

### B. Comment Filing Procedures

64. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments in response to this *Second Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking* on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- **Paper Filers:** Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

### C. Accessible Formats

65. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### D. Regulatory Flexibility Analyses

66. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604,

the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Second Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

### E. Paperwork Reduction Act Analysis

68. The *Second Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking* contain proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2011-0041; MO-92210-0-0008]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding and initiation of status reviews.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list six sand dune beetles as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition

does not present substantial scientific or commercial information indicating that listing two of the six species [Hardy's aegialian scarab (*Aegialia hardyi*) and Sand Mountain serican scarab (*Serica psammobunus*)] may be warranted. However, we find that the petition presents substantial scientific or commercial information indicating that listing may be warranted for four of the six species [Crescent Dunes aegialian scarab (*A. crescenta*), Crescent Dunes serican scarab (*S. ammomenisco*), large aegialian scarab (*A. magnifica*), and Giuliani's dune scarab (*Pseudocotalpa giuliani*)]. Therefore, with the publication of this notice, we are initiating a review of the status of these species to determine if listing these four species is warranted. To ensure that the status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these four species. Based on the status reviews, we will issue 12-month findings on these four species, which will address whether the petitioned actions are warranted, as provided in the Act.

**DATES:** To allow us adequate time to conduct the status reviews, we request that we receive information on or before October 3, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Time on this date.

**ADDRESSES:** You may submit information by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is [FWS-R8-ES-2011-0041]. Check the box that reads "Open for Comment/ Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: [FWS-R8-ES-2011-0041]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

After October 3, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION**

**CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

**FOR FURTHER INFORMATION CONTACT:** Jill Ralston, Acting State Supervisor, by U.S. mail at Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd, Suite 234, Reno, NV 89502, by telephone at 775-861-6300, or by facsimile at 775-861-6301. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Request for Information**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status reviews to be complete and based on the best available scientific and commercial information, we request information on the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. For each of these species, we seek information on:

- (1) The species' biology, range, and population trends, including:
    - (a) Habitat requirements for feeding, breeding, and sheltering;
    - (b) Genetics and taxonomy;
    - (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, its habitat, or both.
  - (2) The factors that are the basis for making a listing, delisting, or downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:
    - (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.
- If, after the status reviews, we determine that listing any of the four

sand dune beetle species is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by each of the four sand dune beetle species, we request data and information on:

- (1) What may constitute "physical or biological features essential to the conservation of the species;"
- (2) Where these features are currently found; and
- (3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific 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 are proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

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 an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning these status reviews 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 supporting documentation that we received and used in preparing this finding is 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, Nevada Fish and Wildlife 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 conduct a species status review, which we subsequently summarize in our 12-month finding.

*Petition History*

On February 2, 2010, we received a petition dated January 29, 2010, from WildEarth Guardians (hereinafter referred to as the petitioner), requesting that we list six species of sand dune beetles in Nevada as endangered or threatened with critical habitat under the Act. The petition clearly identified itself as a petition and included the appropriate identification information for the petitioner, as required in 50 CFR 424.14(a).

In a March 12, 2010, letter to the petitioner, we acknowledged receipt of the petition, and responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not necessary. We also stated that we anticipated making an initial finding in Fiscal Year 2010. This finding addresses the petition.

*Previous Federal Actions*

The Crescent Dunes aegialian scarab (*Aegialia crescenta*), Hardy's aegialian scarab (*A. hardyi*), large aegialian scarab (*A. magnifica*), Crescent Dunes serican scarab (*Serica ammomenisco*), Sand Mountain serican scarab (*S.*

*psammobunus*), and Giuliani's dune scarab (*Pseudocotalpa giuliani*) were all previously designated by the Service as category 2 candidate species, then defined as taxa for which the Service had on hand information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which persuasive data on biological vulnerability and threats were not available to support proposed rules (59 FR 58982; November 15, 1994). In the February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7595), we adopted a single category of candidate species defined as follows: "Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded." In previous CNORs, species matching this definition were known as category 1 candidates for listing. Thus, the Service no longer considered category 2 species as candidates and did not include them in the 1996 list or any subsequent CNORs. The decision to stop considering category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

