

Issued: October 2, 2007.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Giant Palouse Earthworm 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 giant Palouse earthworm (*Driloleirus americanus*) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find that the petition does not provide substantial scientific or commercial information to indicate that listing the giant Palouse earthworm may be warranted. Therefore, we will not be initiating a status review in response to this petition. However, we encourage the public to submit to us any new information that becomes available concerning this species.

**DATES:** The finding announced in this document was made on October 9, 2007.

**ADDRESSES:** Data and new information concerning the giant Palouse earthworm may be submitted to the Supervisor, Upper Columbia Fish and Wildlife Office, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, WA 99206. The petition, administrative finding, supporting data, and comments received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Susan Martin, Field Supervisor, at the above address, by phone at (509) 891-6838, or facsimile at (509) 891-6748. Please include "giant Palouse earthworm scientific information" in the subject line for faxes. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species, presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and publish a notice of the finding promptly in the **Federal Register**.

This finding summarizes the information included in the petition and information available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations in 50 CFR 424.14(b), our review of a 90-day finding is limited to a determination of whether the information in the petition meets the "substantial information" threshold. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We have to satisfy the Act's requirements that we use the best available science to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we accept the petitioners' sources and characterizations of the information, to the extent that they appear based on accepted scientific principles (such as citing published and peer-reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case that listing may be warranted based on the information presented. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should be listed.

On August 30, 2006, we received a petition, dated August 18, 2006, from a private citizen and five other concerned parties requesting that we emergency list the giant Palouse earthworm (*Driloleirus americanus*) as threatened or endangered, and that critical habitat be designated concurrently with the listing. The other five concerned parties include the Palouse Prairie Foundation, the Palouse Audubon Society, Friends

of the Clearwater, and two other private citizens (hereafter referred to as the petitioners). The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). The petition contained information on the natural history of the giant Palouse earthworm and potential threats to the species. Potential threats discussed in the petition include destruction and modification of habitat, disease and predation, inadequacy of regulatory mechanisms, and other natural and manmade factors, such as invasive and noxious weeds and road-building activities.

On October 2, 2006, we notified the petitioners that our initial review of the petition for the giant Palouse earthworm concluded that an emergency listing was not warranted, and that, due to court orders and judicially approved settlement agreements for other listing actions, we would not be able to further address the petition to list the giant Palouse earthworm at that time. This finding addresses the petition.

### Species Information

The giant Palouse earthworm was first described by Frank Smith in 1897 after he discovered it near Pullman, Washington: " \* \* \* this species is very abundant in that region of the country and their burrows are sometimes seen extending to a depth of over 15 feet." Although only a few specimens have been collected, early descriptions and collection locations indicated that the giant Palouse earthworm can be as long as 3 feet (0.9 meters) and is considered by some an endemic that utilizes grassland sites with good soil and native vegetation of the Palouse bioregion (James 1995, p. 1; Niwa *et al.* 2001, p. 34). It has been described as an Anecic earthworm, one of three basic earthworm types, based on its functional role in the soil ecosystem. Anecic earthworms are the largest and longest lived (James 2000, pp. 8-10, 1995, p. 6). Anecic earthworms uniquely contribute to the soil ecosystem by transporting fresh plant material from the soil surface to subterranean levels. The deep burrows also aid in water infiltration (James 2000, p. 9; Edwards 2004, pp. 30-31).

### Population Status

The petition stated that since the initial description of the giant Palouse earthworm, sightings have been extremely infrequent. In 2005, a University of Idaho graduate student conducting soil samples was the first person in nearly two decades to report

a sighting of this earthworm (University of Idaho 2006, p. 1). Prior to this sighting, two specimens were collected in 1988 by University of Idaho researchers studying pill beetles in a forest clearing. A specimen was also collected by Fender in 1978 (Fender 1985, pp. 93–132). An indication of the species' rarity is documented by Fauci and Bezdicek (2002, pp. 257–260); they surveyed earthworms at 46 sites in the Palouse bioregion without one collection of the giant Palouse earthworm.

As of 1990, three distinct collection sites had been identified: Near Moscow, Idaho; near Pullman, Washington; and in the hills west of Ellensburg, Washington (Fender and McKey-Fender 1990, p. 358). It should be noted that the collection site west of Ellensburg is outside of the Palouse bioregion, which casts some doubt on whether the giant Palouse earthworm is endemic only to that area. Ellensburg is located 27 miles (43.5 kilometers) west of the Columbia River, which is the western most extent of the Palouse bioregion.

The petition also states that due to the temperate climate in the Palouse bioregion, earthworms are mainly active in autumn and spring. Additionally, according to Fender (1995, p. 58), giant Palouse earthworms generally form permanent burrows at least 14.7 feet (4.5 meters) deep and can move very rapidly to escape a shovel. This may account for the fact that, in the presence of very limited formal studies of native earthworms in the bioregion, there have been only a few recorded sightings of the giant Palouse earthworm in the past 107 years.

