

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[FWS-R8-ES-2007-0023; 1111 FY07 MO; ABC Code B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To List the Amargosa River Population of the Mojave Fringe-Toed Lizard (*Uma scoparia*) as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Amargosa River population of the Mojave fringe-toed lizard (*Uma scoparia*) in the State of California as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing this population may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the Amargosa River population of the Mojave fringe-toed lizard, and we will issue a 12-month finding on our determination as to if the petitioned action is warranted. To ensure that the status review of the Amargosa River population of the Mojave fringe-toed lizard is comprehensive, we are soliciting scientific and commercial data regarding this species. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

DATES: We made the finding announced in this document on January 10, 2008. To be considered in the 12-month finding for this petition, comments and information must reach us by March 10, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018-AV02; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally

means that we will post any personal information you provide us (see the Public Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT:

Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805-644-1766 ext. 319; facsimile 805-644-3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Public Information Solicited**

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Amargosa River population of the Mojave fringe-toed lizard. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties.

Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1533 (b)(3)(B)).

If we determine that listing the Amargosa River population of the Mojave fringe-toed lizard is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical area currently occupied by the species, we

also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside of the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information, as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

You may submit your comments and materials concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Such findings are based on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information, as defined by the Code of Federal Regulations (CFR), with regards 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 the petition

presents substantial scientific or commercial information, we are required to promptly commence a status review of the species.

We received a petition dated April 10, 2006, from the Center for Biological Diversity and Ms. Sylvia Papadakos-Morafka requesting that the Mojave fringe-toed lizard (*Uma scoparia*) occurring in the Amargosa River area of San Bernardino County, California, be listed as a threatened or endangered distinct population segment (DPS) under the Act. Additionally, the petition requested that critical habitat be designated concurrent with listing. The petition clearly identified itself as such and included the identification information for the petitioners, as required in 50 CFR 424.14(a). In response to the petitioners' request, we sent a letter to the petitioners dated June 21, 2006, explaining that we would not be able to address their petition at that time. The reason for this delay was that responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded in our June 21, 2006, letter that emergency listing of the Amargosa River population of the Mojave fringe-toed lizard was not indicated. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements, until funding recently became available to respond to this petition.

In making this finding, we based our decision on information provided by the petitioners that we determined to be reliable after reviewing sources referenced in the petition, as well as information readily available in our files at the time of the petition review. We evaluated the information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific and commercial information" threshold (as mentioned above).

Species Information

The Mojave fringe-toed lizard (*Uma scoparia*) is in the family Phrynosomatidae, the family of the North American spiny lizards. Fringe-toed lizards are medium-sized lizards and seem to be completely restricted to a sand-dwelling existence (Norris 1958, p. 253). The Mojave fringe-toed lizard may reach a snout to vent length of 4.5 inches (112 millimeters), with a dorsoventrally (top to bottom) compressed body and tail

(Hollingsworth et al. 1999, p. 1). The Mojave fringe-toed lizard has smooth skin and a fine pattern of small black circles and flecks. Both sides of the belly have a conspicuous black spot, and the underside of the tail has black bars. The Mojave fringe-toed lizard is distinguished from other fringe-toed lizards by the dark black spot on each side of the belly and the crescent-shaped markings present on the sides of the throat.

The concealing coloration of fringe-toed lizards is striking, being one of the best examples of this phenomenon among North American vertebrates. Adults of the species have a yellow-green wash on the belly and pink on the sides during breeding periods, but during other times of year, the Mojave fringe-toed lizard's color mimics the sand dunes on which they dwell (Norris 1958, p. 253).

The Mojave fringe-toed lizard is omnivorous throughout its life. They primarily feed on insects, but will also eat seeds and flowers (Stebbins 1944, p. 329). Annual plant species provide important forage during the springtime, though the reliance on vegetative plant species may diminish during the summer with increased arthropod availability (Stebbins 1944, p. 329). The Mojave fringe-toed lizard derives most of its water from arthropod and plant food.