The Service proposed to list Giuliani's dune scarab as endangered or

threatened in 1978 (43 FR 35636; August 10, 1978), citing the effect of off-road vehicle (ORV) use. The Service stated that ORV use compacts dead organic matter accumulated on dune slopes and prevents its buildup, thereby destroying the larval habitat of the beetle. The proposal to list also found that there was a lack of State or Federal laws protecting the species. Included in the proposed rule was a proposal to designate critical habitat at Big Dune, Nye County, Nevada, at the time the only known location for the species. The Service withdrew the proposal to list Giuliani's dune scarab after a temporary 2-year period mandated by Congress for proposed rules to be finalized had expired (45 FR 65137; October 1, 1980).

*Species Information*

The six species of sand dune beetles included in the petition and evaluated in this finding are endemic, terrestrial invertebrates of Great Basin and Mojave Desert sand dunes of Nevada (Table 1). All of the petitioned species are from the phylum Arthropoda, class Insecta, order Coleoptera, and family Scarabaeidae. Three of the species are in the genus *Aegialia*, two are in the genus *Serica*, and one is in the genus *Pseudocotalpa* (Table 1). There are three distinct sand dune beetle and dune system groupings (Sand Mountain/

Blowsand Mountains; Crescent Dunes; and Big Dune/Lava Dune) (Table 1; WildEarth Guardians 2010, p. 5). Both in the petition and in our files, there is little to no information on population sizes or population trends for any of these sand dune beetle species.

The petition provided information regarding the six species' ranking according to NatureServe (WildEarth Guardians 2010, pp. 3–4). The petitioned sand dune beetles are all ranked as critically impaired at the global, national, or State level (WildEarth Guardians 2010, pp. 3–4). While the petition states that the "definition of 'critically impaired' is at least equivalent to definitions of 'endangered' or 'threatened' under the ESA [Endangered Species Act]," this is not an appropriate comparison. According to its own Web site, NatureServe's assessment of any species "does not constitute a recommendation by NatureServe for listing" under the Act (<http://www.natureserve.org/explorer/ranking.htm>). In addition, NatureServe's assessment procedures include "different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (<http://www.natureserve.org/explorer/ranking.htm>).

TABLE 1—NAMES AND LOCATIONS OF SIX SAND DUNE BEETLE SPECIES INCLUDED IN THIS FINDING

Common name	Scientific name	Sand dune system(s)	Nevada county
Species for Which Substantial Information Indicating Listing May Be Warranted Was Not Presented in the Petition or in Service Files:			
Hardy's aegialian scarab .....	<i>Aegialia hardyi</i> .....	Sand Mountain .....	Churchill.
Sand Mountain serican scarab .....	<i>Serica psammobunus</i> .....	Blowsand Mountains .....	
Species for Which Substantial Information Indicating Listing May Be Warranted Was Presented in the Petition or in Service Files:			
Crescent Dunes aegialian scarab .....	<i>Aegialia crescenta</i> .....	Crescent Dunes .....	Nye.
Crescent Dunes serican scarab .....	<i>Serica ammomenisco</i> .....		
Large aegialian scarab .....	<i>Aegialia magnifica</i> .....	Big Dune .....	Nye.
Giuliani's dune scarab .....	<i>Pseudocotalpa giuliani</i> .....	Lava Dune .....	

Hardy's aegialian scarab and the Sand Mountain serican scarab occur only at Sand Mountain and the nearby Blowsand Mountains dune systems, Churchill County, Nevada (Gordon and Cartwright 1977, p. 47; Bechtel *et al.* 1983, p. 476; Hardy and Andrews 1987, p. 174; The Nature Conservancy (TNC) (2004, pp. 23, 26). These two dune systems are located approximately 30 miles (mi) (48.3 kilometer (km)) east-southeast of Fallon, Churchill County, Nevada. Sand Mountain is a star dune (roughly star-shaped) and ranges from 3,895 to 4,650 feet (ft) (1,187.2 to

