

STAFF SUMMARY FOR FEBRUARY 8-9, 2017

12. TRICOLORED BLACKBIRD**Today's Item**Information Action

Adopt emergency regulation regarding incidental take of tricolored blackbird, pursuant to Fish and Game Code sections 240 and 2084.

Summary of Previous/Future Actions

- FGC determined listing may be warranted Dec 9-10, 2015, San Diego
- Approved DFW request for 6 month extension Dec 7-8, 2016; San Diego
- **Today's adoption hearing Feb 8-9, 2017; Rohnert Park**

Background

On Aug 19, 2015, FGC received a petition from the Center for Biological Diversity to list tricolored blackbird as an endangered species under the California Endangered Species Act (CESA). FGC determined listing may be warranted at its Dec 9, 2015 meeting. On Dec 8, 2016, FGC granted a six month extension of time for DFW to complete its status review report and peer review process. FGC is expected to receive DFW's status review at its Aug 16-17, 2017, meeting and, at its Oct 11-12, 2017 meeting, consider the petition, DFW's status review report and other information submitted to determine if listing is warranted.

Under Fish and Game Code sections 2074.2 and 2085, tricolored blackbird became a candidate species until the petition is finally acted upon; the prohibition of take applies while the species is a candidate.

Tricolored blackbird typically starts nesting in the southern San Joaquin Valley in late Feb to early Mar. Tricolored blackbird has adapted its nesting to utilize both native and non-native habitat, including farm fields associated with working dairy farms. The nesting period typically coincides with planned harvest. To help address overlap of the nesting period and harvest of farm fields, the Natural Resource Conservation Service and DFW have worked with farmers to create harvest management guidelines designed to minimize take of tricolored blackbird during the nesting period.

At the Dec 2015 FGC meeting, Dairy Cares submitted a petition for an emergency regulation to provide incidental take authority to farmers who agree to protect colonies of tricolored blackbirds nesting in their grain fields during the candidacy period. The proposed emergency regulation also provided incidental take coverage to individuals creating or improving habitat for the species as well as individuals approved by DFW to monitor nesting colonies. The emergency regulation was adopted as Section 749.8, Title 14, CCR, went into effect on March 7, 2016, and expired on September 7, 2016.

On Oct 5, 2016, Noelle Cremers, California Farm Bureau Federation, submitted a petition for regulation change identical to Section 749.8. At FGC's Dec 2016 meeting, it granted the petition, directed staff to schedule for Feb 2017 an emergency rulemaking action, and authorized staff to begin a regular rulemaking to make the emergency regulations permanent. This regulation is necessary to provide incidental take to farmers who agree to delay harvest to protect tricolored blackbird colonies, but still have a risk of incidental take from their ongoing

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farming activities. A regulation adopted pursuant to Fish and Game Code Section 2084 is necessary to protect farmers who are providing habitat and agreeing to protect nesting tricolored blackbirds.

Significant Public Comments

1. Support for the emergency regulation, encouraging expediting the administrative process for this species given the potential for changes in federal oversight of endangered and threatened species and stating that FGC and DFW must maintain sustainable local management opportunities since potential major negative impacts of federal administrative impositions are possible (Exhibit 12.3).
2. California Farm Bureau Federation (CFBF) requests adoption as the regulation protects dairy farmers who provide habitat for tricolored blackbirds from liability under CESA., and having a Section 2084 regulation in place for the 2017 nesting season will ensure that farmers who agree to protect colonies of tricolored blackbirds nesting in their grain fields are not put at risk of violating CESA. See Exhibit 12.4.
3. Audubon California commented that in the 2016 spring tricolored blackbird breeding season, 100 percent of known farmland colonies were protected for the first time because of the combination of CESA prohibitions on take, the Section 2084 regulation to give farmers a pathway to compliance with CESA, and financial incentives and technical assistance from the Natural Resources Conservation Service for farmers to delay harvest. Audubon California requests that DFW's successful 2016 policies and collaborative programs be extended through 2017. See Exhibit 12.5.
4. Western United Dairymen supports the proposed emergency regulation (Exhibit 12.6).