The Mojave fringe-toed lizard generally reaches sexual maturity during the second summer following hatching. Reproductive activity in both sexes is annually variable, in accordance with seasonal rainfall patterns (Mayhew 1966, pp. 119–120). Breeding colors and testis size indicate the male breeding period, which occurs between April and late June. Female breeding colors are displayed between April and September, with maximized colors during May through July (Mayhew 1966, pp. 115–117). Ovarian egg counts also fluctuate in response to rainfall and food availability; reduced egg counts and fewer juveniles were observed following dry winters. There is also evidence to suggest that female lizards may have more than one brood per year (Mayhew 1966, p. 118).

Fringe-toed lizards likely select unstabilized areas with intermediate grain sand because it eases self-burying and facilitates respiration (Pough 1970, p. 154). Self-burial by the fringe-toed lizard is presumed to be defensive, as there is no evidence to suggest that it is thermoregulatory or used for subsurface hunting as exhibited by other genera of sand lizards (Pough 1970, p. 153). Fringe-toed lizards are highly dependent on desert vegetation as a

source of cover, for thermoregulation and as habitat for primary prey (Pough 1970, pp. 152–153). Mojave fringe-toed lizards spend their inactive periods and hibernation cycle (November to February) beneath the sand (Mayhew 1966, pp. 120–121). It is believed that their flattened body form, skin surface scales, and wedge-shaped head with well-developed eye and ear flaps are all useful for the burrowing behavior exhibited by this genus (Pough 1970, p. 145).

The Mojave fringe-toed lizard is endemic to the deserts of southern California and a small area of western Arizona. The Mojave fringe-toed lizard occurs in the lower Sonoran life zones of the Mojave Desert and the northwestern reaches of the Sonoran Desert. Fringe-toed lizard distribution is discontinuous throughout the range since the animals are restricted to deposits of fine, loose sand (Stebbins 1944, p. 313). The Amargosa River population of the Mojave fringe-toed lizard consists of individuals occurring at Dumont Dunes, Ibex Dunes, and Coyote Holes (Murphy *et al.* 2006, pp. 239–241). Dumont Dunes' main dune area is approximately 9,600 acres (ac) (3,885 hectares (ha)). Dumont Dunes began to form approximately 18,000 years ago when Lake Manley in Death Valley and Lake Dumont in the Silurian Valley began to dry, leaving behind sand to be blown and deposited forming the dunes. Ibex Dunes is about 1,700 ac (688 ha) and is the northern limit for the Amargosa River population of the Mojave fringe-toed lizard. Coyote Holes is a 50-ac (20-ha) sand blow-out located approximately 12 miles (mi) (20 kilometers (km)) southeast of the eastern end of Dumont Dunes. The nearest population of Mojave fringe-toed lizards is known from Silver Lake located approximately 20 mi (32 km) southeast of Dumont Dunes.

Dispersal of Mojave fringe-toed lizards between populations is poorly studied, but based on observed movements and limited ability of the species to cross unsuitable habitat, it is unlikely that isolated populations interact. No specimen of *Uma* has been captured more than a very short distance 148 feet (ft) (45 meters (m)) from wind-blown sand deposits (Norris 1958, p. 257). Population status and relative density data for the Mojave fringe-toed lizard is not currently available. To estimate the amount of habitat rangewide for the Mojave fringe-toed lizard, we used distribution data from Murphy *et al.* (2006, p. 230), Hollingsworth *et al.* (1999, p. 1), and Norris (1958, pp. 265–266) to develop maps showing the amount of potential

Mojave fringe-toed lizard habitat. Based on our habitat analysis, the Amargosa population of the Mojave fringe-toed lizard comprises approximately 3 to 5 percent of the species' range.

