

Decided: December 30, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

**Jeffrey Herzig,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to add part 1301 of title 49, chapter X, of the Code of Federal Regulations as follows:

## **PART 1301—RAIL TRANSPORTATION CONTRACTS**

**Authority:** 49 U.S.C. 721(a) and 10709.

### **§ 1301.1 Contract Disclosure Statement.**

(a) The Board will not find jurisdiction over a dispute involving the rate or service under a rail transportation agreement where that agreement contains a disclosure statement that conforms with paragraphs (b) and (c) of this section. Conversely, where a rail transportation agreement fails to contain such a disclosure statement, the Board will find jurisdiction over a dispute involving the rate or service provided under that agreement, absent clear and convincing evidence both that the parties intended to enter into a rail transportation contract governed by 49 U.S.C. 10709 and that the shipper was made aware that it could request service under a common carrier tariff rate that would be subject to STB jurisdiction.

(b) The disclosure statement should appear at the top of the first page of the rail transportation agreement in type size at least as large as the type size used for the body of the agreement.

(c) The disclosure statement should read as follows:

Disclosure Statement—This agreement constitutes a rail transportation contract under 49 U.S.C. 10709. Contract arrangements are generally not subject to challenge before the Surface Transportation Board (“STB”), but can be enforced in a court of competent jurisdiction. Under federal rules found at 49 CFR 1300, railroads are required, upon request, to quote to shippers a rate for common carriage transportation (i.e., a non-contract rate). Pursuant to 49 U.S.C. 10701, the STB has jurisdiction (subject to some exceptions) over disputes arising out of common carriage (non-contract) rates.

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[FWS–R2–ES–2008–0130; MO 9221050083]

### **Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat**

**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 270 species from a petition to list 475 species in the southwestern United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that for these 270 species the petition does not present substantial scientific or commercial information indicating that listing these species may be warranted. Therefore, for these 270 species, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of these 270 species or threats to them or their habitat at any time. This information will help us monitor and encourage the conservation of these species. An additional 5 species of the 475 included in the petition do not fall within the scope of the petition or are not a listable entity and, therefore, were not considered in this finding (*see* Petition).

**DATES:** The finding announced in this document was made on January 6, 2009. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov>. Supporting information we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Southwest Regional Ecological Services Office, 500 Gold Ave., SW., Albuquerque, NM 87102. Please submit any new information, materials, comments, or questions concerning these species or this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Nancy Gloman, Assistant Regional Director, Southwest Regional Ecological

Services Office (see **ADDRESSES**); telephone 505/248–6920; facsimile 505/248–6788. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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

Our standard for “substantial information,” as defined in the Code of Federal Regulations at 50 CFR 424.14(b), 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.” If we find that substantial information was presented, we are required to promptly commence a status review of the species.

In making this finding, we based our decision on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and otherwise available in our files. We evaluated that 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 is limited to a determination of whether the information in the petition meets the “substantial information” threshold.

##### **Petition**

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened with critical habitat. The petition incorporates all analyses, references, and documentation provided by NatureServe in its online database at <http://www.natureserve.org/> into the petition. The petition clearly identified itself as a petition and included the identification information,

as required in 50 CFR 424.14(a). We sent a letter to the petitioners dated July 11, 2007, acknowledging receipt of the petition and stating that the petition was under review by staff in our Southwest Regional Office. On June 18, 2008, we received a petition from WildEarth Guardians dated June 12, 2008, to emergency list 32 species under the Administrative Procedure Act (APA) and the Endangered Species Act. Of those 32 species, 21 were included in the June 18, 2007, petition to be listed on a non-emergency basis. In a letter dated July 22, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that an emergency situation existed for any of the 21 species. This letter concludes our processing of the emergency aspect of the 2008 petition under the APA. The following discussion presents our partial evaluation of the June 18, 2007 and June 12, 2008 petitions, based on information provided in the petition and our current understanding of the species.

The 2007 petition included a list of 475 species. One species, Salina mucket (*Potamilus metnecktayi*), is also known by the scientific name *Disconaias salinasensis*; we were petitioned to list the species under both names. The species files in NatureServe for these two names are identical. For the remainder of our review we used the name *P. metnecktayi*; therefore, we reviewed only 474 actual species files. This finding addresses 270 of the 475 species for which we were petitioned. The remaining 200 species will be addressed in one or more additional 90-day findings in the future. Although we are not making a finding on the remaining 200 species at this time, the lack of inclusion of those species in this finding does not imply that we are making or will make a positive finding on any or all of the remaining species. Our priority for responding to a petition is a function of the resources that are available and competing demands for those resources.

Because the petition requested that we consider all species from the list that were not currently listed, proposed for listing, or candidates for listing, 3 of the 474 species were also not included in the review. Quitobaquito pupfish (*Cyprinodon eremus*) is currently listed as endangered under the name desert pupfish (*Cyprinodon macularius eremus*). In Arizona, this family was historically represented by two recognized subspecies, *Cyprinodon m. macularius* and *C. m. eremus*, and an undescribed species, the Monkey Spring pupfish. Minckley *et al.* (2002, p. 701) raised *C. m. eremus* to a full species, *C.*

*eremus*. The species is listed as endangered throughout its range, so we did not consider it as part of this petition. On December 13, 2007, we made a 12-month finding that the Jollyville Plateau salamander (*Eurycea tonkawae*) warrants listing, but that listing is precluded by higher listing priorities (72 FR 71040), thus rendering the species to candidate status. On December 6, 2007, we published our annual review of native species that are candidates for listing as endangered or threatened (72 FR 69034), in which we made the San Bernardino springsnail (*Pyrgulopsis bernardina*) a candidate species. Because these three species, Quitobaquito pupfish, Jollyville Plateau salamander, and San Bernardino springsnail, are currently listed or are candidates for listing, and we were petitioned to list species that are not listed or candidates, they were not evaluated as part of this petition.