### Threats Analysis

Section 4 of the Act and implementing regulations (50 CFR part 424), set forth procedures for adding species to the Federal Lists of Endangered and Threatened species. Under section 4(a)(1) of the Act, we may list a species on the basis of any of five factors, as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated the petition and its supporting information to determine whether substantial scientific or commercial information was presented to indicate that listing the giant Palouse earthworm may be warranted. Our evaluation of these threats, based on

information provided in the petition and readily available in our files, is presented below.

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

##### Agriculture

The petition states that the giant Palouse earthworm is threatened by the extensive conversion of native Palouse prairie grassland habitat to non-native annual crop production. The petition states that, based on historic accounts and very few documented observations of the earthworm, it is endemic to this habitat. According to the petition, the giant Palouse earthworm is particularly vulnerable to habitat loss due to its narrow geographic range. During the past 125 years, the Palouse prairie has experienced dramatic conversion of native vegetation and habitat, primarily due to agricultural development.

In general, earthworms are influenced by four environmental factors: Moisture, temperature, soil pH, and food resource quality and quantity (James 1995, p. 5; 2000, p. 1). It has been stated that "agricultural practices replace earthworm functional roles with mechanical and chemical inputs, and tend to reduce earthworm populations" (James 1995, p. 12). According to the petition, it is believed that the giant Palouse earthworm is likely less tolerant of disturbances due to agriculture than its native and non-native earthworm counterparts within the bioregion. Because temperature and moisture patterns tend to be more extreme for grassland habitat types than, for example, forested or shrub land habitat types, it is possible that earthworms that are limited to grassland habitat types are more vulnerable to site-specific degradation (James 2000, pp. 1–2). Agricultural practices that create long periods of bare soil can intensify the effect of weather on earthworms, such as during flooding and drought conditions (James 2000, p. 2).

The petition states that soil compaction occurs from the use of agricultural machinery, development, and grazing. Soil compaction affects the soil food web, soil composition, and functional groups that live within the soil ecosystem (Niwa *et al.* 2001, p. 13). Soil pore size is reduced (Niwa 2001, p. 13); favoring exotic earthworms species that are more tolerant of course soils than native species (Fender and McKey-Fender 1990, pp. 363–364; Edwards *et al.* 1995, pp. 200–201). According to James (2000, p. 6) and others, soil pH is often a limiting factor on earthworm distribution; this conclusion is based on

studies of the best-known European varieties. The petition states that the high application rates of ammonium-based nitrogen fertilizer over the past 40 years in the Palouse bioregion have increased soil pH and reduced soil productivity. According to Edwards *et al.* (1995, p. 202) earthworms are very sensitive to ammonia-based fertilizers. Similarly, studies have shown that earthworms are susceptible to mortality from chemical exposure, including pesticides. Earthworms are particularly vulnerable to herbicides that change or destroy the vegetation upon which they depend. According to Edwards and Bohlen (1996, p. 283), the toxicities of different chemicals and pesticides on earthworms vary greatly.

The petition did not provide any information that indicated the types and amounts of pesticides and herbicides that have been applied to farmed lands within the Palouse bioregion. It also provided little information indicating the amounts of ammonia-based fertilizer that was applied to farmlands in the bioregion.

Little information is available regarding the population status or extent of the giant Palouse earthworm. Although the Palouse prairie grassland habitat has been extensively impacted by agriculture, very limited information exists on the specific habitat limitations of the giant Palouse earthworm or on impacts to it from agricultural activities. Most of the information presented in the petition is related to other native and exotic earthworm species, and therefore it is difficult to draw specific conclusions related to whether any of the potential threats raised in the petition affect the giant Palouse earthworm.

##### Suburban Human Development

The petition states that the Palouse region is currently undergoing a surge in high-density housing construction and its associated infrastructure. In addition to the footprint of suburban housing development and apartment complexes with associated parking lots, access roads fragment existing habitat for this species. County roads are being upgraded and widened to handle the increase in motorized traffic. The petition states that maintaining these vehicular by-ways, specifically runoff pollution from them, is often toxic to humans, animals, insects and invertebrates. The petition states that the giant Palouse earthworm is particularly vulnerable to habitat loss due to its narrow geographic range (James 2000, p. 8).

#### Summary of Factor A

We found that a large percent of the Palouse prairie grassland has been converted to agriculture. However, one of the rare sightings of the species occurred outside the Palouse prairie (in the hills west of Ellensburg, Washington), and therefore it is unclear if the species is endemic only to that area. Because the extent of the giant Palouse earthworm historic range is unknown, we are unable to assess habitat loss or the species' reduction in range. We have no data to confirm that the species is endemic to the Palouse bioregion. The species may be affected by agricultural practices that utilize chemicals and result in soil compaction and composition, but we have no data that verify or quantify these threats to the species.