Distinct Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. "Species" is defined in section 3 of the Act to include any subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532 (16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (February 7, 1996; 61 FR 4722) to help us in determining what constitutes a DPS. The policy identifies three elements that we are to consider in making a DPS determination. These elements include: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. If we determine that a population segment meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing the DPS as either threatened or endangered is warranted.

Discreteness

Citing the Services' DPS policy (61 FR 4722), the April 2006 petition asserts that the Amargosa River population of the Mojave fringe-toed lizard qualifies as a DPS based on discreteness. The DPS policy states that a population may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is 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.

The petitioners assert that the Amargosa River population of Mojave

fringe-toed lizards is restricted to dunes with fine, loose sand. The petitioners also assert that the Amargosa River population of Mojave fringe-toed lizards of Coyote Holes and Dumont and Ibox Dunes are isolated and discrete from other dunes and other populations by the presence of intervening, unsuitable habitat, due to the fact that Mojave fringe-toed lizards are not known to disperse across long distances of unsuitable habitat (Norris 1958, p. 257).

The petitioners provided the following quote from Murphy et al. (2006, p. 241) to support their assertion that the Amargosa River population of the Mojave fringe-toed lizard is discrete: "Natural geographic barriers, including the absence of sand and presence of mountains, separate populations from one another. Each Dune is a discrete entity and it is extremely unlikely that gene flow is occurring among the isolated dunes, and especially among dune systems not connected by a recent hydrogeologic system. Ecologically, dispersal is virtually impossible because of the absence of intervening sand dunes." The petitioners assert that Dumont Dunes, Ibox Dunes, and Coyote Holes are thus isolated from other suitable habitat, making dispersal highly improbable. The petitioners also assert that the physical isolation of the Amargosa River population of the Mojave fringe-toed lizard further indicates genetic differences between this population and others of the species. The April 2006 petition cites the genetic work of Murphy et al. (2006, pp. 231–238), which determined that the Amargosa River population of the Mojave fringe-toed lizard contains unique haplotypes [The petitioners are referring to differences in mitochondrial DNA sequenced from maternal haplotypes. A haplotype is a set of closely linked genetic markers present on one chromosome, which tend to be inherited together.] not found elsewhere within the range of the species.

The Services' DPS policy requires that only one of the discreteness criteria be satisfied in order for a population of a vertebrate species to be considered discrete. After reviewing the information provided (e.g., Murphy et al. 2006, pp. 226–247) in the petition and in our files, we believe that the Amargosa River population may be physically isolated from other populations and may also be genetically distinct from other populations. We based this on a preliminary review of maps of the Mojave Desert in our files, the position of the three dune locations, the petitioners' information on the Amargosa River population, and the research of Murphy et al. (2006, pp.

242–247) cited in the petition on dunes occupied by Mojave fringe-toed lizards and the genetics of this species. From our review of this information, we find that there is substantial information indicating the Amargosa River population of the Mojave fringe-toed lizard may satisfy the discreteness element of the DPS policy.

Significance

If we determine that a population meets the DPS discreteness element, we then consider if it also meets the DPS significance element. The DPS policy (61 FR 4722) states that if a population segment is considered discrete under one or more of the discreteness criteria, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy does provide four possible reasons why a discrete population may be significant. As specified in the DPS policy (61 FR 4722), this consideration of the significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The April 2006 petition asserts that the Amargosa River population of the Mojave fringe-toed lizard, being discrete from other populations, also meets the significance element of the DPS policy for three of the four reasons above: (1) Persistence in an ecological setting unusual or unique to the taxon; (2) loss of the population would create a significant gap in the range of a taxon; and (3) the population differs markedly

from other populations in its genetic characteristics.