*Agave arizonica* (Arizona agave) was recently delisted (71 FR 35195; June 19, 2006) because it was determined to be a product of hybridization and, therefore, not a listable entity. No new information was presented in the petition for Arizona agave. Because of its current status, the Arizona agave was not considered in our review. After eliminating review of Quitobaquito pupfish, Jollyville Plateau salamander, San Bernardino springsnail, and Arizona agave, there were 470 species files to continue with our review in the NatureServe database.

This finding addresses 270 of the 470 species for which we were validly petitioned. The remaining 200 species will be addressed in one or more additional 90-day findings in the future. Our priority for responding to a petition is a function of the resources that are available and competing demands for those resources. Thus, in any given fiscal year, multiple factors dictate whether it will be possible to undertake work on particular listing actions. The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to revise critical habitat and to add species to the Lists of Endangered and Threatened Wildlife and Plants or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related,

administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to, gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our determinations under section 4(a)(1) of the Act; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (*see* 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (e.g., Recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (*see* House Report 105-163, 105th Congress, 1st Session, July 1, 1997). Thus, through the listing cap and the amount of funds needed to address court-mandated listing actions, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated listing actions, set the limits on our ability to fully respond to this petition. When funds become available, we will continue our review of the remaining petitioned species that are not addressed in this finding and publish one or more findings for those species.

### Species Information

The petitioners presented two tables that collectively listed the 475 species for consideration and requested that the Service incorporate all analyses, references, and documentation provided by NatureServe in its online database into the petition. The information presented by NatureServe (<http://www.natureserve.org/explorer/>) is found

in peer-reviewed professional journal articles and is considered to be a reputable source of scientific information. We judge this source to be reliable with regard to the information it presents.

We accessed the NatureServe database on July 5, 2007. We saved electronic and hard-copies of each species file and used this information, including references cited within these files, during our review. Therefore, all information we used from the species files in NatureServe was current to that date. All of the petitioned species were ranked by NatureServe as G1 (critically imperiled) or G1G2 (between critically imperiled and imperiled).

We reviewed all references cited in the NatureServe database species files that were available to us. For some species in NatureServe, there is a "Local Programs" link to the Web sites of the State programs that contribute information to NatureServe. We found this "Local Programs" link to have additional information for very few of the 470 species. We reviewed information in references cited in NatureServe and information readily available in our files, on the Internet, and in local libraries that was directly relevant to the information raised in the petition. For the 21 of the 32 species which were also included in the petition to emergency list dated June 12, 2008, we also used information provided in that petition. Following review of the available information, we separated the 470 species into categories based on the level of information found.

We were unable to readily locate one or more references, which we believed might contain additional information on threats for 82 of the species. Without review of those references, we could not be certain that we had assigned them to the correct category. Therefore, on May 12, 2008, we sent a letter to the petitioners requesting those references. The petitioners responded with copies of all but three of the requested references or information on how to purchase them. The date we received the last of the references from the petitioners was July 15, 2008. That did not provide us with sufficient time to review those references for 79 of the 82 species, so we have not addressed them in this finding, but we will consider them in one or more future findings. The 270 species included in this finding are listed in Table 1; they fit into four distinct information level categories.

The first category, titled Category A in Table 1, has only minimal information about each species, and in some cases no more information than the name of the species. An example of a species in

this category that had minimal information is a cave obligate spider with no common name (*Cicurina trivisae*). The NatureServe file for this species names the species, states that it is endemic to Texas, and lives in subterrestrial habitat. The file provides one reference (Gertsch 1992), which contains no information on threats to the species, but describes many spiders within the genus. The Gertsch publication describes the physical characteristics of *C. trivisae*, diagrams of body parts, and some locations where it has been found with no information on the level of survey effort to determine its range (Gertsch 1992, p. 101). The magnitude and type of information provided for other species in this category was similar in nature, or was mainly taxonomic without as much locational information. Category A contains 225 species, of which 1 is a vertebrate, 189 are invertebrates, and 35 are plants.

Occasionally, generic information was presented in the NatureServe species files for a larger group of species we placed in Category A, such as for the class or family the species belongs to, but not specific information on the individual species. The references were taxonomic in nature or simply checklists (lists of species, for example Common and Scientific Names of Fishes from the United States and Canada (Robbins *et al.* 1991)) or taxonomic keys (which provide anatomical characteristics for identification of species) and did not address threats to the species. An example that illustrates the type of generic information that was presented for such species in Category A is Silver Creek woodlandsnail (*Ashmunella binneyi*). The NatureServe file for this species states the name of the species and lists one reference that is a checklist of names of aquatic invertebrates from the United States and Canada (Turgeon *et al.* 1998). The file contains no other information specific to Silver Creek woodlandsnail. The file does describe the basic biology of terrestrial snails (pulmonates) in general stating "terrestrial gastropods do not move much usually only to find food or reproduce" and "as a whole, pulmonates (previously Subclass Pulmonata) are better dispersers than prosobranchs (previously Subclass Prosobranchia) possibly due to their hermaphroditic reproduction increasing the chance of new colonization." The identical language was used in other NatureServe files for terrestrial snail species, and no specific information was provided about the species or threats to the species or its habitat.

