meeting for three sessions of approximately five days at roughly monthly intervals. Meetings will start on a Monday at 1:00 and end on a Friday at noon. The committees will meet in the Washington, DC area. The dates and locations of these meetings will be posted on the Department's Web site at: *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/negreg-summerfall.html*.

The schedule for these negotiations has been developed to ensure publication of the final regulations by the November 1, 2010 statutory deadline for publishing Title IV, HEA student financial assistance final regulations.

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Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1098a.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: September 3, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–21695 Filed 9–8–09; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2008–0697; FRL–8948–9]

RIN 2060–AP08

Revisions to Test Method for Determining Stack Gas Velocity Taking Into Account Velocity Decay Near the Stack Walls

Correction

In proposed rule document E9–20395 beginning on page 42819 in the issue of Tuesday, August 25, 2009 make the following correction:

Appendix A–2 to Part 60 [Corrected]

On page 42819, in Appendix A–2 to Part 60, Equation 2H–1 is reprinted correctly to read as set forth below:

$$d_{rem} = r - \sqrt{\left(\frac{p-1}{p}\right)r^2 - rd_{last} + \frac{1}{2}d_{last}^2} \qquad \text{Eq. 2H-1}$$

[FR Doc. Z9–20395 Filed 9–8–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R4-ES-2009-0029
MO 9221050083-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Eastern Population of the Gopher Tortoise (*Gopherus polyphemus*) as Threatened

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, announce a 90–day finding on a petition to list the eastern population of the gopher tortoise (*Gopherus polyphemus*) as threatened under the Endangered Species Act of 1973, as amended (Act) and designate critical habitat. Herein, the Service refers to the eastern population of the gopher tortoise as the gopher tortoise in the eastern portion of its range. Following a review of the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the gopher tortoise in the eastern portion of its range may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the gopher tortoise in the eastern portion of the range is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding the status of and threats facing the gopher tortoise throughout all of its range.

DATES: We made the finding announced in this document on September 9, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before November 9, 2009 to allow us time to review and consider the information in our status review.

ADDRESSES: You may submit information 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: FWS-R4-ES-2009-0029; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256, by telephone 904/731-3336, or by facsimile 904/731-3045. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating 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 gopher tortoise throughout all of its range. We request information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status

of the gopher tortoise throughout all of its range. We are seeking information regarding:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy of the gopher tortoise throughout its entire range including the federally listed western portion of the gopher tortoise's range;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species or its habitat.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

(3) Information related to whether any portion of the range should be considered for listing as a distinct population segment or significant portion of the range.

If we determine that listing the gopher tortoise in the eastern portion of its range is warranted, it may be appropriate, at the same time, 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 range currently occupied by the gopher tortoise range wide 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 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. Include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you provide.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we received and used in preparing this 90–day finding will be available for you to review at *http://www.regulations.gov*or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. 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'' within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species which we subsequently summarize in our 12–month finding.

On January 18, 2006, we received a petition, dated January 13, 2006, from Save Our Big Scrub, Inc. and Wild South requesting that we list the gopher tortoise (*Gopherus polyphemus*) in the eastern portion of its range as a threatened species under the Act and we designate critical habitat. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). Action on this petition was precluded by court orders and settlement agreements for other listing and critical habitat actions that required all of our listing and critical habitat funding for fiscal year 2006. On September 26, 2006, we received a 60–day notice of intent to sue from Save Our Big Scrub, Inc. and Wild South for failing to make a timely 90–day finding. This notice constitutes our 90–day finding on the petition to list the gopher tortoise in the eastern portion of its range.

Previous Federal Action(s)

On July 7, 1987 (52 FR 25376), the Service determined the western population of the gopher tortoise to be a threatened species. This population occurs from the Tombigbee and Mobile Rivers in Alabama west to southeastern Louisiana. To date, no Federal actions have been taken with regard to the gopher tortoise in the eastern portion of its range.

Species Information

The gopher tortoise was first described in 1802 by F.M. Daudin. It is the only tortoise indigenous to the southeastern United States (U.S. Fish and Wildlife Service 1990, p. 1). The gopher tortoise is a moderate-sized, terrestrial turtle, averaging 23 to 28 centimeters (cm) (9 to 11 inches (in)) in length. The species is identified by its stumpy, elephantine hind feet and flattened, shovel-like forelimbs. The shell is oblong and generally tan, brown, or gray in coloration.