We found very little data, in the petition or in our files, directly related to the giant Palouse earthworm indicating the extent of any impact to the population across its range, or verifying the range of the species. Overall, the petitioners' claim is not supported by the information available. Therefore, we find that the petition does not present substantial scientific or commercial information that present or threatened destruction, modification, or curtailment of the species' habitat or range may be a factor threatening the continued existence of the giant Palouse earthworm.

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

The petition states that three of the last few reported individuals of this species have been inadvertently killed during research activities focused on reporting the rarity of its existence.

#### Summary of Factor B

We could find no reliable population size or trend data for the giant Palouse earthworm in the petition or in our files that would enable us to determine whether the loss of four documented collections of the earthworm since 1978 may be a threat to the species' existence. Based on our review, the petitioners' claim is not supported by the information available. Therefore, we find that the petition does not present substantial scientific or commercial information to document that over utilization for commercial, recreational, scientific, or educational purposes may be a factor threatening the continued existence of the giant Palouse earthworm.

#### *C. Disease or Predation*

The petition states that the removal of native plants and the agricultural practice of leaving cropland bare for long periods of time create an environment where native species, such as the giant Palouse earthworm, are susceptible to predation by birds (James 1995, p. 11). The petition states that pathogens are known to have been transmitted to native earthworms by exotic earthworms, either as passive carriers or as intermediate hosts (Hendrix and Bohlen 2002, p. 802).

#### Summary of Factor C

We could locate no information specific to predation of the giant Palouse earthworm or to transmission of pathogens by exotic earthworms, in the petition or our files. There was also no population data provided that could be used to determine the extent of any threats to this earthworm by predation. Therefore, we find that the petition does not present substantial scientific or commercial information to document that disease or predation may be a factor threatening the continued existence of the giant Palouse earthworm.

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

The petition states that there are no Federal, state, or local regulations that specifically protect the giant Palouse earthworm or its habitat. The petition indicates that the Palouse Subbasin Management Plan, developed as part of the Northwest Power and Conservation Council review process for the subbasins in the Columbia River Basin, contains three objectives (7, 8, and 15) that are relevant to the giant Palouse earthworm and its habitat. Objective 7 is designed to protect native grassland habitat within the Palouse subbasin, however there is no indication that this objective would be regulatory rather than voluntary in nature, and it does not provide specific protection for the giant Palouse earthworm. Objective 8 is designed to restore lost or degraded grassland habitat within the Palouse subbasin by identifying feasible opportunities for restoration. This objective does not define "feasible opportunities," and appears to rely on a voluntary approach, which provides no regulatory protection for the giant Palouse earthworm. Objective 15 is designed to increase wildlife habitat value on agricultural land for focal species; however, it too is voluntary in nature and does not provide specific protection for the giant Palouse earthworm or its habitat.

The petition states that the Interior Columbia Basin Ecosystem Management Project (ICBEMP) was initiated to develop an ecosystem-based management strategy for managing Federal lands of the Interior Columbia River Basin. Earthworms in particular are not mentioned in the Environmental Impact Statement or proposed decision (ICBEMP 2003). The ICBEMP report does state that, "An overview of the Palouse subbasin wouldn't be complete unless the giant Palouse earthworm was mentioned" (ICBEMP 2003, p.131). However, neither the giant Palouse earthworm nor any other native earthworm species is listed as a priority species in Washington, even though grassland is considered a priority habitat in this bioregion by the Washington Department of Fish and Wildlife.

According to the petition, the regulation of earthworms imported into the United States is based on the Federal Plant Pest Act (7 U.S.C. 150aa–150jj, May 23, 1957, as amended 1968, 1981, 1983, 1988 and 1994), under which the Animal and Plant Health Inspection Service controls imports containing soil that might carry pathogens. The petition cited Hendrix and Bohlen (2002, p. 809), who observed that, "In the absence of pathogens, it appears that any earthworm species may be imported, that is, there is no specific consideration of earthworms as invasive organisms." According to the petition, regulation has not been effective in reducing the importation of exotic earthworm species to the United States from other parts of the world, and the petitioners believe that this poses a direct threat to the existence of the giant Palouse earthworm and other native earthworm species in the United States.

#### Summary of Factor D

We found the petition to be correct in that there are no existing regulatory mechanisms for the giant Palouse earthworm or for other native earthworms. However, we could not determine the existence of any threats the earthworm may face, now or in the foreseeable future, due to this lack of regulation. So little information exists, about the population size, trends, habitat needs, and limiting factors of the giant Palouse earthworm, we could not determine if lack of regulations may pose a threat to the species. Therefore, we find that the petition does not present substantial scientific or commercial information to document that lack of regulatory mechanisms may be a factor threatening the continued

existence of the giant Palouse earthworm.