The information we reviewed for the species in Category B (see Table 1) contained basic information on the range of the species, based on some level of survey effort. Habitat was frequently mentioned as well as other aspects of the species' biology, such as food habitats. Population size or abundance, if addressed, was rarely quantified, and the database instead used descriptors such as large, small, or numerous. The available information we reviewed did not address specific threats to the species. Category B contains 38 species, of which 2 are vertebrates, 25 are invertebrates, and 11 are plants.

An example of the type of information we found for species in Category B is illustrated by the Animas Mountains tubeshell (*Holospira animasensis*). The NatureServe file for the Animas Mountains tubeshell provides one reference, which is a published description of the newly discovered species (Gilbertson and Worthington 2003, pp. 220–224). That article describes the physical characteristics of the species and the habitat in which it was discovered. The article does not address threats to the Animas Mountains tubeshell. The NatureServe file for this species cites Gilbertson and Worthington (2003) and states that live individuals are known only from the north slope of a single hill at the north end of Animas Mountains, and that fossil shells were found from sediments exposed in a mine roadcut on the south side of the hill. The file also states, under Global Protection, that no occurrences are appropriately protected and managed, but under Threats, it states that threats are unknown. This information is typical for the species in Category B.

The information we reviewed for the species in Category C (see Table 1) described one or more threats for the general area, but it did not link the threats to the species or the habitat at the site occupied by the species. Information for species in this category is sometimes provided on distribution, habitat, population size, or other aspects of the species' biology. There are five species in Category C, of which one is an invertebrate and four are plants.

An example of the type of information we reviewed for Category C species is for *Panicum mohavense* (Mojave panicgrass), which occurs at one site on a large military base in New Mexico and five sites in Arizona. The NatureServe file states that for the New Mexico site, there is some grazing in the remote area where the species occurs, but that the threat to the species is unknown. The habitat is described for all of the sites,

but no threats are mentioned for the sites in Arizona. Ladyman (1999), which was cited in NatureServe, did not name additional threats to the species, but recommended additional surveys to determine habitat requirements and abundance.

The information we reviewed for the species in Category D (see Table 1) cited one or more threats and generally linked them to the species or its habitat. However, we have no documentation to support significant impacts from the threats. These species are addressed in the Threats Analysis section. There are

two species in Category D, both of which are plants.

This finding addresses the 270 petitioned species that are listed in Table 1. Of the 270 species, 3 are vertebrates, 215 are invertebrates, and 52 are plants.