1,417.3 meters (m)) in elevation. It occupies approximately 12 square miles (sq. mi) (32 sq. km) on mostly Bureau of Land Management (BLM) lands, though a portion of the dune may also occur on State and private lands (Bechtel *et al.* 1983, p. 477; Nevada Natural Heritage Program 2006, p. 43). Blowsand Mountains is a complex of star and linear dunes occurring partially on Fallon Naval Air Station (NAS) lands and BLM lands about 15.6 mi (25 km) southwest of Sand Mountain (Bechtel *et al.* 1983, p. 477; Nachlinger *et al.* 2001, pp. A12–1, A12–11). Blowsand

Mountains rise to an elevation of 4,593 ft (1,400 m) and occupy 3.6 sq. mi (9.2 sq km) (Bechtel *et al.* 1983, p. 477).

During a 1981 arthropod survey, Hardy's aegialian scarab was found to be common in sand around the perennial shrub vegetation at the base of Sand Mountain, but less common in similar habitat at Blowsand Mountains, which the surveyor suspected was due to the limited area to which he had access (Rust 1981, pp. 13, 29). An undescribed species of *Serica*, subsequently named *S. psammobunus* (Sand Mountain serican scarab) (Hardy and Andrews

1987, p. 174), was found to be very common on both dune systems (Rust 1981, p. 14).

The Crescent Dunes aegialian scarab and Crescent Dunes serican scarab are known to occur only at Crescent Dunes northwest of Tonopah, Nye County, Nevada (Gordon and Cartwright 1977, p. 45; Hardy and Andrews 1987, p. 173). The Crescent Dunes are a small complex of crescent-shaped dunes (WildEarth Guardians 2010, p. 8). The highest dune rises to 5,000 ft (1,524 m) in elevation (WildEarth Guardians 2010, p. 8). These dunes occur on BLM lands and are managed by the agency's Battle Mountain District, Tonopah Resource Area (BLM 1997, p. 21).

The petition provided no information, and we have no information in our files, on the population sizes or population trends of the Crescent Dunes aegialian scarab or the Crescent Dunes serican scarab.

The large aegialian scarab and Giuliani's dune scarab occur only at Big Dune and Lava Dune in the Amargosa Desert, Nye County, Nevada (Gordon and Cartwright 1977, p. 43; Rust 1985, p. 105). These dunes are located about 4 mi (6.4 km) apart (WildEarth Guardians 2010, p. 15). Big Dune is a complex star dune that reaches 2,731 ft (832.4 m) in elevation and extends across approximately 1.5 sq mi (3.9 sq km). Lava Dune is sand that is trapped at the base of a cinder cone, has an elevation of 2,800 ft (853.4 m), and covers about 1.0 sq mi (2.6 sq km) (WildEarth Guardians 2010, p. 15). Both dunes are managed by the BLM (WildEarth Guardians 2010, p. 15).

The petition provided no information on the population sizes or trends of the large aegialian scarab or the Giuliani's dune scarab. We have anecdotal information that these two beetle species occurred in "huge" numbers at Big Dune as recently as 2007 (Murphy 2007, p. 1). We have no information in our files on the population trends of either species.

There is limited life history information for the six petitioned sand dune beetle species available in the petition, references cited in the petition, and in our files. Many genera of Scarabaeidae in North American deserts, including species of the genera *Aegialia* and *Serica*, are found in sand dunes (Gordon and Cartwright 1977, p. 42; Hardy and Andrews 1987, p. 178). Sand dunes supply the necessary requirements of an easily penetrable substrate that provides ready access to higher levels of moisture and protection from temperature extremes; sand is easily penetrable by both larvae and adults, and wet sand levels are generally

no more than 1.6 to 3.3 ft (0.5 to 1.0 m) beneath the surface (Hardy and Andrews 1987, p. 175). Plant roots on more stable dunes provide food for some Scarabaeidae, while detritus collected and buried in pockets by the wind provides food for detritivores (beetles and other animals that feed on decomposing organic matter) (Hardy and Andrews 1987, p. 175). Many genera of Scarabaeidae using dune areas seem to be unable to survive elsewhere in desert areas, including some species of *Aegialia* and *Serica* (Hardy and Andrews 1987, p. 175).

