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Joseph S. Carra,

Acting Associate Administrator for  
Rulemaking.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R6-ES-2010-0058]  
[MO 92210-0-0008]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Brian Head Mountainsnail as Endangered or Threatened 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 a petition to list the Brian Head mountainsnail (*Oreohelix parawanensis*) as endangered or threatened under the Endangered Species Act of 1973 (Act), as amended. Based on our review, we find that the petition does not present substantial information indicating that listing the species may be warranted. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the mountainsnail or its habitat at any time. This information will help us monitor and encourage the conservation of this species.

**DATES:** The finding announced in this document was made on August 17, 2010. 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> at Docket No. FWS-R6-ES-2010-0058. 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, Mountain-Prairie Regional Ecological Services Office, P.O. Box 25486, Denver Federal Center, Denver, CO 80255. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above postal address.

**FOR FURTHER INFORMATION CONTACT:** Ann Carlson, Mountain-Prairie Regional Ecological Services Office (see

**ADDRESSES**); telephone 303-236-4264. 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 indicating that a petitioned action may be warranted. We are to base this finding on information provided in the petition and any information we may have in our files. 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 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.” If we find that substantial information was presented, we are required to promptly commence a status review of the species, which we subsequently summarize in our 12-month finding.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the subsequent status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the information in the petition and our files is substantial. The information must include evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

##### Petition History

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians)

requesting that the Service: (1) Consider for listing all full species in our Mountain Prairie Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing (a total of 206 species); and (2) list each species we considered as either endangered or threatened. The petition incorporated all analysis, references, and documentation provided by NatureServe in its online database at <http://www.natureserve.org/> into the petition. However, it should be noted that no other documentation on species was provided in the petition, and the information on most species in the NatureServe database is not extensive, because the focus is on rare species. Subsequent to the petition, NatureServe included a disclaimer on its database indicating that: “The purpose of the conservation status ranks developed by NatureServe is to assess the relative risk facing a species and does not imply that any specific action or legal status is needed to assure its survival...Assessment by NatureServe of any species...does not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act...”.

The petition clearly identified itself as a petition and included the identification information required at 50 CFR 424.14(a). We sent a letter to the petitioners dated August 24, 2007, acknowledging receipt of the petition and stating that, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition.

On June 18, 2008, we received a petition from WildEarth Guardians dated June 12, 2008, to emergency list 32 species including the Brian Head mountainsnail under the Administrative Procedure Act (APA) (5 U.S.C. Subchapter II) and the Act. However, emergency listing a species is not a petitionable action under the APA or the Act, and is treated solely as a petition to list a species under the Act. Of those 32 species, 11 had been included in the July 24, 2007, petition for listing on a non-emergency basis. In a letter dated July 25, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that any of the 11 species were at significant risk of well-being, and in need of temporary protections under section 4(b)(7) of the Act (i.e. emergency listing).

We subsequently published an initial 90-day finding for 165 of the 206 petitioned species on February 5, 2009,

concluding that the petition did not present substantial information indicating that listing of those species may be warranted (74 FR 6122). That finding included the Brian Head mountainsnail in a table of species by category, and mistakenly cited it as fitting into "Category A," meaning that no information was provided. The Brian Head mountainsnail should have been in "Category C," meaning that some information on the species was provided, but that information was not substantial.

In response to a January 7, 2010, complaint from WildEarth Guardians, we agreed, under a June 28, 2010, stipulated settlement agreement, to reassess the petition with respect to the Brian Head mountainsnail, to specifically explain a review of any literature readily available from NatureServe and in our files at the time the petition was submitted, and to issue a new 90-day finding. This finding meets the terms included in the settlement agreement and addresses the petition.

#### *Species Information*

The Brian Head mountainsnail is reported from Iron County, Utah. The species exists as a localized population at a rock slide on the southwest slope of Brian Head Peak, above timberline at approximately 3,350 meters (11,000 feet) (Oliver and Bosworth 2002, p. 451). The rock slide is located within a mountain shrub habitat type that is the focus of conservation by the State of Utah (Gorrell *et al.* 2005, p. K-11).

Prior to 2002, one empty shell had been found by Clarke (1993). In 2002, the first living examples (18 individuals) of the species were documented at 4 of 14 small survey stations within an area of about 11 hectares (27 acres), and the species was noted as the most common gastropod at the stations where it was detected (Oliver and Bosworth 2002, p. 452). The researchers also collected 49 empty shells and 5 embryos at 7 of the 14 survey sites (Oliver and Bosworth 2002, p. 452). This data appears to represent the best and only information on Brian Head mountainsnail abundance. Based on the information presented above, it appears that the information presented in NatureServe concerning occurrence records may be erroneous in stating that the first live specimens were found in 1998, and that Oliver and Bosworth (2002) found 37 specimens.