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES

Category	Scientific name	Common name	Range	Group
A	<i>Eurycea sp. 10</i>	Dolan Falls Salamander	TX	vertebrate
A	<i>Gammarus pecos</i>	Pecos Amphipod	TX	invertebrate
A	<i>Hyalella texana</i>	Clear Creek Amphipod	TX	invertebrate
A	<i>Agylla septentrionalis</i>	A Tiger Moth	AZ	invertebrate
A	<i>Sonorarctia fervida</i>	A Tiger Moth	AZ	invertebrate
A	<i>Ceratopsyche vanaca</i>	A Caddisfly	NM	invertebrate
A	<i>Hydroptila abbotti</i>	A Caddisfly	TX	invertebrate
A	<i>Neotrichia juani</i>	A Caddisfly	TX	invertebrate
A	<i>Neotrichia sonora</i>	A Caddisfly	TX	invertebrate
A	<i>Taeniopteryx starki</i>	Texas Willowfly	TX	invertebrate
A	<i>Melanoplus chiricahuae</i>	A Spur-throat Grasshopper	AZ	invertebrate
A	<i>Melanoplus pinaleno</i>	A Spur-throat Grasshopper	AZ	invertebrate
A	<i>Agathon arizonicus</i>	A Net-winged Midge	AZ	invertebrate
A	<i>Isoperla sagittata</i>	A Stonefly	TX	invertebrate
A	<i>Phreatodrobia conica</i>	Hueco Cavesnail	TX	invertebrate
A	<i>Pyrgulopsis sola</i>	Brown Springsnail	AZ	invertebrate
A	<i>Pyrgulopsis sp. 2</i>	Mimbres Springsnail	NM	invertebrate
A	<i>Stygopyrgus bartonensis</i>	Barton Cavesnail	TX	invertebrate
A	<i>Texapyrgus longleyi</i>	Striated Hydrobe	TX	invertebrate
A	<i>Tryonia brunei</i>	Brune Spring Snail	TX	invertebrate
A	<i>Tryonia diaboli</i>	Devil Tryonia	TX	invertebrate
A	<i>Ashmunella animasensis</i>	Animas Peak Woodlandsnail	NM	invertebrate
A	<i>Ashmunella ashmuni</i>	Jemez Woodlandsnail	NM	invertebrate
A	<i>Ashmunella bequaerti</i>	Goat Cave Woodlandsnail	TX	invertebrate
A	<i>Ashmunella binneyi</i>	Silver Creek Woodlandsnail	NM	invertebrate
A	<i>Ashmunella danielsi</i>	Whitewater Creek Woodlandsnail	NM	invertebrate
A	<i>Ashmunella edithae</i>	Mckittrick Woodlandsnail	TX	invertebrate
A	<i>Ashmunella ferrissi</i>	Reed's Mountain Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella lenticula</i>	Horseshoe Canyon Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella mendax</i>	Iron Creek Woodlandsnail	NM	invertebrate
A	<i>Ashmunella mogollonensis</i>	Mogollon Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella mudgei</i>	Sawtooth Mountain Woodlandsnail	TX	invertebrate
A	<i>Ashmunella pilsbryana</i>	Blue Mountain Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella pseudodonta</i>	Capitan Woodlandsnail	NM	invertebrate
A	<i>Ashmunella rileyensis</i>	Mount Riley Woodlandsnail	NM	invertebrate
A	<i>Ashmunella salinasensis</i>	Salinas Peak Woodlandsnail	NM	invertebrate
A	<i>Ashmunella todseni</i>	Maple Canyon Woodlandsnail	NM	invertebrate
A	<i>Ashmunella walkeri</i>	Florida Mountain Woodlandsnail	NM	invertebrate
A	<i>Coelostemma pyrgonasta</i>	Bishop Cap Tubesnail	NM	invertebrate
A	<i>Daedalochila scintilla</i>	A Terrestrial Snail	TX	invertebrate
A	<i>Gastrocopta prototypus</i>	Sonoran Snaggletooth	AZ, NM	invertebrate
A	<i>Gastrocopta ruidosensis</i>	Ruidoso Snaggletooth	KS, NE, NM, OK, TX	invertebrate
A	<i>Holospira cockerelli</i>	Cockerell Holospira	NM	invertebrate
A	<i>Holospira metcalfi</i>	Metcalf Holospira	NM	invertebrate
A	<i>Holospira sherbrookei</i>	Silver Creek Holospira	AZ	invertebrate
A	<i>Humboldtiana fullingtoni</i>	Capote Threeband	TX	invertebrate
A	<i>Naesiotus christenseni</i>	Santa Rita Rabdotus	AZ	invertebrate
A	<i>Nesovitrea suzannae</i>	Live Oak Glass	TX	invertebrate
A	<i>Oreohelix barbata</i>	Bearded Mountainsnail	AZ, NM	invertebrate
A	<i>Oreohelix confragosa</i>	Pinos Altos Mountainsnail	NM	invertebrate
A	<i>Oreohelix houghi</i>	Diablo Mountainsnail	AZ, NM	invertebrate
A	<i>Oreohelix litoralis</i>	San Agustin Mountainsnail	NM	invertebrate
A	<i>Oreohelix magdalenae</i>	Magdalena Mountainsnail	NM	invertebrate
A	<i>Oreohelix swopei</i>	Morgan Creek Mountainsnail	NM, WY	invertebrate
A	<i>Pallifera tournescalis</i>	Quachita Mantleslug	OK	invertebrate
A	<i>Paravitrea aethia</i>	Goddess Supercoil	TN, TX	invertebrate
A	<i>Patera leatherwoodi</i>	Pedernales Oval	TX	invertebrate
A	<i>Philomycus batchi</i>	Dusky Mantleslug	OK	invertebrate
A	<i>Philomycus bisdodus</i>	Grayfoot Mantleslug	OK	invertebrate
A	<i>Sonorella anchana</i>	Sierra Ancha Talussnail	AZ	invertebrate
A	<i>Sonorella animasensis</i>	Animas Talussnail	NM	invertebrate