The gopher tortoise typically inhabits relatively well-drained, sandy soils. This species is generally associated with longleaf pine (*Pinus palustris*)– xeric oak (*Quercus* spp.) sandhills but also occurs in scrub, xeric hammock, pine flatwoods, dry prairie, coastal grasslands and dunes, mixed hardwood-

pine communities, and a variety of disturbed habitats (Auffenberg and Franz 1982, p. 98; Kushlan and Mazzotti 1984, pp. 231-232; Diemer 1987, pp. 73-74; Diemer 1992; pp. 163-164; Breininger *et al.* 1994, pp. 60 and 63). Gopher tortoises excavate burrows that average 0.91 to 15.8 meters (m) (3 to 52 feet (ft)) in length and 2.7 to 7.0 m (9 to 23 ft) in depth (Ashton and Ashton 2004, p. 15). These burrows, which provide protection from temperature extremes, desiccation, and predators, serve as refuges for approximately 360 other species (Cox *et al.* 1987, p. 11; Jackson and Milstrey 1989, pp. 86-87; Witz *et al.* 1991, p. 152).

The gopher tortoise is slow to reach sexual maturity, has low fecundity, and has a long life span (Cox *et al.* 1987, p. 17). Females reach sexual maturity at 9 to 21 years of age, depending on local resource abundance and latitude; males mature at a slightly younger age (Mushinsky *et al.* 1994, p. 352; Aresco and Guyer 1999, pp. 503-504). The breeding season is generally April to November. Nests are constructed (often in burrow mounds) from mid-May to mid-June, and only one clutch is produced annually (Iverson 1980, p. 356). Incubation periods range from 80 to 90 days in northern Florida (Iverson 1980, p. 356) to 110 days in South Carolina, the northern limit of the gopher tortoise's range (Wright 1982, p. 68). Predation of nests and hatchlings is a major factor affecting population dynamics (Diemer 1994, pp. 134-135; Alford 1980, p. 180; Butler and Sowell 1996, pp. 455-457).

Gopher tortoises feed primarily on broadleaf grasses, wiregrass (*Aristida stricta* var. *beyrichiana*), asters, peas and beans, and fruit, but they are known to eat more than 300 species of plants (Ashton and Ashton 2004, pp. 33-35). Home range size varies with habitat type, season, and sex of the tortoise; moreover, considerable individual variation has been found (Diemer 1992, pp. 160-162). Reported annual average home ranges for males have varied from 0.5 to 1.9 hectares (ha) (1.2 to 4.7 acres (ac)). Females generally have smaller home ranges, with reported averages ranging from 0.1 to 0.6 ha (0.2 to 1.6 ac) (McRae *et al.* 1981, pp. 174-176; Diemer 1992, pp. 160-161; Smith *et al.* 1997, pp. 359-361). Home range size is inversely correlated with the amount of herbaceous ground cover and the range may vary depending on habitat quality (Diemer 1992, p. 163). Multiple burrows are typically used (McRae *et al.* 1981, p. 165; Diemer 1992, p. 162), which complicates estimates of population size (McCoy and Mushinsky 1992, p. 402).

The gopher tortoise is endemic to the United States and occurs in the southeastern Coastal Plain from southeastern South Carolina to extreme southeastern Louisiana (Auffenberg and Franz 1982, p. 95). The eastern portion of the gopher tortoise's range includes Alabama (east of the Tombigbee and Mobile Rivers), Florida, Georgia, and South Carolina. Of the eastern portion of the tortoise's range, the northernmost part is in South Carolina; in that State, four disjunct populations remain in Jasper County, a few tortoises occur in southern Hampton County (Wright 1982, p. 14), and tortoises have recently been documented in Aiken County (Clark 2001, p. 191). In Georgia, the largest number of tortoises is found along the western Fall Line Sand Hills and the central Tifton Uplands. Along the Coastal Plain of Georgia, most of the tortoises are scattered due to urbanization along the coast, which further isolates tortoises from one another (Landers and Garner 1981, pp. 46-47). Tortoises found farther inland in rural areas also tend to be scattered due to lack of management, such as prescribed burning. The State of Florida contains the largest portion of the total global range of the species. Gopher tortoises remain widely distributed in Florida, occurring in parts of all 67 counties; however, their current range in south Florida is restricted due to unsuitable habitat and increased urbanization (Diemer 1987, p. 73). Tortoises occur as far south as Cape Sable and on islands off the east and west coasts of Florida (Auffenberg and Franz 1982, p. 99; Kushlan and Mazzotti 1984, p. 231).