The six beetles vary in their dispersal abilities. The three aegialian scarabs (Crescent Dunes, Hardy's, and large) are all flightless, a characteristic that may have facilitated population isolation and resulting speciation (formation of a new species) (Rust and Hanks 1982, p. 319; Porter and Rust 1996, p. 717; Porter and Rust 1997, p. 306). Giuliani's dune scarab is capable of flight (Hardy 1976, p. 301). We have no information on the dispersal abilities of the two serican scarabs (Crescent Dunes and Sand Mountain) in our files, nor was any provided in the petition.

Hardy's aegialian scarab is a flightless detritivore that is active in winter at Sand Mountain and Blowsand Mountains; both adults and larvae are active in months having a mean monthly temperature near or below 50 °F (10 °C) (Rust 1981, pp. 13, 27; Rust and Hanks 1982, p. 324). The Sand Mountain serican scarab is active in early summer on both dune systems (Rust 1981, p. 14; Hardy and Andrews 1987, p. 174).

Giuliani's dune scarab is restricted to the vegetated sandy areas around the base of the major dune at Big Dune (43 FR 35639; August 10, 1978). *Larrea tridentata* (creosote bush) and *Petalonyx thurberi* (sandpaper plant), common shrubs found here, accumulate plant debris at their bases. This accumulated plant debris is an important food source and is the larval habitat of the beetle. Adults of Giuliani's dune scarab emerge in late spring and fly nightly, hovering over dune shrubs, and mate on the sand surface; the adults do not feed and larvae are found beneath dune shrubs (Rust 1985, p. 109).

#### 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 considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain 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 threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the six sand dune beetle species, 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.

#### Summary of Common Threats

The petition identified a few threats as common to many of the six petitioned sand dune beetles. The petition identified the following as threats to all six sand dune beetle species: Loss, degradation, and fragmentation of habitat due to ORV recreation and potential construction of solar facility projects; inadequate existing regulatory mechanisms due to the lack of Federal or State regulatory protection; and increased vulnerability

to extinction due to isolated populations and limited habitat (WildEarth Guardians 2010, pp. 6–8, 11, 18, 19). These are described as general threats in the petition, but there is little or no information in the petition that associates the threats with existing or probable impacts on the individual sand dune beetle species.

For two species, Hardy's aegialian scarab and Sand Mountain serican scarab, both of which are endemic to Sand Mountain and Blowsand Mountains in Churchill County, we have information in our files on ORV use and existing regulatory mechanisms. Due to the three distinct geographic groupings of the six petitioned species, where appropriate, threats are assessed below by dune system: Sand Mountain and Blowsand Mountains, Crescent Dunes, and Big Dune and Lava Dune.

*Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Information Provided in the Petition

In general, the petition identifies ORV use as the most serious threat to the six sand dune beetles (WildEarth Guardians 2010, p. 6). The petition notes that ORV recreation has increased substantially over the past few decades, that it accounted for over 400,000 visitor days on lands administered by the BLM in 2000 alone, and that the conditions of sand dune habitats in Nevada are influenced mostly by ORV use (Wildlife Action Plan Team (WAPT) 2006, p. 238).

The petition states that the six beetles depend on vegetation around the bases of the sand dunes for adult or larval forage, mating sites, and protective cover (Hardy 1976, pp. 301–302; Rust 1985, pp. 108–109; Hardy and Andrews 1986, p. 136; Hardy and Andrews 1987, pp. 175–176, 178). The petition cites several scientific studies that have documented the severe negative impacts that ORVs can have on insects in the Order Coleoptera (Van Dam and Van Dam 2008, p. 411). Heavy use by ORVs can destroy dune vegetation (Luckenbach and Bury 1983, p. 280; WAPT 2006, pp. 238–239), eliminating and fragmenting beetle habitat and reactivate sand dune movement (Wiggs *et al.* 1995, as cited by Van Dam and Van Dam 2008, p. 411). In addition, ORV use may disrupt beetle mating activity (Luckenbach and Bury 1983, p. 277), may potentially kill individual beetles (Van Dam and Van Dam 2008, p. 416), and may facilitate the spread of invasive plant species (WAPT 2006, p. 238). Sand dune systems are dynamic, and the establishment of invasive plant

species can stabilize dunes, preventing sand movement and altering habitat functions. Invasive plant species may also displace preferred vegetation used by beetles. Research also suggests that areas unprotected from ORV use contain much smaller populations of Coleopterans than in protected areas (Van Dam and Van Dam 2008, p. 415).