The April 2006 petition asserts that the loss of the Amargosa River population of the Mojave fringe-toed lizard would result in the species disappearing from a unique ecological setting. The petitioners state that populations at Coyote Holes, Ibex Dunes, and Dumont Dunes represent the northernmost extension of the species' range and are the only populations in the Amargosa River drainage. The petitioners also assert that the loss of the Amargosa River population would result in a significant gap in the range of the Mojave fringe-toed lizard. The petition further asserts that the Amargosa River population of the Mojave fringe-toed lizard differs markedly from other Mojave fringe-toed lizard populations in genetic characteristics. These populations contain unique haplotypes that very likely represent adaptation to unique regional characteristics, such as differences in climate, vegetation, and substrate. The petition cites the research of Murphy *et al.* (2006, pp. 236–238), which identified the Amargosa River population of the Mojave fringe-toed lizard as one of two distinct maternal lineages that have been isolated since likely the mid-Pleistocene (about 500,000 years ago). The Amargosa River population was found to have the greatest amount of DNA sequence divergence (Murphy *et al.* 2006, p. 232). This lineage includes individuals from Coyote Holes and Ibex and Dumont Dunes, which are closely related and likely had recent contact during more mesic (moderately moist) periods of the late Pleistocene and Holocene (i.e., <125,000 years ago) (Murphy *et al.* 2006, pp. 237–238). In regards to the significance of genetic differences observed in the Amargosa River population, Murphy *et al.* (2006, p. 241) concluded: "The Amargosa River lineage is genetically distinct. The presence of unique haplotypes gives credence to the possibility of regional adaptations and incipient speciation. The Amargosa River lineage represents a significant historical component and it deserves recognition as a DPS."

The Mojave fringe-toed lizard is widespread geographically across the Mojave and northern Sonoran deserts. Although it is true that the Amargosa River population is at the northern extent of the species' range, this population is separated by only about 20 mi (32 km) from another population at Silver Lake. The petitioners do not provide any information supporting the view that either the climate or the habitat where the Amargosa River

population occurs is different from that of their nearest neighbor at Silver Lake. Although the genetic differences observed in the Amargosa River population may have resulted from adaptation to the environment, the differences may also have resulted from random genetic drift. Therefore, based on the information provided by the petitioners and in our files, we do not agree that the Amargosa River population of the Mojave fringe-toed lizard occurs in an ecological setting that is unique for the taxon.

We also do not agree that the loss of the Amargosa River population of the Mojave fringe-toed lizard would result in a significant gap in the range of the species. We estimated total extant range of the Mojave fringe-toed lizard to be approximately 600 sq mi (1540 sq km), and the total area that comprises the Amargosa River area is 18 sq mi (46 sq km). Therefore, the total area comprised by the Amargosa River population represents at most 3 to 5 percent of the total extant range of Mojave fringe-toed lizard, and the loss of this population may not result in a significant gap in the range of the species. However, we will further evaluate the contribution of the Amargosa River population to the taxon as a whole during our status review.

However, based on our preliminary review of the research of Murphy *et al.* (2006, pp. 231–238) cited in the petition, the genetic characteristics of the Amargosa River population differ from those of other populations of Mojave fringe-toed lizards, thus meeting the fourth criteria for significance identified above. Murphy *et al.* 2006 analyzed the mitochondrial DNA genes ATPase 6 and cytochrome b. Their statistical analysis indicates that the Amargosa River population is significantly different ($p < 0.01$) from other populations. Therefore, we find that there is substantial information indicating the Amargosa River population of the Mojave fringe-toed lizard may satisfy the significance element of the DPS policy.

DPS Conclusion

We have reviewed the information presented in the petition, and have evaluated the information in accordance with 50 CFR 424.14(b). In a 90-day finding, the question is whether a petition presents substantial information that the petitioned action may be warranted. We do not make final determinations regarding DPSs at this stage; rather, we determine whether a petition presents substantial information that a population may be a DPS. Based on our review, we find that the April 2006 petition, and the

information in our files, do present substantial scientific or commercial information to indicate that the Amargosa River population of the Mojave fringe-toed lizard may be a DPS based on genetic evidence, which may meet both the discreteness and significance criteria of the DPS policy, and thus may be a listable entity under the Act. To meet the third element of the DPS policy, we evaluate the level of threat to the DPS based on the five listing factors established by the Act. We thus proceeded with an evaluation of information presented in the petition, as well as information in our files, to determine whether there is substantial scientific or commercial information indicating that listing this population may be warranted. Our threats analysis and conclusion follow.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) 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) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information on threats to the Amargosa River population of the Mojave fringe-toed lizard in our files and those presented in the April 2006 petition constitute substantial scientific or commercial information such that listing under the Act may be warranted. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of this information is presented below.