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES—Continued

Category	Scientific name	Common name	Range	Group
A	<i>Sonorella apache</i>	Apache Talussnail	AZ	invertebrate
A	<i>Sonorella bagnarai</i>	Rincon Talussnail	AZ	invertebrate
A	<i>Sonorella bartschi</i>	Escabrosa Talussnail	AZ	invertebrate
A	<i>Sonorella binneyi</i>	Horseshoe Canyon Talussnail	AZ	invertebrate
A	<i>Sonorella bowiensis</i>	Quartzite Hill Talussnail	AZ, CA	invertebrate
A	<i>Sonorella bradshaveana</i>	Bradshaw Talussnail	AZ	invertebrate
A	<i>Sonorella clappi</i>	Madera Talussnail	AZ	invertebrate
A	<i>Sonorella coltoniana</i>	Walnut Canyon Talussnail	AZ	invertebrate
A	<i>Sonorella compar</i>	Oak Creek Talussnail	AZ	invertebrate
A	<i>Sonorella dalli</i>	Garden Canyon Talussnail	AZ	invertebrate
A	<i>Sonorella delicata</i>	Tollhouse Canyon Talussnail	AZ	invertebrate
A	<i>Sonorella dragoonensis</i>	Stronghold Canyon Talussnail	AZ	invertebrate
A	<i>Sonorella ferrissi</i>	Dragoon Talussnail	AZ	invertebrate
A	<i>Sonorella imperatrix</i>	Total Wreck Talussnail	AZ	invertebrate
A	<i>Sonorella imperialis</i>	Empire Mountain Talussnail	AZ	invertebrate
A	<i>Sonorella insignis</i>	Whetstone Talussnail	AZ	invertebrate
A	<i>Sonorella meadi</i>	Aqua Dulce Talussnail	AZ	invertebrate
A	<i>Sonorella micromphala</i>	Milk Ranch Talussnail	AZ	invertebrate
A	<i>Sonorella reederi</i>	Rampart Talussnail	AZ	invertebrate
A	<i>Sonorella russelli</i>	Black Mesa Talussnail	AZ	invertebrate
A	<i>Sonorella tryoniana</i>	Sanford Talussnail	AZ	invertebrate
A	<i>Sonorella vespertina</i>	Evening Talussnail	AZ	invertebrate
A	<i>Sonorella waltoni</i>	Doubtful Canyon Talussnail	AZ	invertebrate
A	<i>Vertigo berryi</i>	Rotund Vertigo	AZ, CA	invertebrate
A*	<i>Vertigo binneyana</i>	Cylindrical Vertigo	CAN: BC, MB, ON; USA: IA, KS, MT, NM	invertebrate
A	<i>Cisthene conjuncta</i>	A Tiger Moth	TX	invertebrate
A	<i>Catinella texana</i>	A Terrestrial Snail	LA, TX	invertebrate
A	<i>Artesia subterranea</i>	A Cave Obligate Amphipod	TX	invertebrate
A	<i>Artesia welbourni</i>	A Cave Obligate Amphipod	TX	invertebrate
A	<i>Caecidotea adenta</i>	A Cave Obligate Isopod	OK	invertebrate
A	<i>Caecidotea bisetus</i>	A Cave Obligate Isopod	TX	invertebrate
A	<i>Holsingerius smaragdinus</i>	A Cave Obligate Amphipod	TX	invertebrate
A	<i>Seborgia hershleri</i>	A Cave Obligate Amphipod	TX	invertebrate
A	<i>Stygobromus bowmani</i>	Bowman's Cave Amphipod	OK	invertebrate
A	<i>Stygobromus reddelli</i>	Reddell's Cave Amphipod	TX	invertebrate
A	<i>Batrisodes grubbsi</i>	A Beetle	TX	invertebrate
A	<i>Rhadine austinica</i>	A Cave Obligate Beetle	TX	invertebrate
A	<i>Rhadine insolita</i>	A Cave Obligate Beetle	TX	invertebrate
A	<i>Rhadine noctivaga</i>	A Cave Obligate Beetle	TX	invertebrate
A	<i>Rhadine russelli</i>	A Cave Obligate Beetle	TX	invertebrate
A	<i>Alexicles aspersa</i>	A Tiger Moth	AZ, NM	invertebrate
A	<i>Lepidostoma ozarkense</i>	A Caddisfly	AR, OK	invertebrate
A	<i>Neotrichia mobilensis</i>	A Caddisfly	AL, TX	invertebrate
A	<i>Ochrotrichia guadalupensis</i>	A Caddisfly	TX	invertebrate
A	<i>Melanoplus alexanderi</i>	A Grasshopper	TX	invertebrate
A	<i>Melanoplus magdalenae</i>	A Spur-throat Grasshopper	AZ, NM	invertebrate
A	<i>Baetodes alleni</i>	A Mayfly	TX	invertebrate
A	<i>Thalkeothops grallatrix</i>	A Cave Obligate Centipede	NM	invertebrate
A	<i>Balconorbis uvaldensis</i>	Balcones Ghostsnail	TX	invertebrate
A	<i>Phreatoceras taylori</i>	Nymph Trumpet	TX	invertebrate
A	<i>Phreatodrobia coronae</i>	A Cavesnail	TX	invertebrate
A	<i>Phreatodrobia rotunda</i>	Beaked Cavesnail	TX	invertebrate
A	<i>Ashmunella chiricahuana</i>	Cave Creek Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella esuritor</i>	Barfoot Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella lepiderma</i>	Whitetail Woodlandsnail	AZ	invertebrate
A	<i>Ashmunella rhyssa</i>	Sierra Blanca Woodlandsnail	NM	invertebrate
A	<i>Deroceras heterura</i>	Marsh Slug	NM	invertebrate
A	<i>Holospira tantalus</i>	Teasing Holospira	AZ	invertebrate
A	<i>Holospira whetstonensis</i>	Whetstone Holospira	AZ	invertebrate
A	<i>Neohelix lioderma</i>	Tulsa Whitelip	OK	invertebrate
A	<i>Sonorella caerulifluminis</i>	Blue Talussnail	AZ	invertebrate
A	<i>Sonorella micra</i>	Pygmy Sonorella	AZ	invertebrate
A	<i>Sonorella neglecta</i>	Portal Talussnail	AZ	invertebrate
A	<i>Apocheiridium reddelli</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Archeolarca guadalupensis</i>	Guadalupe Cave Pseudoscorpion	TX	invertebrate
A	<i>Archeolarca welbourni</i>	A Cave Obligate Pseudoscorpion	AZ	invertebrate
A	<i>Cheiridium reyesi</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Chitrella elliotti</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Chitrella major</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Chitrella welbourni</i>	A Cave Obligate Pseudoscorpion	NM	invertebrate
A	<i>Cicurina barri</i>	A Cave Obligate Spider	TX	invertebrate