Applicability of the Act to the Eastern Portion of its Range

Section 3 of the Act defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature,'' and an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' (A ''threatened species'' is ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range).'' As a result, we make listing decisions on entire species or subspecies which may be threatened or endangered throughout all or a significant portion or their range, and on DPSs of vertebrate animals (see our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996) for information on how we define and identify DPSs). If we recognize a population as a DPS, it is listed if we find it is threatened or endangered throughout all or a significant portion of its range.

If we find the gopher tortoise is threatened in the eastern portion of the range, it may be appropriate to list the entire species as threatened (because it is already listed as threatened in the western portion of the range). Alternatively, we may determine that a DPS of the gopher tortoise inhabits the eastern portion of the range, and we may make a listing determination for that DPS.

The petition and information in our files suggest that the eastern portion of the gopher tortoise's range contains the majority of the total global range of the species. This indicates that the eastern portion of the range may be a significant portion of the range of the species, or, if discrete from the remainder of the range, a distinct population segment of the species. See the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722, February 7, 1996).

Therefore, we find that the petition presents substantial information that the eastern portion of the range of the gopher tortoise may, if threatened or endangered, be an appropriate subject of a listing rule, and that a range-wide review of its status is warranted.

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding species to the Federal Lists 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) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the gopher tortoise in the eastern portion of its range, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our

evaluation of this information is presented below.

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

The petition states that within the eastern portion of the range of the gopher tortoise, land for urban uses (urban development) has increased by approximately 614 percent, which is higher than in areas where the federally listed western population occurs (483 percent increase) (Vesterby and Krupa 1997, pp. 44-45). Based on the document cited in the petition, it is unclear how the petitioners reach this conclusion. Although the information has shown an increase in urban use throughout the southeastern United States, it does not show that this conversion to urban use has occurred in areas occupied by gopher tortoises. However, information in our files indicates that conversion of natural pine stands for urban uses can and does have detrimental effects, caused by loss of habitat, on populations of gopher tortoises. Based on GIS analysis of 2003 Landsat imagery, an estimated 688,963 ha (1,701,736 ac) of former tortoise habitat in Florida are now urban, which represents a 15.7 percent loss of historical tortoise habitat to urbanization (FWC 2006, p. 8).

The petition also notes that between 1952 and 1999, natural pine habitat declined by more than 61 percent within the eastern portion of the gopher tortoise's range. The 61 percent decline is a greater decline than the 41 percent in areas occupied by the federally listed western population (Conner and Hartsell 2002, pp. 374-375). Furthermore, the petition states that the amount of land devoted to pine plantations has increased from 567,000 ha (1.4 million ac) in 1952 to nearly 8.91 million ha (22 million ac) in 1999, an increase of more than 1,400 percent (Conner and Hartsell 2002, pp. 373-376). Information in our files indicates that loss of natural pine stands converted to pine plantations has an adverse effect on gopher tortoise populations (Auffenberg and Franz 1982, p. 102). Pine plantations are typically planted in dense rows of pine trees. The resulting open, grassy habitat may encourage colonization for several years. Such colonies are short-lived, however, for within l0 to l5 years, the pines shade out the grasses, and the tortoises either die or scatter (Auffenberg and Franz 1982, p. 111).

Natural pine stands tend to have an open canopy that allows for greater light intensity at ground level and a diversity of grasses and forbs that the tortoises eat. Pine plantations tend to have a dense overstory, which results in a sparse surface flora and lack of foraging vegetation for tortoises (Auffenberg and Franz 1982, p. 102). Conversion to pine plantations results in poor habitat quality and smaller populations of gopher tortoises. Based on the information provided in the petition and information in our files, there is a trend showing an increase in planted pine and a decrease in natural pine that could be detrimental to gopher tortoises throughout the eastern portion of their range.

