

to lay eggs, is known within portions of the Capitan Mountains, which are adjacent to and north of the current range of the butterfly in the Sacramento Mountains. The petition asserts that a slight shift in either the butterfly's or *P. neomexicanus*' distribution, productivity, phenology, or other factors resulting from climate change could imperil the butterfly. The apparent northward range "shift" in the Edith's checkerspot butterfly was due to greater population extinctions at southern latitudes, not to a northward expansion of its range (Parmesan 1996, p. 765). Parmesan (1996, pp. 765-766) discussed why these extinctions were most likely attributable to climate change rather than habitat destruction. If the Sacramento Mountains checkerspot butterfly were to respond similarly, it may decline at the southern portion of its range, but not expand northward to the Capitan Mountains.

As noted under Species Information, the elevational range for the Sacramento Mountains checkerspot butterfly is 2,380 to 2,750 m (7,800 to 9,000 ft), and that of *Penstemon neomexicanus*, on which the butterfly lays its eggs, is 1,830 to 2,750 m (6,000 to 9,000 ft) (New Mexico Rare Plant Technical Council 2008, webpage). Thus, the butterfly is at the upper elevational range of the plant on which it depends, so it would be dependent on an upward elevational shift of *P. neomexicanus* for the butterfly to shift to higher elevations.

The petition asserts that extreme weather threatens the butterfly. However, other than reiterating our preliminary finding from the 2001 proposed listing rule (66 FR 46575; September 6, 2001) that this may be a threat to the species, the petition presents no information or explanation regarding why the butterfly is threatened as a result of extreme weather. In our 2004 proposed listing withdrawal, we found that the butterfly can survive and persist despite natural events such as drought (69 FR 76428; December 21, 2004). Since our finding in that 2004 withdrawal, we have no new information in our files indicating that there is any such threat from extreme weather currently or in the foreseeable future.

In summary, the petition and information readily available to us do not provide substantial information that extreme weather threatens the butterfly. The petition and information readily available to us provide substantial information that indicate that the petitioned action may be warranted because pesticide spraying and climate change are other natural or manmade factors that may threaten the butterfly.

Finding

We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. Based on our evaluation of the information provided in the petition, and in accordance with recent applicable court decisions pertaining to 90-day findings, we find that the petition presents substantial scientific information indicating that listing the Sacramento Mountains checkerspot butterfly may be warranted. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "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)).

The petitioners present substantial information indicating that the butterfly may be threatened by Factor D (inadequacy of existing USFS regulatory mechanisms) and Factor E (pesticide spraying and climate change) throughout the entire range of the butterfly. The petitioners do not present substantial information that Factors A, B, and C are currently, or in the future, considered a threat to the butterfly. Based on this review and evaluation, we find that the petition has presented substantial scientific or commercial information that listing the butterfly throughout all or a portion of its range may be warranted due to current and future threats under Factors D and E. As such, we are initiating a status review to determine whether listing the butterfly under the Act is warranted. We will issue a 12-month finding as to whether any of the petitioned actions are warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the butterfly.

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have

completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the butterfly. The petitioners requested that critical habitat be designated for this species. If we determine in our 12-month finding that listing the butterfly 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 in this finding is available upon request from the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rule are the New Mexico Ecological Services Office staff members (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: November 12, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648-AW97

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

Correction

In proposed rule document E8-28015 starting on page 71598 in the issue of Tuesday, November 25, 2008, make the following correction:

On page 71598, in the first column, under the **DATES** heading, in the second line "November 25, 2008" should read "January 26, 2009".

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