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES—Continued

Category	Scientific name	Common name	Range	Group
A	<i>Cicurina caverna</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina coryelli</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina cueva</i>	A Cave Spider	TX	invertebrate
A	<i>Cicurina ezelli</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina gruta</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina holsingeri</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina machete</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina mckenziei</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina medina</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina menardia</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina obscura</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina orellia</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina pablo</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina pastura</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina patei</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina porteri</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina puentecilla</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina rainesi</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina reclusa</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina reddelli</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina reyesi</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina russelli</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina sansaba</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina selecta</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina serena</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina sheari</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina sprousei</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina stowersi</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina suttoni</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina travisae</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina ubicki</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina uvalde</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina venefica</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina vibora</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Cicurina watersi</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Leucohya texana</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Mexichthonius exoticus</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Neoallochernes incertus</i>	A Cave Obligate Pseudoscorpion	NM	invertebrate
A	<i>Neoleptoneta concinna</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Neoleptoneta devia</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Neoleptoneta valverde</i>	A Cave Obligate Spider	TX	invertebrate
A	<i>Pseudogarypus hypogeus</i>	A Cave Obligate Pseudoscorpion	AZ	invertebrate
A	<i>Tartarocreagris intermedia</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Texella brevidenta</i>	A Cave Obligate Harvestman	TX	invertebrate
A	<i>Texella brevistyla</i>	A Cave Obligate Harvestman	TX	invertebrate
A	<i>Texella diplospina</i>	A Cave Obligate Harvestman	TX	invertebrate
A	<i>Texella fendi</i>	A Harvestman	TX	invertebrate
A	<i>Texella grubbsi</i>	A Cave Obligate Harvestman	TX	invertebrate
A	<i>Texella hardeni</i>	A Cave Obligate Harvestman	TX	invertebrate
A	<i>Texella renkesae</i>	A Cave Obligate Harvestman	TX	invertebrate
A	<i>Texella welbourni</i>	A Cave Obligate Harvestman	NM	invertebrate
A	<i>Tuberochernes ubicki</i>	A Cave Obligate Pseudoscorpion	AZ	invertebrate
A	<i>Tyrannochthonius troglodytes</i>	A Cave Obligate Pseudoscorpion	TX	invertebrate
A	<i>Holospira millestriata</i>	A Terrestrial Snail	AZ	invertebrate
A	<i>Succinea pseudavara</i>	A Terrestrial Snail	KS, OK	invertebrate
A	<i>Apatania arizona</i>	A Caddisfly	AZ	invertebrate
A	<i>Chimarra holzenthali</i>	A Caddisfly	LA, TX	invertebrate
A	<i>Chimarra primula</i>	A Caddisfly	AZ	invertebrate
A	<i>Catapyrenium granuloseum</i>	No common name	NM	lichens
A	<i>Xanthoparmelia dissensa</i>	No common name	AZ, NM	lichens
A	<i>Cirsium rusbyi</i>	Rusby's Thistle	AZ	plant
A	<i>Lupinus lemmonii</i>	Lemmon's Lupine	AZ	plant
A	<i>Aconitum infectum</i>	Arizona Monkshood	AZ	plant
A	<i>Centaurium blumbergianum</i>	Blumberg Rosita	TX	plant
A	<i>Crataegus nananixonii</i>	Nixon's Hawthorn	TX	plant
A	<i>Eleocharis brachycarpa</i>	Short-fruited Spikerush	TX	plant
A	<i>Opuntia martiniana</i>	Seashore Cactus	AZ	plant
A	<i>Tetrateuris verdiensis</i>	No common name	AZ	plant
A	<i>Fissidens littlei</i>	No common name	NM	plant
A	<i>Arabis tricornuta</i>	Rincon Mountain Rockcress	AZ	plant
A	<i>Camissonia gouldii</i>	Diamond Valley Suncup	AZ, UT	plant

TABLE 1—LIST OF 270 SPECIES INCLUDED IN THIS FINDING BY CATEGORY. AN ASTERISK DENOTES SPECIES IN THE JUNE 12, 2008 PETITION TO EMERGENCY LIST 32 SPECIES—Continued