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

The petitioners assert that a significant portion of the range of this population has suffered severe habitat destruction and modification by extensive OHV traffic. The petitioners are concerned that extensive Off-Highway Vehicle (OHV) traffic at Dumont Dunes, and to a lesser extent

Ibex Dunes and Coyote Holes, poses a substantial threat to the continued existence of the Amargosa River population of the Mojave fringe-toed lizard. Dumont Dunes and Ibex Dunes represent more than 98 percent of the known range of the Amargosa River population of the Mojave fringe-toed lizard. The petitioners assert that OHV use at Dumont Dunes and elsewhere in the range of the Amargosa River population results in compression fatalities, destruction of habitat by compaction of soils, and elimination of native vegetation and prey sources critical to the Mojave fringe-toed lizard's survival.

The petitioners cite a 2002 study at Dumont Dunes that found low densities of Mojave fringe-toed lizards and significant habitat destruction by OHV use at Dumont Dunes. Stratified sampling studies at Dumont Dunes found Mojave fringe-toed lizard frequencies per 3281-ft (1000-m) transect were 0.583 (SD: 0.900), 0.250 (SD: 0.463), 0.500 (SD: 0.674) at low, moderate, and high OHV use areas, respectively. Similar studies were conducted under the same protocols at Bitter Springs and Red Pass dunes in 1998, where anthropomorphic impacts were low to absent. Mojave fringe-toed lizard frequencies per 3281-ft (1000-m) transect were 6.714 (SD: 2.059) at Bitter Springs Dune and 6.156 (SD: 2.825) at Red Pass Dune (Morafka 2002, p. 4).

Petitioners assert that the significant increase in OHV use at Dumont Dunes fuels an increase of illegal OHV use at both Ibex Dunes and Coyote Holes. Petitioners cite the following statement by Murphy *et al.* (2006, pp. 242); "Disruption of dune ecosystems by off-road vehicles poses a major threat." Habitat photographs of Dumont Dunes included in the petition show areas heavily affected by OHV use.

A comprehensive study cited by the petitioners demonstrated that OHV activities at nearby Algodones Dunes were detrimental to dune biota (Luckenbach and Bury 1983, p. 280). At Algodones Dunes, herbaceous and shrubby perennial vegetation is greatly reduced in habitats where OHVs operate. The same study showed that the closely-related fringe-toed lizard (*Uma notata*) abundance is lower in areas frequently used by OHVs. Control areas had nearly 5 times more lizards than OHV areas. Control areas had 2.4 times more plant species, 10 times greater plant density, and 9.4 times greater cover than OHV areas. The Mojave fringe-toed lizard is dependent on native vegetation for forage, prey forage, cover, thermoregulation, and predator avoidance. The petitioners

assert that, given the similar vegetation and OHV use between the Algodones Dunes and Dumont Dunes, similar impacts can be expected.

The Service acknowledges that OHV use poses a threat to dune habitat. However, a preliminary study conducted by Morafka (2002) at Dumont Dunes does not show a statistically significant correlation between intensity of OHV use in an area and fewer numbers of Mojave fringe-toed lizards in that area. Yet, study results may have been inconclusive for the following reasons: The studies were conducted in a year of extreme drought, performed late in the species activity season, and used an inadequate system to quantify stratification in OHV use areas.