Brian Head mountainsnail population trends are unknown. Information in NatureServe indicated that the species is stable in the short term, that few immediate threats exist, and that the

long-term trend may be stable. The high-elevation (at or above timberline) and barren nature (rock slides) of the species' habitat tend to provide it with relatively good protection from potential threats such as timber harvest, development, and other anthropogenic activities (Oliver and Bosworth 2002, p. 453).

#### **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 a species to, or removing a species from, 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 factors affecting the Brian Head mountainsnail, as presented in the petition, may reasonably constitute threats that may be negatively impacting the species, thereby indicating that the petitioned action may be warranted. We had no information in our files on the species. Our evaluation of the information from the petition is presented below.

The petitioners presented two tables that collectively presented 206 species for consideration for listing under the Act, including the Brian Head mountainsnail, and requested that the Service incorporate analyses, references, and documentation provided by NatureServe in its online database (<http://www.natureserve.org/>) into the petition. We accessed the NatureServe database on August 10, 2007, saved a hardcopy of the Brian Head mountainsnail file, and fully evaluated this information, including references cited, during our review.

For the Brian Head mountainsnail, the NatureServe database had a "Local Programs" link to the website of the Utah Department of Natural Resources (UDNR), Division of Wildlife Resources. We reviewed the information, assertions, and opinions of the State program provided on that site because

that program has primary management responsibility for non-federally listed species.

We followed regulations at 50 CFR 424.14(b) in evaluating the information presented in the petition. Paragraph (b)(1) of that section provides that the Service must consider whether the petition has presented substantial information indicating to a reasonable person that the petitioned action may be warranted. Paragraph (b)(2) requires us to consider whether the petition provides a detailed narrative justification describing past and present numbers and distribution of the species, and any threats faced by the species. We must also consider whether the petition provides appropriate supporting documentation—references, publications, reports, or letters from authorities, and maps.

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

Ski resort operations exist to the west and northwest of Brian Head mountainsnail habitat. However, according to Oliver and Bosworth (2002, p. 453), the operation of the ski resort does not appear to provide a threat to the species or its habitat. No information was presented in the petition to indicate that expansions of the ski resort are planned.

An unpaved road exists on the south side of Brian Head Peak that extends to the summit (Oliver and Bosworth 2002, p. 453), but no information was presented in the petition to indicate that this road affects the Brian Head mountainsnail or its habitat. NatureServe states that hikers and mountain bikers utilize the area and, therefore, are a potential threat, but NatureServe provides no indication of whether Brian Head mountainsnail sites are being impacted; it is unlikely that these activities are occurring on rock slides, which constitute habitat for the snail.

Grazing is listed as a general threat to mountain shrub habitat by the State of Utah (Gorrell *et al.* 2005, pp. 6-67 and K-11), and domestic sheep have been noted 10 kilometers (6 miles) away (Oliver and Bosworth 2002, p. 453). No information was presented in the petition indicating that grazing may be negatively affecting the rock habitat inhabited by the Brian Head mountainsnail.

On the basis of a review of the information referenced by the petition related to the specific potential threats it identifies, we find that there is not substantial information to reasonably suggest that these factors may be threats

to the species such that listing may be warranted. Consequently, we have determined that the petition, including references cited in NatureServe that were readily available, does not contain substantial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or range is a threat to the Brian Head mountainsnail.

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

Rock collectors, who gain access via the unpaved road on the south side of Brian Head Peak, have been encountered near Brian Head mountainsnail habitat (Oliver and Bosworth 2002, p. 453); however, no information was presented in the petition indicating that this activity may be affecting the species or its habitat.

On a basis of a review of the information referenced by the petition related to the specific potential threats identified in the petition, we find that there is not substantial information to reasonably suggest that these factors may be threats to the species such that listing may be warranted. Consequently, we have determined that the petition, including references cited in NatureServe that were readily available, does not contain substantial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the Brian Head mountainsnail.

*C. Disease or Predation.*

We have determined that the petition, including references cited in NatureServe that were readily available, does not contain any information concerning threats to the Brian Head mountainsnail from disease or predation. Therefore, we find that the petition does not present substantial information that either disease or predation is a threat to the species.

*D. Inadequacy of Existing Regulatory Mechanisms.*

The petition discusses the lack of protection under the Act for the species, stating that unless a species is listed as endangered or threatened 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 the species if it was 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 presents no specific information related to other Federal, State, or local government regulatory mechanisms that may exist to provide regulatory protections for the species or its habitat, other than the State of Utah Comprehensive Wildlife Conservation Strategy. Further, the petition provides no information to suggest that regulatory mechanisms may be inadequate.