Included in the petition is a quote from the Florida Fish and Wildlife Conservation Commission (FWC) that, ''it may be inevitable that gopher tortoises will be largely eliminated from private lands in Florida within the next three generations, which would represent a 60-65 percent decline in tortoise habitat. We anticipate similar losses in the other range states,'' (FWC 2001, p. 5). Kautz (1998, p. 184) projects that natural pine forests could disappear from all commercial forest lands in Florida by 2021. Kautz (1998, p. 182) also estimates that between 1970 and 1995, natural pine forests in Florida declined from 2.26 million ha (5.58 million ac) to 1.14 million ha (2.82 million ac), a 49.4 percent loss in approximately one tortoise generation (31 years). In other States where gopher tortoises occur, human population growth has not increased as it has in Florida over the last 50 years, but prospects for loss of natural pine forests in these other States are no less bleak (FWC 2001, p. 5).

The loss of natural pinelands throughout the South is further supported by Siry (2002, p. 335), who stated that in 2000, natural pine made up 11 percent of the forest industry's land holdings throughout the southern United States; but by 2020, only a predicted 2 percent of the forest industry's land holdings will be in natural pine. Siry (2002, p. 335) also showed that in 2000, natural pine consisted of 14 percent of nonindustrial private forest holdings, whereas by 2020, only 10 percent is predicted to be left in natural pine. This information, which was cited in the petition, is supported by information found in our files. FWC's 2006 update to the species' 2001 status report further indicates a serious decline in the amount of gopher tortoise habitat in the State of Florida.

The petition also contends that the increase in habitat destruction and degradation of upland habitats has resulted in fragmentation of large tortoise populations and forced individuals into unsuitable habitats and onto highways (Wilson 1997, p. 18). The petitioners' rationale is that as the quality of isolated patches of gopher tortoise habitat is degraded, mature adults may be forced to abandon a site in search of better quality habitat and food. This could force the tortoises into urban areas where food and habitat are scarce. According to FWC (2001, p. 4), gopher tortoises left areas that had been recently converted to pine plantations. Dense pines shade out understory forage plants causing the tortoises to move to peripheral areas to find food.

These peripheral areas are often road shoulders, which may give the impression that population numbers are high, even though the adjacent pine plantation is largely unoccupied (FWC 2001, p. 4). This claim is supported by information in our files. Roads fragment gopher tortoise habitat and populations, and proper management of these small habitat fragments (e.g., prescribed burning, invasive species control) becomes complicated (FWC 2006, p. 10). Highway mortality of gopher tortoises is probably greatest in urban areas with heavy vehicular traffic and a relatively high number of displaced tortoises (Mushinsky *et al.* 2006, p. 362).

The Service's 1990 Gopher Tortoise Recovery Plan for the western portion of the gopher tortoise's range discusses the conversion of natural pine habitat to other uses and describes similar effects that are also occurring within the eastern portion of the gopher tortoise's range (U.S. Fish and Wildlife Service 1990, p. 9). Since this recovery plan was written, other researchers have supplied evidence that fire suppression and the decline of prescribed fire in both natural pine forests and pine plantations have resulted in a substantial decline in gopher tortoise habitat (FWC 2006, p. 10). Auffenburg and Franz (1982, p. 106) reported that tortoise densities are highest in fire-adapted associations (sand pine-scrub oak and longleaf pine-oak) or early successional stages (beach scrub and old-field). In the absence of fire, each of these associations would eventually be replaced by predominantly evergreen hardwood communities, in which tortoises are generally less abundant (Auffenburg and Franz 1982, pp. 106-107).

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to habitat destruction (especially from urbanization and the conversion of natural pine habitat to pine plantations)

and fire suppression in natural pine forests.

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

The petition states that harvesting of gopher tortoises is now prohibited by all States throughout its range; however, commercial hunters continue to illegally collect gopher tortoises for their meat (Puckett and Franz 2001, p. 6). The petitioners note that in Florida there has been a long history of human predation on tortoises, especially in the western Panhandle. For example, prior to the closure of tortoise harvest in the late 1980s, one community in Okaloosa County held an annual tortoise cookout (FWC 2006, p. 4). Auffenberg and Franz (1982, p. 103) found that tortoise populations in longleaf pine-turkey oak (*Quercus laevis)* habitat in the Florida Panhandle averaged only 20 percent of the density of populations in similar habitat in the peninsula of Florida.