Recommendation

FGC staff: Adopt the proposed emergency regulation submitted by California Farm Bureau Federation.

Exhibits

1. [Petition for emergency regulation from Noelle Cremers, received Oct 5, 2016](#)
2. [Attachment A – proposed emergency regulation from Noelle Cremers, received Oct 5, 2016](#)
3. [Email from Tom O'Key, received Jan 23, 2017](#)
4. [Email from Noelle Cremers, received Jan 23, 2017](#)
5. [Email from Michael Lynes, received Jan 24, 2017](#)
6. [Email from Western United Dairymen, received Jan 26, 2017](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission finds the following:

A failure to adequately protect the tricolored blackbird would cause harm to the general welfare of the citizens of the State of California.

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Action is necessary to ensure the protection and immediate conservation of the tricolored blackbird during the upcoming harvest of grain fields planted for silage.

This finding is based on the record before the Commission, generally, and specifically the past activity under the Natural Resources Conservation Service program and the timing of the candidacy of the tricolored blackbird in relation to the upcoming harvest.

Moved by _____ and seconded by _____ that the Commission adopts the emergency language submitted to the Commission on October 6, 2016 by the California Farm Bureau Federation as an emergency regulation to be codified in Section 749.9.



2016-024
Tracking Number: (Click here to enter text.)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. **Person or organization requesting the change (Required)**
Name of primary contact person: Noelle G. Cremers, California Farm Bureau Federation
Address: 1127 11th Street, Suite 626, Sacramento, CA 95814
Telephone number: (916) 446-4647
Email address: ncremers@cfbf.com
2. **Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:** Government Code § 11340.6 (right to petition for regulation) and Fish and Game Code § 2084 (authority of Commission to enact regulation).
3. **Overview (Required) - Summarize the proposed changes to regulations:** The regulation would authorize the take of Tricolored Blackbirds in the following limited circumstances: 1) Actions to protect, restore, conserve or enhance habitat; 2) Actions to monitor Tricolored Blackbird colonies; and 3) Harvest of grain crops after delay to protect colonies. This proposed regulation is identical to the emergency regulation adopted by the Commission in February 2016 (Title 14, § 749.8).
4. **Rationale (Required) - Describe the problem and the reason for the proposed change:**
Historically Tricolored Blackbirds nested in native flora in or adjacent to wetlands in the Central Valley and elsewhere across the State of California. Concomitant with the loss of wetlands during the 19th and 20th centuries, Tricolored Blackbirds have adapted to nest in varied substrates. Grain fields planted for winter silage on dairy farms provide attractive nesting sites for the species.
Unfortunately, nesting occurs at the same time the crop is scheduled for harvest. For about the past decade, a patchwork of funding sources have been used to pay farmers for the lost crop when they agree to delay harvest until after nesting is complete. In some cases, particularly where funding was unavailable or farmers were not aware of the potential for funding to offset losses, harvest has occurred before the young fledged. Recently, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) committed to provide multiple years of funding to support a program to delay harvest of fields in which Tricolored Blackbird colonies have nested. At the same time, California Farm Bureau Federation and Dairy Cares in coordination with additional farming interests has initiated



an active campaign to educate dairy farmers about the Tricolored Blackbird and the NRCS-funded program. After adoption of Title 14 § 749.8 in 2016, through a coordinated effort including NRCS, farming interests, the Department, and Audubon, dairy farmers enrolled in the NRCS program delayed harvest on fields where an estimated 57,000 Tricolored Blackbirds nested. During the 2016 nesting season through this concerted effort 100 percent of the known Tricolored Blackbird colonies on dairy farms were protected under this program. Having the 2084 regulation in place helped alleviate concerns for farmers participating in the harvest delay program that they could still be at risk for incidental take.

