Oregon, 75 mountain quail were captured in the western Cascade Mountain Range of southwestern Oregon and translocated into northeastern Oregon between 1997 and 1999, partly to assess breeding range movements of both resident and translocated mountain quail (Pope 2002). Additionally, a total of 209 mountain quail were translocated to three separate locations in central Oregon in 2001 using birds that were captured in western Oregon (Jackle *et al.* 2002) as part of a restoration plan.

The DPS policy states that genetic information may be used to provide evidence of separation. The numerous historic and recent translocation efforts as discussed above may have lead to genetic homogenization of mountain quail. Assessing evidence of genetic separation among either historic or current populations of mountain quail is likely to be complicated by past translocation efforts. No comprehensive genetic evaluation for discreteness of mountain quail rangewide or within in the proposed DPS is currently available. Also, the petitioners submit that the genetic differentiation of mountain quail subspecies or populations has not been adequately tested, and refer to unpublished preliminary data that indicate no genetic differences exist among mountain quail in western North America (Kavanaugh *et al.* 2000).

Additionally, in evaluating information regarding translocations, it is difficult to discern which are introductions, reintroductions, or supplementations of existing mountain quail populations. ''Introduction'' has been used to define the release of a species in a new range, ''reintroduction'' refers to release of a species into historical range that is no longer inhabited by that species, and ''supplementation'' is release of the species into currently inhabited range (Vogel and Reese 2002). Given the history of translocations of mountain quail, it is currently difficult to clearly identify the historical native range of the species. The petitioners make no attempt to distinguish between the species' potential native or introduced ranges.

Two other factors to consider with regard to discreteness or isolation of a population are the behavioral and morphological aspects. Delehanty (1997) initiated a study to determine behavioral differences and similarities in male and female mountain quail. He also examined and was successful at developing a method to determine genetic detectability of sex using microsatellite fragments from undegraded DNA. He concluded that many behavioral displays are universal among both sexes of mountain quail, while some are particular only to males. These behaviors were observed by Delehanty (1997) in captive-reared birds and in wild populations at sites in the eastern Sierra Nevada of east central California, western Nevada, and in the Mojave Desert of southern California. He further confirmed the monomorphic plumage and size characteristics of mountain quail from known geographical places. The study served to demonstrate that behavioral and morphological aspects are not limiting factors in reproduction when translocation is considered. These conclusions were further confirmed by Pope and Crawford (2001) in controlled studies of wild populations of mountain quail when 75 birds were translocated from the Cascades of southwestern Oregon to Hells Canyon National Recreation Area in northeastern Oregon. The petitioners did not provide evidence to document whether mountain quail within the proposed DPS exhibit any unique behavioral or morphological traits. No information is presented in the petition, nor is any available in Service files, to indicate that any physical, genetic, behavioral, morphological, physiological, or ecological differences between mountain quail that occur in the proposed DPS and those found outside of it.

In summary, to make a DPS determination, we examined the physical, physiological, ecological, and behavioral factors and considered the complicating nature of past translocation efforts. Since there are no international government boundaries of significance, this condition for a finding of discreteness was not considered in reaching this determination. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the DPS, as proposed for mountain quail by the petitioners, is discrete from the remainder of the taxon. Accordingly, we are unable to define a listable entity of mountain quail within those areas of Washington, Oregon, Idaho, and Nevada as described in the petition. Therefore, we did not address the second element for determining a DPS, which is the potential significance of discrete populations of mountain quail to the remainder of the taxon. Finally, since no DPS of mountain quail can be defined at this time, we did not evaluate its status as endangered or threatened on the basis of either the Act's definitions of those terms or the factors in section 4(a) of the Act.

Petition Finding

We have reviewed the petition, obtainable literature cited in the petition, other pertinent literature, and information available in Service files, and we have consulted with State and Federal agency biologists. After our review, we find the petition does not present substantial information to indicate that the petitioned action is warranted. This finding is based on the following: (a) Insufficient information exists to enable us to determine whether the mountain quail in the proposed DPS are separated from other mountain quail throughout the range of the taxon; (b) complicating information about past translocations of mountain quail currently precludes clearly determining the native historical distribution of the species; and (c) evidence is insufficient to demonstrate that genetic, morphological, ecological, or behavioral differences exist among extant mountain quail populations.

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is Rich Howard, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office (see **ADDRESSES**).

Authority:

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

Dated: January 10, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–1283 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P