Brian Head mountainsnail habitat is within the Dixie National Forest, and, therefore, is afforded Federal environmental and conservation considerations required by the National Forest Management Act (16 U.S.C. 1600 *et seq.*) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The State of Utah lists it as a Species of Concern (Utah Department of Natural Resources (UDNR) 2007, p. 7), and follows its Comprehensive Wildlife Conservation Strategy (Gorrell *et al.* 2005, pp. 6-67, K-11) in implementing management and conservation actions specifically for the Brian Head mountainsnail. Further, the high-elevation and barren nature of the species' habitat tends to provide it with relatively good protection from otherwise potential threats such as timber harvest, development, and other anthropogenic activities (Oliver and Bosworth 2002, p. 453).

We have determined that the petition, including references cited in NatureServe that were readily available, does not contain substantial information to indicate that the inadequacy of existing regulatory mechanisms is a threat to the Brian Head mountainsnail.

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

The UDNR website page for the Brian Head mountainsnail indicated that because the species occurs as a single, localized population, it is susceptible to catastrophic events (UDNR website, p. 1). However, in order to determine that substantial information exists to indicate that a species may be endangered or threatened, we must determine that the species may be subject to threats (such as drought, flood, habitat destruction, pollution, or exotic species). Threats may be based on environmental, biological, or anthropogenic factors. The petition does not present any substantial information on threats to the Brian Head mountainsnail.

When determining whether a species may warrant listing under the Act, it is important to distinguish between the presence of threats, either now or in the foreseeable future, and the susceptibility of a species to those threats, in order to determine whether those threats may likely impact the species and potentially cause it to be in danger of extinction now or in the foreseeable future. The Brian Head mountainsnail may be a naturally rare species. Although rare species may be vulnerable to single event occurrences, it is important to have information on how likely the occurrence of such an event may be, whether the specific event might impact the species, what form that impact would take and by what mechanism (i.e., what specific life-history function, habitat requirement, or other need of the species might be impacted and how), and whether the possible impact would likely result in a significant threat to the species (i.e., to what extent might the event have a negative impact). Available information should be specific to the species and should reasonably suggest that operative threats will act on the species to the point that the species may warrant protection under the Act. Statements about a generalized threat (especially within a general area and not within the species' habitat) do not constitute substantial information that listing may be warranted. General stochastic events such as natural catastrophes do not necessarily threaten a species simply because that species is rare.

Information on a species' rarity is relevant to the conservation status of a species. Generally, a species that has a geographically restricted range is likely to be more susceptible to environmental threats (e.g., fire, flood, drought, human land use), if they occur, than a species that is more widespread. A single event could affect a larger total percentage of the range of a rare species than of a widespread species. However, for the Brian Head mountainsnail, we do not have substantial information regarding whether any environmental or anthropogenic threats are negatively affecting the species or are likely to do so in the foreseeable future. Stochastic events (e.g., catastrophic fire and flood) are unpredictable by nature, but can be indicated by historic records or climate predictions. The fact that a rare species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given event within the timescales that are meaningful under the Act.

The petition provides no information to indicate that the range or abundance

of the Brian Head mountainsnail has been significantly curtailed. Therefore, we do not know if the species has always been rare, or if it was once more widespread. Many features of a species' biology, ecology, and habitat, such as its life history, population structure, geographic location, or characteristics of its local landscape, will modify its vulnerability to any potential threat. Whether a rare species is affected by environmental or biological factors, and the magnitude of the effect of these factors on the species' ability to persist into the foreseeable future, is species- and context-specific. The petition does not contain information about the biology and ecology of the species that would indicate that there may be any substantial genetic or demographic impacts to the Brian Head mountainsnail based on other natural or manmade factors affecting the species' continued existence.

We recognize that many of the species contained within the NatureServe database have limited distribution or small population size, but these two factors alone (i.e., rarity), without

additional information regarding threats, do not meet the substantial information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species, and linking those threats to the rarity of the species, we do not consider rarity to be a threat.

We have determined that the petition, including references cited in NatureServe that were readily available, does not present substantial information that rarity, or any other natural or manmade factors are a threat to the Brian Head mountainsnail.

#### **Finding**

We reviewed and evaluated information cited in the petition that was readily available. We had no information available in our files on the species. On the basis of our review under section 4(b)(3)(A) of the Act, we have determined that the petition does not present substantial scientific or commercial information indicating that listing may be warranted for the Brian Head mountainsnail.

Although we will not commence a status review in response to the petition,

we will continue to accept information and materials regarding the Brian Head mountainsnail at our Mountain-Prairie Region Ecological Services Office (see **ADDRESSES**).

#### **References Cited**

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

#### **Authors**

The primary authors of this document are the staff members of the Mountain-Prairie Region Ecological Services Office (see **ADDRESSES**).

#### **Authority**

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

Dated: August 4, 2010.

#### **Wendi Weber,**

*Acting Director, Fish and Wildlife Service.*

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