Although the petition provides some information about human predation on tortoises in the Florida Panhandle, it does not present information on human predation in other areas of Florida or elsewhere in the eastern portion of the range. However, information in our files indicates that the tortoise was used for food throughout its range during the 1930s (''Great Depression'') and as late as the 1980s in some parts of the range. Although this activity may have abated, the taking of adult gopher tortoises can result in long-term negative effects on populations. Since tortoises already have high juvenile and hatchling mortality, require a long time to reach sexual maturity, and have a low reproductive rate, populations can show substantial effects from the loss of reproducing adults.

The petition also provides information indicating that other human activities focused on other species negatively affect gopher tortoises. For example, although ''rattlesnake round-ups'' have decreased throughout the gopher tortoise's range, they are still occurring in South Georgia (Humane Society of the United States 2005, p. 1). Collection methods for these round-ups include pouring gasoline into snakes' hiding places, which include gopher tortoise burrows. The petitioners note that Florida has banned the use of gasoline to collect rattlesnakes from gopher tortoise burrows (Florida Administrative Code, 68A-4.001(2)) and has banned tortoise races (Florida Administrative Code, 68A-25.002(9) and (10)). However, these activities persist in other States such as Georgia and Alabama.

The petition also contends that past gopher tortoise harvesting during rattlesnake roundups would most likely explain why tortoises are absent from some seemingly appropriate habitat (Hermann 2002, p. 295). We have evidence in our files indicating this activity did occur, at least historically. As stated previously, some activities, although historical in nature, may have lasting effects on populations, but the magnitude of these effects is unknown at this time.

In summary, the petition provides information on the impacts of past and present commercial and recreational activities on tortoises. However, it is difficult to determine from either the information submitted with the petition or the information in our files the current and projected extent and magnitude of these impacts on the gopher tortoise throughout all or a significant portion of its eastern range. Therefore, we find that the petition does not present substantial information for this factor.

C. Disease or Predation

The petitioners provide information that the bacterial disease known as upper respiratory tract disease (URTD) has become more widespread among gopher tortoises (Seigel 2003, p. 138). This disease is highly contagious and is transmitted by close contact between tortoises, as during courtship or male combat (Mushinsky *et al.* 2006, p. 363). Symptoms of URTD can include swollen eyelids, nasal discharge, and severe respiratory distress (Seigel 2003, p. 139). The petition also includes information regarding the large-scale mortality of tortoises from URTD at several sites in Florida, including the unusually high mortality at the Kennedy Space Center between 1995 and 2000 (Seigel 2003, pp. 138-139). Data show that tortoises of both genders and all age classes at the Kennedy Space Center were equally vulnerable to URTD-related mortality and that an ''across the board'' decrease in tortoise numbers could be expected (Seigel 2003, p. 142). Although URTD can result in large-scale mortality of gopher tortoises, the petition does not provide information on the extent of this disease on the gopher tortoise in the eastern portion of its range. Information within our files indicates that URTD has the potential to influence survival and reproduction of individual tortoises, but definitive data are lacking (Brown *et al.* 2002, pp. 505-506); therefore, the current extent of the impact of this disease is difficult to determine within the eastern portion of the gopher tortoise's range.

The petition also includes information indicating that predators pose a significant threat to gopher tortoise population viability. The petition states that because of high nest loss to predators, a mature gopher tortoise may produce as few as one clutch every 10 years that actually survives. Predators destroy more than 80 percent of gopher tortoise nests (Puckett and Franz 2001, p. 5). In South Carolina, 17 of 24 (74 percent) nests were destroyed by predators (Wright 1982, p. 59). In Georgia, females are estimated to produce one clutch (approximately seven eggs per clutch in southern Georgia) annually; however, predators will destroy 87 percent of these clutches throughout that year (Landers and Garner 1981, p. 46). In northern Florida, gopher tortoises have been estimated to have a mortality rate of 94.2 percent during their first year of life (Alford 1980, p. 180).