NRCS funds compensate participating farmers for a portion of the value of the crop lost by the harvest delay. Under the NRCS program, a colony is identified and the area inhabited by the colony is delineated by a biologist. Once the colony is delineated, a buffer is established and the farmer is allowed to harvest only those fields outside the colony site and buffer area. Delaying harvest protects the vast majority of the colony until the birds fledge, but it does not guarantee that no take will occur. Having the emergency regulation (Title 14 § 749.8) in place for the 2016 nesting season provided tremendous value to ensure farmers who protected colonies on their farms weren't penalized in the event a small number of birds are taken incidental to their beneficial conservation actions in delaying harvest and otherwise lawful agricultural activities. By all accounts the 2016 nesting season was a success and the emergency regulation worked well.

It is likely that the timing of the Commission's consideration of whether or not listing is warranted under CESA won't occur until the middle of nesting season at the earliest. If a decision is delayed, Tricolored Blackbirds will be candidates for the entire nesting season. Given this timing, it is important to have a regulation in place that again allows for incidental take in the limited circumstances adopted previously.

SECTION II: Optional Information

5. **Date of Petition: October 3, 2016**
6. **Category of Proposed Change**
 - Sport Fishing
 - Commercial Fishing
 - Hunting
 - Other, please specify: Incidental Take Regulation for Tricolored Blackbirds
7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*
 - Amend Title 14 Section(s):
 - Add New Title 14 Section(s): 749.9
 - Repeal Title 14 Section(s): Click here to enter text.
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** Click here to enter text.
Or Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency: February 15, 2017. Tricolored Blackbirds typically start nesting in the southern San



Joaquin Valley in late February to early March. Tricolored Blackbirds have adapted their nesting to utilize both native and non-native habitat, including farm fields typically associated with working dairy farms. The nesting period typically coincides with planned harvest and this regulation is needed to provide incidental take to farmers who agree to delay harvest to protect Tricolored Blackbird colonies, but still have a risk of incidental take from their ongoing farming activities. A regulation adopted pursuant to Fish and Game Code § 2084 is necessary to protect farmers who are providing habitat and agreeing to protect nesting Tricolored Blackbirds.

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: See Attachment A – Proposed 2084 Regulation for Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period.

11. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: If enacted by the Commission, the proposed 2084 regulation would have positive economic impacts and contribute to the conservation of the Tricolored Blackbird. The regulation would have positive economic impacts because it would incentivize farmers to participate in the NRCS program described above or a similar program administered by the Department. In 2016, there were nearly 400 acres of dairy silage fields that provided nesting habitat for Tricolored Blackbirds. NRCS was able to provide payments to farmers who agreed to delay the harvest of their fields until after the nesting season ended. Without these payments, losses (due to the decline in value of the crop) associated with delayed harvest would have been approximately \$250,000.

Absent the 2084 regulation, enrollment in the NRCS program may decline. Furthermore, farmers may harvest their crop early before onset of the nesting season, which would decrease the value of the crop and also decrease available nesting habitat; farmers may elect to plant crops that do not provide nesting habitat for the Tricolored Blackbird thereby decreasing available nesting habitat; or farmers may risk harvesting their crop even if Tricolored Blackbirds are present. The first of these outcomes has adverse economic impacts.

Adopting a regulation providing incidental take coverage for farmers participating in harvest delay programs will incentivize participation in these programs thereby reducing economic impacts as described above. As important if not more so, adopting a regulation will contribute to the conservation of the Tricolored Blackbird during the period the species is a candidate for listing.

12. Forms: If applicable, list any forms to be created, amended or repealed:

[Click here to enter text.](#)

SECTION 3: FGC Staff Only

Date received: [Click here to enter text.](#)

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action:

10/11/2016

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Meeting date for FGC consideration: December 9-10, 2016

FGC action:

- Denied by FGC
- Denied - same as petition _____
Tracking Number
- Granted for consideration of regulation change

Attachment A – Proposed Section § 749.8. Incidental Take of Tricolored Blackbird (*Agelaius tricolor*) During Candidacy Period.