The study at nearby Algodones Dunes supports the petitioners' assertion that OHV use decreases fringe-toed lizard numbers, prey insects, forage vegetation, and critical cover sites (Luckenbach and Bury 1983, pp. 271–273). Evidence does exist to indicate that the compaction of soils near the base of vegetation can result in the destruction of many desert plants by destroying shallow root systems (Luckenbach and Bury 1983, p. 275). Dumont Dunes is a designated open area; Ibex Dunes and Coyote Holes are not open to OHV use. No specific data were provided showing OHV use at Ibex Dunes. However, the petitioners cited a recent National Park Service (NPS) environmental assessment report, in which the NPS acknowledges that some OHV visitation occasionally spills over from Dumont Dunes into Death Valley's Ibex Dunes, increasing unauthorized OHV vehicular visitations to mines in the area (NPS 2004, p. 3). Mojave fringe-toed lizard densities at Ibex dunes are low despite the low incidence of trespass OHV use. Possibly Mojave fringe-toed lizard densities are low because this is the northern range limit for the species.

Studies provided by the petitioners indicate OHV use may cause direct harm to Mojave fringe-toed lizards. Hearing loss associated with OHV use may compromise prey acquisition and predator avoidance (Brattstrom 1979, p. 22). The shallow-buried Mojave fringe-toed lizard is susceptible to tail loss, maiming, and crushing by OHV (Luckenbach and Bury 1983, p. 277). Intense OHV activities of the spring and summer months coincide with the reproductive season of the Mojave fringe-toed lizard. During the most critical phase of their life cycle, the breeding season, their habitat is subjected to the most intense degree of OHV impact (Brattstrom 1979, p. 22). Petitioners cited Luckenbach and Bury (1983, p. 277) stating that there is no

doubt OHVs contribute to the maiming and crushing death of shallow-buried Mojave fringe-toed lizards.

We acknowledge that the petitioners present information indicating that tail loss, maiming, and hearing loss may compromise prey acquisition, predator avoidance, and reproduction. Natural predators of the Mojave fringe-toed lizard may be responsible for a significant percentage of maiming and tail loss occurrences. The petitioners present substantial information to indicate that a significant segment of the Amargosa River population of the Mojave fringe-toed lizard may be threatened by OHV-related compression fatalities.

In summary, we find that the information provided in the petition, as well as other information in our files present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the habitat or range of the Amargosa River population of the Mojave fringe-toed lizard. We base this finding in part by extrapolating from studies at Algodones Dunes, which found that OHV use resulted in lower numbers of fringe-toed lizard (*Uma notata*). The Service concurs with the parallel drawn in the petition comparing Dumont Dunes with Algodones Dunes (Luckenbach and Bury 1983, pp. 265–272).

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

The petition and our files provided no information to document current or future threats from overutilization for commercial, recreational, scientific, or educational purposes to Mojave fringe-toed lizards in the Amargosa River area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Amargosa River population of the Mojave fringe-toed lizard may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The petitioners omitted this section in the discussion of factors affecting the species. The petition and our files provided no information to document the extent or magnitude of the present or future threat of disease or predation to Mojave fringe-toed lizards in the Amargosa River area. Therefore, we conclude that there is not substantial scientific or commercial information to indicate that listing of the Amargosa

River population of the Mojave fringe-toed lizard may be warranted due to disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

The petition asserts that no management plan has been drafted to include adequate regulatory mechanisms to prevent declines of the Amargosa River population of the Mojave fringe-toed lizard and avoid listing the species as threatened or endangered. The petitioners contend that Federal laws such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), as amended, and others do not provide for Mojave fringe-toed lizard conservation.