Epperson and Heise (2003, pp. 320 and 322) showed in their study that survivorship of tortoise hatchlings was low with most (65 percent) killed within 30 days of hatching. Information in our files indicates that the most significant egg and hatchling predator appears to be the raccoon (*Procyon lotor*) (Landers *et al.* 1980, p. 358); however, a variety of mammals are reported predators of gopher tortoise, including gray foxes (*Urocyon cinereoargenteus*), striped skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*), armadillos (*Dasypus novemcinctus*) (Landers *et al.* 1980, p. 358), and dogs (*Canis domesticus*) (Causey and Cude 1978, pp. 94-95). Introduced nonnative fire ants (*Solenopsis saevissima* or *invicta*) are also reported as hatchling predators (Landers *et al.* 1980, p. 358; Lohoefener and Lohmeier 1984, p. 5).

Although disease and predation have resulted in the loss of gopher tortoises, the petition and information in our files do not provide sufficient information to show the extent to which these threats have affected or are expected to affect the gopher tortoise throughout all or a significant portion of its eastern range. Therefore, we find that the petition does not present substantial information for this factor. We will further review the role of disease and predation during our status review.

D. Inadequacy of Existing Regulatory Mechanisms

The petition asserts that although each State affords some protection to gopher tortoise in the eastern portion of its range, such State protections have been ineffective at preventing further declines. In Alabama, the tortoise is a State-protected nongame species; in

South Carolina, the species is listed as endangered; and in Georgia and Florida, the species is listed as threatened.

In Florida, permits are required to take gopher tortoises (Florida Administrative Code, 68A-25.002 (9) and (10)). The petition claims that since 1991, the permitting process used by the State of Florida has issued permits to ''entomb and kill'' an estimated 67,000 to 71,000 gopher tortoises for the construction of houses, strip malls, roads, and schools (Fleshler 2005, p. 1). However, the State of Florida's first action is to prevent direct harm to tortoises through its permitting process. According to information in our files, at the time the petition was received, the FWC had a draft 2006 Management Plan to protect suitable habitat and relocate tortoises to this habitat. The extent of the impacts from relocation, either positive or negative, on this species throughout the eastern portion of the range is currently unknown. We will evaluate this during the status review.

The information presented in the petition, as well as information in our files, does not present substantial information for this factor. Therefore, we have determined that the petition does not present substantial information that the gopher tortoise throughout all or a significant portion of its eastern range may be threatened due to the inadequacy of existing regulatory mechanisms. We will continue to evaluate this factor, including the long-term monitoring program of gopher tortoise translocation as described in the FWC draft 2006 Management Plan, during our status review of the gopher tortoise in the eastern portion of its range.

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

The petition states that the previously identified threats are accentuated by the length of time required for gopher tortoises to reach sexual maturity and their low reproductive rate. The petition further states that the Service used this claim as one of the justifications for listing the gopher tortoise in the western portion of its range as threatened in 1987 (52 FR 25376, July 7, 1987). The petitioners contend that this same rationale applies to the eastern portion of the range because the threats are similar to what the western portion of the range was facing at the time of listing. As described under the Species Information section above, female gopher tortoises do not reach sexual maturity until about 9 to 21 years of age; males mature at a slightly younger age (Cox *et al.* 1987, p. 17; Mushinsky *et al.* 1994, p. 352; Aresco and Guyer 1999, pp. 503-504). As described above, because of the natural life history parameters of the gopher tortoise, including low reproductive rate and delayed age to sexual maturity, the mortality experienced by other threats can be amplified within populations. Therefore, we find that the information provided in the petition, as well as information in our files, presents substantial information indicating that the petitioned action may be warranted under this factor due to the natural life history of gopher tortoises.

Finding

On the basis of our review and evaluation under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information that listing the gopher tortoise to include the eastern portion of its range may be warranted due to current and future threats under Factors A and E. Therefore, we are initiating a status review to determine whether listing the eastern population of the gopher tortoise is warranted. To ensure that the status review is comprehensive (in conjunction with the status review we are conducting under the Act's section 4(c)(2) of the listed western portion of the range), we are soliciting scientific and commercial data and other information regarding listing the gopher tortoise throughout all of its range. At the conclusion of the status review, we will issue a 12–month finding on the petition, announcing our determination of whether or not the petitioned action is warranted.

The ''substantial information'' standard for a 90–day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Jacksonville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Jacksonville Ecological Services Field Office (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: August 24, 2009.

Daniel M. Ashe,

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

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