This regulation authorizes take as defined by Fish and Game Code Section 86, of tricolored blackbird in the limited circumstances described below, subject to certain terms and conditions, during the species' candidacy under the California Endangered Species Act (Fish and Game Code, Section 2050 et seq.).

(a) Take Authorization.

The Commission authorizes the take of tricolored blackbird during the candidacy period subject to the terms and conditions herein.

(1) Actions to Protect, Restore, Conserve, or Enhance Habitat.

Take of tricolored blackbird incidental to otherwise lawful activity, where the purpose of the activity is to protect, restore, conserve, or enhance habitat for a species designated as an endangered, threatened, or candidate species under state or federal law.

(2) Actions to Monitor Tricolored Blackbird Breeding Colonies.

Take of tricolored blackbird incidental to efforts to monitor active tricolored blackbird breeding colonies, including entering colonies to perform walking transects. Only trained observers who are approved by the Department will be authorized to engage in such monitoring.

(3) Harvest of Grain Crops Under Harvest Management Program to Protect Colonies.

Take of tricolored blackbird incidental to harvest of grain fields and related agricultural activities is authorized where an individual participates in a harvest management program administered by the Natural Resources Conservation Service (NRCS), or harvest management program administered or approved by the Department; the harvest management program shall include the establishment of a buffer zone and harvest date as described under Topics 1 and 2 in the document "California Department of Fish and Wildlife (Department) Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (adopted on March 19, 2015 and available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>). The individual seeking authorization for take incidental to harvest of grain fields and related agricultural activities shall receive written confirmation of participation in the harvest management program and must obtain specific authorization for the timing of harvest and related agricultural activities from NRCS, the Department, or a biologist authorized by the Department or NRCS before proceeding with any harvest activities that take tricolored blackbirds.

(b) Reporting.

Any person, individual, organization, or public agency, or their agents, for which incidental take of tricolored blackbirds is authorized pursuant to subsections (a)(1) or (a)(3), shall report observations and detections of tricolored blackbird colonies, including take, to the Department's Wildlife Branch by August 1 during the candidacy period.

Information reported to the Department pursuant to this subsection shall include: a contact name; the date and location (GPS coordinate preferred) of the colony or take; colony size; colony outcome; and details regarding the tricolored blackbirds observed. Colony outcome means whether the colony was abandoned or whether young in a colony fledged. Any person, individual, organization, or public agency, or their agents seeking incidental take authorization pursuant to subsection (a)(3), shall report their participation in an approved harvest management program to the Department prior to grain harvest.

(c) Additions, Modifications or Revocation.

Incidental take of tricolored blackbird from activities not addressed in this section may be authorized during the candidacy period by the Commission pursuant to Fish and Game Code Section 2084, or by the Department on a case-by-case basis pursuant to Fish and Game Code Section 2081, or other authority provided by law.

Note: Authority cited: Sections 200, 202, 240 and 2084, Fish and Game Code.

Reference: Sections 200, 202, 240, 2080, 2084 and 2085, Fish and Game Code.

California Fish and Game Commission
PO Box 944209
Sacramento, CA 94344-2090
fgc@fgc.ca.gov

Tom O'Key
Joshua Tree CA
January 23, 2017

Dear Commissioners,

Responding to the opportunity to include my opinions on wildlife issues coming before the Commissioners as shown on the agenda for the meeting of February 8 and 9, 2017, I thank the Commission and wish to submit the following requests into the record for consideration.

For a non-agenda comment I wish to restate the request to make unlawful the unlimited take in killing wildlife and particularly contest killing of coyotes. I strongly oppose these activities and believe that current insights in best available science shows the detrimental nature of these misguided allowed activities. It is time to end recreational killing with family fun as the attraction.