Category	Scientific name	Common name	Range	Group
A	<i>Lesquerella lata</i>	Lincoln County Bladderpod	NM	plant
A	<i>Dryopteris rossii</i>	Ros's Woodfern	AZ	plant
A	<i>Talinum gooddingii</i>	Goodding's Flameflower	AZ	plant
A	<i>Cuscuta dentatasquamata</i>	Los Pinitos Dodder	AZ	plant
A	<i>Potentilla albiflora</i>	White-flowered Cinquefoil	AZ	plant
A	<i>Agalinis calycina</i>	Leoncita False Foxglove	TX, NM	plant
A	<i>Arida mattrurneri</i>	No Common Name	TX	plant
A	<i>Eriogonum terrenatum</i>	San Pedro River Wild Buckwheat	AZ	plant
A	<i>Hedyotis butterwickiae</i>	Mary's Bluet	TX	plant
A	<i>Machaeranthera gypsitherma</i>	Gypsum Hotspring Aster	NM, TX	plant
A	<i>Matelea texensis</i>	Trans Pecos Matelea	TX	plant
A	<i>Mentzelia memorabilis</i>	September 11 Stickleaf	AZ	plant
A*	<i>Paronychia maccartii</i>	Mccart's Whitlow-wort	TX	plant
A	<i>Perityle fosteri</i>	Foster's Rockdaisy	TX	plant
A	<i>Perityle vitreomontana</i>	Glass Mountains Rockdaisy	TX	plant
A	<i>Physalis latiphysa</i>	Broad-leaf Ground-cherry	AZ	plant
A*	<i>Pseudoclapia watsonii</i>	Watson's False-clappia	TX	plant
A	<i>Scutellaria laevis</i>	Smooth-stem Skullcap	TX	plant
A	<i>Senecio quaylei</i>	Quayle's Ragwort	TX	plant
A	<i>Yucca cernua</i>		TX	plant
A	<i>Camissonia confertiflora</i>	Bunch Flower Evening Primrose	AZ	plant
A	<i>Thelypodium tenue</i>	Fresno Creek Thelypod	TX	plant
B	<i>Menidia clarkhubbsi</i>	Texas Silverside	TX	vertebrate
B	<i>Syngnathus affinis</i>	Texas Pipefish	TX	vertebrate
B*	<i>Procambarus nueces</i>	Nueces Crayfish	TX	invertebrate
B*	<i>Isoperla jewetti</i>	A Stonefly	CO, NM, TX	invertebrate
B	<i>Juturnia tularosae</i>	Tularosa Juturnia	NM	invertebrate
B	<i>Ashmunella harrisi</i>	Goat Mountain Woodlandsnail	NM	invertebrate
B	<i>Humboldtiana agavophila</i>	Agave Threeband	TX	invertebrate
B	<i>Humboldtiana chisosensis</i>	Chisos Threeband	TX	invertebrate
B	<i>Hemigrapsus oregonensis</i>	Yellow Shore Crab	TX	invertebrate
B	<i>Streptocephalus thomasbowmani</i>	Bowman's Fairy Shrimp	NM	invertebrate
B	<i>Stygobromus blinni</i>	Blinn's Amphipod	AZ	invertebrate
B	<i>Stygobromus boultoni</i>	Boulton's Amphipod	AZ	invertebrate
B	<i>Stygobromus curroae</i>	Curro's Amphipod	NM	invertebrate
B	<i>Stygobromus dejectus</i>	Cascade Cave Amphipod	TX	invertebrate
B	<i>Stygobromus hadenoecus</i>	Devil's Sinkhole Amphipod	TX	invertebrate
B	<i>Stygobromus jemezensis</i>	Jemez Mountains Amphipod	NM	invertebrate
B	<i>Culoptila kimminsi</i>	A Caddisfly	AZ	invertebrate
B	<i>Culoptila moselyi</i>	A Caddisfly	AZ	invertebrate
B	<i>Ochrotrichia weddleae</i>	A Caddisfly	AR, OK	invertebrate
B*	<i>Fallceon eatoni</i>	A Mayfly	AZ	invertebrate
B	<i>Holospira animasensis</i>	Animas Mountains Tubeshell	NM	invertebrate
B	<i>Cicurina bandida</i>	Bandit Cave Spider	TX	invertebrate
B	<i>Cicurina browni</i>	A Cave Obligate Spider	TX	invertebrate
B	<i>Eidmannella bullata</i>	A Cave Obligate Spider	TX	invertebrate
B	<i>Eidmannella delicata</i>	A Cave Obligate Spider	TX	invertebrate
B	<i>Eidmannella nasuta</i>	A Cave Obligate Spider	TX	invertebrate
B	<i>Eidmannella reclusa</i>	A Cave Obligate Spider	TX	invertebrate
B*	<i>Donrichardsia macroneuron</i>	No Common Name	TX	plant
B	<i>Erigeron kuschei</i>	Chiricahua Fleabane	AZ	plant
B	<i>Perityle ambrosiifolia</i>	Lace-leaf Rockdaisy	AZ	plant
B	<i>Perityle ajoensis</i>	Ajo Rockdaisy	AZ	plant
B	<i>Townsendia smithii</i>	Black Rock Ground-daisy	AZ	plant
B*	<i>Proboscidea spicata</i>	Many-flowered Unicorn-plant	TX	plant
B	<i>Sclerocactus sileri</i>	Siler's Fishhook Cactus	AZ	plant
B	<i>Silene rectiramea</i>	Grand Canyon Catchfly	AZ	plant
B	<i>Viola guadalupeensis</i>	Guadalupe Mountains Violet	TX	plant
B	<i>Cyperus cephalanthus</i>	Cryptic Flatsedge	LA, TX	plant
B	<i>Lechea mensalis</i>	Chisos Pinweed	TX	plant
C	<i>Procambarus steigmani</i>	Parkhill Prairie Crayfish	TX	invertebrate
C	<i>Houstonia correllii</i>	Correll's Bluet	TX	plant
C	<i>Panicum mohavense</i>	Mojave Panicgrass	AZ, NM	plant
C	<i>Paronychia lundelliorum</i>	Lundell's Nailwort	TX	plant
C	<i>Erigeron heliographis</i>	Heliograph Peak Fleabane	AZ	plant
D	<i>Erigeron hessii</i>	Hess' Fleabane	NM	plant
D	<i>Cymopterus beckii</i>	Pinnate Spring-parsley	AZ, UT	plant

## Threats Analysis

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species, subspecies, or distinct population segment of vertebrate taxa may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (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) 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 270 species, as presented in the petition and other readily available information at the time of the petition review, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

For those species we placed in Categories A, B, and C, no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that the present or threatened destruction, modification, or curtailment of the species' habitat or range is a threat to any of the 268 species in Categories A, B, and C. For one of the two plant species in Category D (Table 1), information related to habitat impacts at one or more occupied sites is presented.

*Cymopterus beckii* (pinnate spring-parsley) occurs in 1 area in Arizona and in 2 areas in Utah; within the 2 areas in Utah, it is known to occur at more than 40 sites, most discovered in the past 10 years. NatureServe (<http://www.natureserve.org/explorer/>) cites park visitor impacts, presumably trampling, as a potential threat at Capitol Reef National Park in Utah. However, following 3 years of intensive surveys in the 2 Utah areas where the species was found at 42 new sites, Clark (2002, p. 49) stated that the majority of the new sites are in remote locations with difficult accessibility that serves to protect the plants from human disturbance. No additional threats were

identified for those new sites, and we found no information about threats to the species in Arizona (Arizona Game and Fish Department 2004, p. 4). Therefore, we find the petition and supporting information does not present substantial scientific or commercial information to indicate *C. beckii* is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

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

For those species we placed in Categories A, B, and C, no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that overutilization for commercial, recreational, scientific, or educational purposes is a threat to 268 of the 270 species. For one of the two plants in Category D (Table 1), information related to overutilization for recreational use at one or more occupied sites is presented. This information is discussed below.