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

The petition states that, in general, native earthworms are vulnerable to habitat disturbance and invasion by exotic species (James 1995, p. 5). According to the petition, invasion of exotic species is a twofold threat to the giant Palouse earthworm. First, exotic plants and animals degrade native Palouse grassland habitat by reducing the beneficial functions native species provide and by performing different functions themselves. Second, native earthworm species are displaced by exotic earthworm species better able to adapt to a degraded habitat. The petition describes non-native plants intentionally and accidentally introduced into the Palouse bioregion, including *Poa pratensis* (Kentucky bluegrass), *Bromus tectorum* (cheatgrass), and *Centaurea solstitialis* (yellow starthistle).

#### Summary of Factor E

While data exists on non-native plants within the Palouse bioregion, we could find no data provided by the petitioners or in our files, that specifically documented potential threats the giant Palouse earthworm may face from exotic species. We could not determine whether exotic species of earthworms may be a threat to the giant Palouse earthworm, because we found no information on numbers or locations of exotic earthworms provided by the petitioners or in our files. Therefore, we find that the petition does not present substantial scientific or commercial information to document that other natural or manmade factors may be a factor threatening the continued existence of the giant Palouse earthworm.

#### Finding

We assessed the information in the petition and in our files, and found no substantial information indicating that listing the giant Palouse earthworm may be warranted. While we share the petitioners' concern for the species, we could not determine whether any of the potential threats discussed in the petition may pose a risk, now or in the foreseeable future, to the continued existence of the species.

We found little data provided by the petitioner or in our files to determine the extent of the historic or current range and distribution of the giant Palouse earthworm. At least one collection site is outside of the Palouse bioregion (Fender and McKay-Fender

1990, p. 358), suggesting that the species may not be endemic to the specific bioregion. We agree with the petitioners that the Palouse prairie has experienced a dramatic conversion of native habitat to agricultural practices; however, information linking the effect this may have had on the earthworm is currently nonexistent.

Information regarding the range, distribution, population size, and status of the giant Palouse earthworm is very limited, which curtails any assessment of population trends. This limits our ability to assess whether the species may be impacted by the threats listed in the petition.

We evaluated the petition and the literature cited, and information available in our files. Based on our current understanding of the species' distribution and population numbers, our analysis, and a review of factors affecting the species as presented in the petition, we find that the petition does not present substantial information demonstrating that listing the giant Palouse earthworm as threatened or endangered may be warranted at this time.

While we will not be initiating a status review in response to the petition, we will continue to cooperate with others to monitor the species' status, trends, and life history needs, and we encourage interested parties to continue to provide us with information that will assist with the conservation of the species. Information on the species range and distribution, and other information relevant to the species status and potential threats would be particularly helpful. Interested parties may submit information regarding the giant Palouse earthworm to the Field Supervisor, Upper Columbia Fish and Wildlife Office (see **ADDRESSES** above).

#### References Cited

A complete list of all references cited is available on request from the Upper Columbia Fish and Wildlife Office (see **ADDRESSES** above).

#### Author

The primary authors of this document are staff at the Upper Columbia Fish and Wildlife Office (see **ADDRESSES** above).

#### Authority

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

Dated: September 27, 2007.

#### Kenneth Stansell,

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AV05

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep and Proposed Taxonomic Revision

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

**ACTION:** Proposed rule; reopening of comment period and notice of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce the reopening of the public comment period and the scheduling of one public hearing on the proposed critical habitat designation for the Sierra Nevada bighorn sheep (*Ovis canadensis californiana*) and proposed taxonomic revision under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested parties with an additional opportunity to submit written comments on the proposed designation and taxonomic revision. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

**DATES:** We will accept comments and information until 5 p.m. on November 23, 2007, or at the public hearing. Any comments received after the closing date may not be considered in the final decision on the proposed designation of critical habitat.

*Public Informational Meetings:* October 24, from 1 p.m. to 3 p.m., in Bridgeport, CA and October 25, 2007, from 4 p.m. to 5 p.m., in Bishop, CA.

*Public Hearing:* October 25, 2007, between 6 p.m. and 8 p.m., in Bishop, CA.

#### **ADDRESSES:**

*Public Informational Meetings:* October 24, 2007, at the Memorial Hall, 744 N. School Street, Bridgeport, CA 93517, and October 25, 2007, at Tri-County Fair Grounds, Patio Room (patio area), Sierra Street and Fair Drive, Bishop, CA 93514.

*Hearing:* The public hearing will be held in the Tri-County Fair Grounds, Patio Room, Sierra Street and Fair Drive, Bishop, CA 93514.

*Public Comments:* Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Field Supervisor,