I ask that you please accept my input on a number of items I've found important to me from the list of items one through thirty seven as stated on the agenda.
My attention is on items 5, 6, 7, 8, 9, 12, 13 and 20

On Items for consent I submit,

*5. Adopt proposed changes to regulations to add Livermore tarplant (*Deinandra bacigalupii*) to the list of plants of California declared to be endangered (Section 670.2, Title 14, CCR)*

I strongly support this declaration.

Preventing the extinction of this plant is entirely dependent on the stewardship that only the Commission and Department can and must provide.

*6. Receive Department's request for a six month extension of time to submit its status review report on the petition to list Humboldt marten (*Martes caurina humboldtensis*) as an endangered species (Pursuant to Section 2074.6, Fish and Game Code)*

I strongly support immediate protection for the Humboldt marten and ask for immediate action in protecting this species and all other threatened species under California wildlife management.

I ask that all recreational and commercial trapping of predators be made unlawful as protection of the Humboldt marten serves as but one of countless examples of the benefits resulting from banning all predator trapping. Item 6 is well supported with a trapping ban that relieves added unnecessary stress related to negative impacts of trapping put upon the Humboldt marten and many other threatened predator species.

Many fair arguments can be made supporting a ban on all commercial and recreational trapping and an important example is the economic consideration placed on taxpayers who currently carry the burden of responsibility for paying costs of administrating and managing the practice of trapping.

Time is past due for the enforcement of existing laws as contained in California SB1148 as well as in section 4006c of the California Dept. F&G Code. Full financial costs of allowing trapping to continue must be imposed upon the consumptive users of the current allowance or the allowance must come to an end.

7. Receive petition from the Center for Biological Diversity to list foothill yellowlegged frog (*Rana boylei*) as endangered under the California Endangered Species Act (CESA) (Pursuant to Section 2073.3, Fish and Game Code, and Section 670.1(c), Title 14, CCR)

8. Ratify findings on the petition to list northern spotted owl (*Strix occidentalis caurina*) as a threatened or endangered species under CESA (Pursuant to Section 2075.5, Fish and Game Code)

9. Ratify findings on the petition to list flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened or endangered species under CESA (Pursuant to Section 2075.5, Fish and Game Code)

12. Adopt emergency regulation concerning special order relating to incidental take of tricolored blackbird (*Agelaius tricolor*) during candidacy period as an endangered species (Pursuant to Section 2084, Fish and Game Code)

13. Consider the petition, Department's evaluation report, and comments received to determine whether listing *Lupinus lupine* (*Lupinus constancei*) as a threatened or endangered species may be warranted (Pursuant to Section 2074.2, Fish and Game Code) Note: If the Commission determines listing may be warranted, a one-year status review will commence before the final decision on listing is made.

I encourage expediency in administering agenda items 7, 8, 9, 12, and 13, and of all issues of similar concern.

Given the potential for changes in Federal oversight of endangered and threatened species, new federal laws may soon jeopardize fair protections. The California Fish and Game Commission and the California Department of Wildlife Services must maintain sustainable local management opportunities. Since potential major negative impacts of Federal administrative impositions are possible, I believe time is of the essence in maintaining local control of crucial issues.

20. Adopt proposed changes to regulations concerning the use of dogs for the pursuit and take of mammals (Section 265, Title 14, CCR)

I oppose all laws allowing the use of dogs to pursue and take mammals.

Thank you for your consideration,

Sincerely, Tom O'Key





CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION

1127-11TH STREET, SUITE 626, SACRAMENTO, CA 95814 • PHONE (916) 446-4647

January 23, 2017

Eric Sklar, President
California Fish and Game Commission
1416 9th Street, Room 1320
Sacramento, CA 95814

RE: Emergency regulation concerning special order relating to incidental take of tricolored blackbird (*Agelaius tricolor*) during candidacy period as an endangered species

Dear President Sklar:

The California Farm Bureau Federation (Farm Bureau) is writing to request adoption of a 2084 regulation allowing incidental take in limited circumstances during the candidacy period of the Tricolored Blackbird. Farm Bureau represents more than 48,000 members as it strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. Our dairy farmer members who plant small grain crops adjacent to their dairies provide valuable nesting habitat for Tricolored Blackbirds, but need incidental take protection when they agree to provide that habitat.