The petition also noted that a solar energy facility has been proposed on BLM lands near Crescent Dunes (WildEarth Guardians 2010, p. 11). The BLM is also currently reviewing a proposal to develop solar energy on public land near the Big Dune Area of Critical Environmental Concern (ACEC) (WildEarth Guardians 2010, p. 18). The petition claims that, if the two solar facilities are approved, the increased activity from their construction and maintenance may disturb beetles and their habitat (WildEarth Guardians 2010, p. 18). As noted above, these threats are discussed below by dune system.

Evaluation of Information Provided in the Petition and in Our Files

Sand Mountain and Blowsand Mountains

Hardy's aegialian scarab and the Sand Mountain serican scarab occur only at Sand Mountain and the nearby Blowsand Mountains, Churchill County. The petition provided information on possible threats to these species from ORV recreation at Sand Mountain and Blowsand Mountains. In addition, we have information in our files regarding potential impacts from the use of Blowsand Mountains as a military bombing range. We discuss these potential threats below.

ORV Recreation

The petition indicates that Sand Mountain is a 4,795-ac (1,941-ha) designated Special Recreation Management Area (SRMA) managed by the Stillwater Field Office of the BLM (WildEarth Guardians 2010, p. 14). The petition states that ORV use can be intense at times and that BLM has "closed" some areas to ORV use (BLM 2001, pp. REC–3, REC–4; WildEarth Guardians 2010, p. 14). The petition also states from an anonymous source that "some" users ignore restrictions and ride into areas that were closed in 2001 (WildEarth Guardians 2010, p. 14). The petition does not provide additional information pertaining to the number of or frequency with which these users violate restrictions and ride into closed areas.

Information in our files indicates that recreational ORV use is currently

restricted to a designated trail system that prohibits ORV use of vegetated areas (72 FR 24253; May 2, 2007). Most arthropods found during a survey at Sand Mountain occurred in association with perennial shrub vegetation at the base of the dune and, except while traveling, no species were found to inhabit open sand (Rust 1981, p. 2). On December 12, 2006, BLM implemented an emergency restriction on motorized use on 3,985 ac (1,612 ha) of land to prevent adverse effects to the habitat of the Sand Mountain blue butterfly (*Euphilotes pallescens arenamontana*) (72 FR 12187; March 15, 2007). These restrictions reduce the route system within and outside of the SRMA from an estimated 200 mi (320 km) to 21.5 mi (34.4 km) (72 FR 24253; May 2, 2007). This returns the length of the route system to about the length of the system in 1980. The emergency restriction will remain in effect until the Resource Management Plan has been updated or until the Field Office Manager determines it is no longer needed (72 FR 12187; March 15, 2007). The Service has found that implementation of this closure in 2006 effectively reduces the threat posed by ORVs to the Sand Mountain blue butterfly's habitat and ensures that further habitat destruction is prevented and will ensure natural shrub regeneration over the long-term (72 FR 24253; May 2, 2007). The reduction of this ORV threat also applies to Hardy's aegialian scarab and Sand Mountain serican scarab habitat at Sand Mountain. Thus, the extent and magnitude of potential impacts to Hardy's aegialian scarab and the Sand Mountain serican scarab from ORV use have decreased since the petition's 2001 citation and are likely to remain so. In addition, the petition's statement of closed areas as referenced in BLM (2001) is incorrect. The BLM document (BLM 2001, p. REC–4) cites a **Federal Register** Notice published on September 15, 1988 (53 FR 35917). This **Federal Register** Notice does not indicate closed areas to ORV use at Sand Mountain Recreation Area but indicates their use is limited in vegetated areas. We do not have information in our files on potential violations of the 2006 ORV restrictions. Therefore, we believe the petition's information regarding ORV threats to these species' habitat at Sand Mountain is outdated and inaccurate. We discuss the adequacy of BLM's regulation of this trail system in protecting the habitat of the dune beetles at Sand Mountain under *Factor D* below.