The petitioners reviewed management plans of Dumont Dunes and Coyote Holes, both of which are managed by BLM, concluding that NEPA and BLM regulations have provided few protections for the Mojave fringe-toed lizard. The petitioners noted that NEPA "governs management of BLM lands", including those occupied by the Mojave fringe-toed lizard. While NEPA does require BLM to analyze the impacts its action will have on the environment, NEPA does not require BLM to choose the alternative action that would best conserve the species. BLM lists the Mojave fringe-toed lizard as a sensitive species. The petitioners cite relevant sections of the BLM manual. The BLM manual section 6840.06E states: "The protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species." The BLM manual section 6840.06C states: "Consistent with existing laws, the BLM shall implement management plans that conserve candidate species and their habitats and shall ensure that actions authorized, funded, or carried out by BLM do not contribute to the need for the species to become listed." However, the petition points out that the BLM has no management plan for the lizard and no areas have been closed to OHV traffic or other uses in order to protect the lizard's habitat.

The National Park Service (NPS) manages Ibex Dunes. The petitioners note that the NPS prohibits OHV use at Ibex Dunes, which does provide some protection to the Amargosa River population of the Mojave fringe-toed lizard. However, the petitioners cite a report by the NPS that acknowledges OHV visitation occasionally spills over from Dumont Dunes into Ibex Dunes (NPS 2004, p. 3). The petitioners further assert that field studies by a former Death Valley National Park ecologist show low densities of the Mojave fringe-

toed lizard at Ibex Dunes, suggesting that small amounts of mortality may be sufficient to decimate the population (CBD 2006, p. 13).

We acknowledge that BLM has designated Dumont Dunes as an area open to OHV use (Seehafer 2007, p. 1). The OHV area management plan for Dumont Dunes does not identify any actions to manage OHV impacts to the Mojave fringe-toed lizard within its boundaries (BLM 1990). BLM has not developed a management plan to prevent declines or listing of the Amargosa River population of the Mojave fringe-toed lizard. BLM does not include specific actions to manage the Mojave fringe-toed lizard in the Northern and Eastern Mojave Management Plan. Consequently, we acknowledge that the lack of BLM regulatory mechanisms to protect the Mojave fringe-toed lizard at Dumont Dunes may reduce the likelihood of conserving the species at this site.

Coyote Holes is designated wilderness and closed to OHV use. A BLM staff biologist asserts that vehicle access to Coyote Holes is effectively prohibited by a bluff and remains in near pristine condition (LaPre 2007, p. 1). Due to the wilderness restrictions in place at this location and the topographic barriers to human use, the lack of regulatory protection does not likely reduce the potential for conserving Mojave fringe-toed lizards at this location in the near future.

The National Environmental Policy Act (NEPA) requires all Federal agencies to formally document and publicly disclose the environmental impacts of their actions and management decisions. However, NEPA does not require Federal agencies to take particular actions in response to environmental documentation. NEPA documentation is provided in an environmental impact statement (EIS), an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal.

The California Department of Fish and Game (CDFG) designated the Mojave fringe-toed lizard as a Species of Special Concern. A Species of Special Concern is broadly defined as wildlife species that are of concern to CDFG because of population declines and restricted distributions, and/or they are associated with habitats that are declining in California (CDFG 2007). CDFG staff should consider Species of Special Concern during: (1) The environmental review process; (2) the conservation planning process; (3) the preparation of management plans for Department lands; and (4) inventories,

surveys, and monitoring. Impacts to Species of Special Concern are considered significant in the California Environmental Quality Act documents. However, compared to listing under the Act, the designation of the Mojave fringe-toed lizard as a Species of Special Concern designation provides minimal protection for the species or its habitat.

We acknowledge that illegal OHV trespass onto Ibex Dunes could pose a threat to that population of the Mojave fringe-toed lizard. However, regulations do exist to prohibit OHV use at Ibex Dunes. The NPS report cited by the petitioners also notes that the former OHV access road to Ibex Dunes is designated as wilderness and was closed off by the Desert Protection Act of 1994 (NPS 2004, p.3). The Desert Protection Act of 1994 designated approximately 95 percent of Death Valley National Park as wilderness. The access road closure should deter illegal OHV trespass.