Farm Bureau appreciates the Fish and Game Commission's (Commission) responsiveness to the petition requesting adoption of a 2084 regulation for Tricolors. The 2084 regulation protects dairy farmers who provide habitat for Tricolored Blackbirds from liability under the California Endangered Species Act (CESA). Farm Bureau appreciates the Commission's adoption of a 2084 regulation for Tricolors last year. The 2016 nesting season was successful and the 2084 regulation in place last spring worked exactly as intended. Unfortunately, since it was an emergency regulation it has expired and another 2084 regulation is necessary for the 2017 nesting season.

Having a 2084 regulation in place for the 2017 nesting season will ensure that farmers who agree to protect colonies of Tricolored Blackbirds nesting in their grain fields are not put at risk of violating CESA. Farm Bureau appreciates the Commission's timely response to the petition and respectfully requests adoption of a 2084 regulation in time for the 2017 nesting season in the spring. Should you have any questions, please contact Noelle G. Cremers (916/446-4647 or ncremers@cxbf.com).

Sincerely,

A handwritten signature in black ink that reads "Noelle Cremers".

Noelle G. Cremers
Director, Natural Resources and Commodities



Audubon CALIFORNIA

400 Capitol Mall, Suite 1535
Sacramento, California 95814
www.ca.audubon.org

January 24, 2017

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814
fgc@fgc.ca.gov

RE: Agenda Item 12. Adopt emergency regulation concerning special order relating to incidental take of tricolored blackbird (*Agelaius tricolor*) during candidacy period as an endangered species (Pursuant to Section 2084, Fish and Game Code).

Dear Commissioners:

Audubon California writes on behalf of its 350,000 members and supporters to ask the Commission to maintain uninterrupted California Endangered Species Act (CESA) protections for Tricolored Blackbirds and the associated regulations that facilitate the successful implementation of those protections.

In the 2016 spring Tricolored Blackbird breeding season, 100 percent of known farmland colonies were protected for the first time because of the combination of CESA prohibitions on take, the 2084 regulation to give farmers a pathway to compliance with CESA when they delay harvest for nesting colonies, and financial incentives and technical assistance for farmers to delay harvest from the Natural Resources Conservation Service. With the extension of the scientific review period for Tricolored Blackbirds we ask that the Department of Fish and Wildlife's successful 2016 policies and collaborative programs also be extended through 2017.

Nearly 90 percent of Tricolored Blackbirds are located in California with smaller breeding colonies occurring in Nevada, Oregon, Washington, and Baja California (Beedy and Hamilton 1999). Tricolored Blackbirds are the last North American landbird that breeds in large colonies. Tricolored Blackbirds nest predominantly in California's Central Valley, historically in native wetlands, but more recently in agricultural fields due to lack of available natural habitat. Nesting in agricultural fields, particularly dairy silage fields, can create a conflict when farmers need to harvest during the breeding timeframe.

The Tricolored Blackbird's combination of narrow geographic range and highly colonial breeding make them particularly susceptible to disturbance and habitat loss. In the 2014 statewide survey 64 percent of the population was contained in just ten large colonies, making the loss of even one colony's reproductive output cause for concern. Over 95 percent of the species' historic habitat, wetlands in the Central Valley, have been replaced with agriculture or urbanization (Central Valley Joint Venture 2006). As a result of this large-scale habitat loss and ongoing mortality, Tricolored Blackbirds have declined significantly in the last 80 years.