*Erigeron hessii* (Hess' fleabane) is known from two sites in a Wilderness Area on the Gila National Forest in New Mexico. Plants are scattered in crevices of exposed rock (Nesom 1978, p. 443). The known sites are in a remote area (Sivinski 1998, p. 2). The NatureServe file contains a statement that at one of the sites, those plants that occur on a scenic overlook at the top of the outcrop that is occupied by the species may be trampled by hikers. No references are cited for this statement, and none of the references cited in the NatureServe file mention trampling by hikers (Kartez 1994; Nesom 1978; New Mexico Native Plant Protection Advisory Committee (NMPPAC 1984, p. 28); Sivinski 1998; Sivinski and Lightfoot 1995), although Nesom (1978, p. 443) and NMPPAC (1984, p. 28) state that at one site, it occurs along one or more trails. Robert Sivinski is the sole State-employed botanist in New Mexico responsible for rare plants in the State. He leads the New Mexico Rare Plant Technical Committee (NMRPTC), formerly the NMPPAC, which meets regularly to review and update information on the status of rare New Mexico plants. Sivinski (1998), which is cited in NatureServe, appeared on the NMRTPC Web site in 1998, but is currently not readily available. In the 2008 version on the NMRTPC Web site that was accessed by the Service on March 4, 2008 at <http://nmrareplants.unm.edu/rarelist.php>, it states that there are no

current land uses that threaten the species and points out that it is within a Wilderness Area, where major ground disturbing activities are prohibited. The NMPPAC (1984, p. 28) stated that no threats were known. The NMRPTC 2008 Web site also provides a recommendation that surveys be conducted for the species at additional suitable rock outcrops in the area.

For *Erigeron hessii*, we find that although a specific threat to each species was mentioned in NatureServe for a single site or area, additional substantial information was presented in cited references or was readily available to us that the species is not threatened by overutilization for recreational purposes. Therefore, the petition does not present substantial information that overutilization for commercial, recreational, scientific, or educational purposes is a threat to this species.

### C. Disease or Predation

For those species we placed in Categories A, B, and C, no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that disease or predation is a threat to any of the 268 species in Categories A, B, and C. For the two remaining species in Category D, no information on threats due to disease or predation was presented. Therefore we find that the petition does not present substantial scientific or commercial information that the petitioned action may be warranted due to threats from this factor.

### D. Inadequacy of Existing Regulatory Mechanisms

The petition discusses the lack of protection under the Act for the petitioned species, stating that unless a species is listed as threatened or endangered under the Act, it receives no protections from the statute. The petition provides no information addressing any other State or Federal regulations, and no information about the inadequacy of existing regulatory mechanisms.

The petitioner's claim that we could afford more protection to these petitioned species if they were listed under the Act does not provide substantial information that the existing regulatory mechanisms are inadequate. As the petitioner acknowledges, under 16 U.S.C. 1533(b)(1)(A), we must reach our determination solely on the basis of the best scientific and commercial data available. The petition did not present



any specific information related to other Federal, State, or local government regulatory mechanisms that may exist to provide regulatory protections for the 270 species or their respective habitats. Therefore, we conclude that the petition does not present substantial information that any of the 270 species may warrant listing due to inadequacy of existing regulatory mechanisms.

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

While we recognize that many of the species contained within the NatureServe database have limited distribution or small population size, limited distribution and population size were not identified as threats faced by any of the 270 species in the petition, including all available references and the NatureServe species files and these two factors alone without elaboration may not be substantial information that may warrant listing under the Act. No other information that could be categorized under Factor E was presented in the petition or was readily available to us for the species in any of the four categories. Therefore, we conclude that the petition does not present substantial information that

other natural or manmade factors affecting the species' continued existence are a threat to any of the 270 species.

**Finding**

We have reviewed and evaluated the five listing factors with regard to 270 of the 475 petitioned species, based on the information in the petition and the literature cited in the petition, and we have 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 to us. Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information that listing these 270 species as threatened or endangered under the Act may be warranted. For 8 of the 32 species we were petitioned in 2008 to emergency list, we also find that the 2007 petition, the 2008 petition, NatureServe, references cited in the petitions and in NatureServe, and information readily available to us did not present substantial information that emergency listing those 8 species is warranted. Although we will not commence a status review in response to 270 of the 475 species petitioned in

2007 and 8 of the 32 species petitioned in 2008, we will continue to accept information and materials regarding any of the 270 species at our Southwest Regional Ecological Services Office (*see ADDRESSES*). Further, as indicated previously, we will address the remaining 200 species in future findings.

**References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Southwest Regional Ecological Services Office (*see ADDRESSES*).

**Author**

The primary authors of this document are the staff members of the Southwest Regional Ecological Services Office (*see ADDRESSES*).

**Authority**

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

Dated: December 23, 2008.

**Kenneth Stansell,**

*Acting Deputy Director, U.S. Fish and Wildlife Service.*

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**BILLING CODE 4310-55-P**