In summary, we acknowledge that the petitioners have presented information that State and Federal regulations listed above may be inadequate to conserve the Dumont Dunes population of the Mojave fringe-toed lizard. BLM has designated Dumont Dunes as open to OHV use. BLM does not have an OHV area management plan for Coyote Holes; however, unless future access to Coyote Holes is made available, the current regulations should be sufficient for this area. However, we believe that current regulations are sufficient to protect fringe-toed lizards at Ibex Dunes. We find that the petition, supporting information, and information readily available to us does present substantial information for this factor indicating that the petitioned action may be warranted.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioners cite other natural or manmade factors that could affect the continued existence of the Amargosa River population of the Mojave fringe-toed lizard. The listed threats include population isolation, small population size, air pollution, invasive non-native vegetation, global climate change, residual pesticides, blocking of sand sources, and effects of environmental toxins from nearby military operations.

The Amargosa River population of Mojave fringe-toed lizard occupies the following fine sand habitats: Dumont Dunes, Ibex Dunes, and the small sand blow-out of Coyote Holes. Dumont Dunes contains the largest area of habitat, approximately 9,600 ac (3,885 ha), and is open to OHV use. The

smaller fine sand habitats of Ibex Dunes and Coyote Holes are not open to OHV use. Studies provided by the petitioners indicate that low densities of Mojave fringe-toed lizards occur over the majority of the Amargosa River population's range. We agree with the petitioners that species such as the Mojave fringe-toed lizard, that are restricted to fine sand habitats, are vulnerable to extinction. However, we do not base the decision to list a species as endangered or threatened on its restriction to an area or on its rarity, but rather on whether its existence is currently or in the future, threatened by one or more of the five listing factors.

The petition cited sources to support the contentions that residual pesticides, air pollution, invasive non-native vegetation, global climate change, blocking of sand sources, and environmental toxins pose threats to the Amargosa River population of the Mojave fringe-toed lizard. We found the information cited to be generic in nature and not specific to the Amargosa River population of the Mojave fringe-toed lizard. These threats cited by the petition are speculative in nature. The petition does not provide information that documents the extent, magnitude, or immediacy of these other threats to the Amargosa River population of the Mojave fringe-toed lizard.

In summary, we find the other natural or manmade factors cited in the petition to be generic in nature and not specific to the Amargosa River population of the Mojave fringe-toed lizard. We reviewed the petition, supporting information, and the information readily available to the Service and find the petition does not present substantial information for this factor indicating that the petitioned action may be warranted.

Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files and evaluated that information to determine whether the sources cited support the claims made in the petition. The petitioners presented substantial information indicating that the Mojave fringe-toed lizard may be threatened by Factor A and D at Dumont Dunes; as much as 85 percent of the Amargosa River population of the Mojave fringe-toed lizard may be at Dumont Dunes. The petitioners did not assert that Factors B and C are currently, or in the future, considered a threat to this species in any area of the Amargosa River population's range, nor did the petitioners present substantial information to indicate that Factor E is currently, or in the future considered a threat to this species. Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information such that listing the Amargosa River population of the Mojave fringe-toed lizard as threatened or endangered may be warranted due to current and future threats under Factor A. As part of our status review of the Amargosa River population of the Mojave fringe-toed lizard, we will examine the available genetic information for the species in greater detail, and make a final determination as to whether or not the Amargosa River population is a DPS under the Service's DPS policy. Our status review will also include an evaluation as to whether significant portions of the Amargosa River population warrant listing as threatened or endangered; the petitioners assert that a significant portion of the range of the Amargosa River population has suffered severe habitat destruction and

modification by extensive OHV traffic. We will issue a 12-month finding as to whether the petitioned action is warranted.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the Mojave fringe-toed lizard in the Amargosa River area. You may submit information regarding the Amargosa River population of the Mojave fringe-toed lizard by one of the methods listed in the **ADDRESSES** section, at any time.

The petitioners requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the Amargosa River population of the Mojave fringe-toed lizard is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authority

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

Dated: December 13, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.
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