Once numbering in the millions (Hamilton et al. 1995; Neff 1937), the Tricolored Blackbird population declined to approximately 145,000 birds in 2014 according to the statewide survey (Meese 2014). The triennial survey was developed and employed to track the Tricolored Blackbird population abundance and distribution. The next statewide survey will be conducted in April, 2017. The most extensive and replicable surveys – conducted in 2008, 2011, and 2014 – show a steep decline in Tricolored Blackbird abundance. The Tricolored Blackbird population declined by 64 percent between 2008 and 2014, despite an increase in the number of sites surveyed (Meese 2014). Additionally, Graves et al. (2013) identified a 63 percent decline in mean breeding colony size from 1935 to 1975. This dramatic decline has led Audubon to support the proposed CESA listing for this species, while also prioritizing on-the-ground partnerships to help find solutions for farmers and other private landowners impacted by the species.

The goal of Audubon California, along with the researchers, agencies, conservation organizations and industry groups in the Tricolored Blackbird Working Group, is population recovery. Listing is a tool to protect vulnerable breeding colonies and direct agency efforts towards providing safe, long-term habitat. The 2084 regulation complements listing protections by supporting the Natural Resources Conservation Service farmer assistance program. Audubon and our partners remain committed to collaboration to achieve recovery.

Thank you for consideration of our comments. If you would like to discuss this matter further, please do not hesitate to contact me at (916) 737-5707 or via email at mlynes@audubon.org.

Respectfully submitted,



Michael Lynes
Director of Public Policy
Audubon California

Literature Cited

Beedy, E. C. and W. J. Hamilton III. 1999. Tricolored Blackbird (*Agelaius tricolor*). Account no. 423, 24 pp, in A. Poole and F. Gill (eds.), *The Birds of North America*, Philadelphia PA.

Central Valley Joint Venture. 2006. Central Valley Joint Venture Implementation Plan – Conserving Bird Habitat. U.S. Fish and Wildlife Service, Sacramento, CA.

Graves, E.E., M. Holyoak, R.T. Kelsey, and R.J. Meese. 2013. Understanding the contribution of habitats and regional variation to long-term population trends in tricolored blackbirds. *Ecology and Evolution* 2013; 3(9): 2845-2858.

Hamilton, W. J., III, L. Cook, and R. Grey. 1995. Tricolored blackbird project 1994. Report prepared for U. S. Fish and Wildlife Service, 69 pp + append.

Neff, J. 1937. Nesting distribution of the tricolor-colored redwing. *Condor* 39(2):61-81.

Meese, R. J. 2014. Results of the 2014 Tricolored Blackbird Statewide Survey. U.C. Davis.



January 23, 2017

Eric Sklar, President
Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

Re: Tricolored Blackbird 2084 Incidental Take Petition

Dear President Sklar,

I am writing to offer the support of Western United Dairymen for the adoption of the 2084 incidental take regulation for Tricolored Blackbird. Western United Dairymen (WUD) is the largest dairy producer trade association in California representing about 500 of the State's dairy families. Tricolored Blackbirds have taken to nesting in dairy silage fields due to the loss of natural habitat. WUD has been a member of the Tricolored Blackbird Working Group for over a decade and has worked with its members to support the Tricolored Blackbird. We have put on several workshops dedicated to this topic and disseminated information in other venues that WUD uses to communicate with our members.

WUD along with our partners, California Farm Bureau Federation, Dairy Cares and Audubon of California have applied for and been awarded a grant from the Natural Resources Conservation Service to help farmers that must delay harvest when the birds are nesting in a field. Biologists from NRCS and/or the Department of Fish and Wildlife advise farmers as to what they should do when Tricolors are nesting in their fields, but it is very important that farmers are protected from incidental take when they are following the advice of an approved biologist and doing everything they can to avoid take.

This regulation lets farmers know that they can do the right thing and be protected from incidental take. We look forward to continuing the collaboration we have developed with the Commission and the Department to protect the Tricolored Blackbird. The adoption of this 2084 will help this process continue to work effectively. If you have any questions in the matter please feel free to let me know.

Sincerely,

Paul Sousa
Director of Environmental Services
Western United Dairymen