As indicated above, Blowsand Mountains occur partially on Fallon

NAS lands and partially on BLM lands (Nachlinger *et al.* 2001, pp. A12–1, A12–11). The petition does not provide specific information related to ORV use at Blowsand Mountains.

According to information in our files, the Blowsand Mountains occur within the Fallon Range Training Complex Military Operation Area, a 26-million-acre (ac) (10.5-million hectare (ha)) area used by the Naval Strike and Air Warfare Center (TNC 2004, p. 11). Because a portion of the Blowsand Mountains dune system is used for inert and live air-to-ground ordnance drops by the military, much of the area is not open to public access and therefore is not used for ORV recreation (TNC 2004, p. 12). According to TNC (2004, p. 48), “The only activities that take place on this dune system are those related to the military training mission of NAS Fallon.” Therefore, the petition’s assertions regarding ORV use at Blowsand Mountains impacting Hardy’s aegialian scarab and the Sand Mountain serican scarab are not supported.

#### Bombing Range

Our files indicate, as noted above, that much of the Blowsand Mountains dune system is within an active practice bombing range. A conservation assessment of the Blowsand Mountains dune system has been completed by a team comprised of individuals from the BLM, Fallon NAS, TNC, Fallon Paiute Shoshone Tribe, and Walker River Paiute Tribe (TNC 2004). Threats identified to the Blowsand Mountains dune system by the assessment team were related to ordnance drops, detonation of unexploded ordnance, and invasive weed transport during the removal of ordnance (TNC 2004, p. viii). As part of the conservation assessment, the stressors at the Blowsand Mountains dune system (habitat for Hardy’s aegialian scarab and the Sand Mountain serican scarab) were evaluated. Only direct mortality to dune biota from ordnance drops was rated as a high-severity threat, but because it was of small geographic scope, the overall stress ranking was determined to be low (TNC 2004, p. 48). The assessment team also evaluated the viability of the Blowsand Mountains dune system based on its size outside of the heavy-effect bombing area, its condition based on invasive species, and its connection to a current source of sand. The assessment team determined it to have an overall viability score of “good” based on size and condition of the system and its landscape context (TNC 2004, p. 32). Because the stress ranking from the conservation assessment was considered low for ordnance drops and

the overall viability of Blowsand Mountains was determined to be good, potential impacts to populations of Hardy’s aegialian scarab and the Sand Mountain serican scarab from bombing practice at Blowsand Mountains are considered low.

Based on the information available in the petition and our files, we have determined that there is not substantial information to indicate that listing Hardy’s aegialian scarab or the Sand Mountain serican scarab located at Sand Mountain and Blowsand Mountains may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

#### Crescent Dunes

The Crescent Dunes aegialian scarab and Crescent Dunes serican scarab occur only at Crescent Dunes, Nye County (Gordon and Cartwright 1977, p. 44; Hardy and Andrews 1987, p. 173). The petition provided information on possible threats from ORV use at Crescent Dunes. In addition, the petition provided information related to potential impacts from a solar facility proposed near the dunes. We discuss these potential threats below.

#### ORV Recreation

According to the petition, Crescent Dunes is a designated SRMA on 3,000 ac (1,214 ha) of public lands administered by the Tonopah Field Office of the BLM (BLM 1997, p. 21). The SRMA is open to ORV use year-round (WildEarth Guardians 2010, p. 11). Though no part of the dunes is reserved for the protection of sensitive species, ORVs are required to stay on roads, trails, and unvegetated dunes (WildEarth Guardians 2010, p. 11). The petition does not provide any specific information regarding impacts to the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab from ORV use. However, the petition provided information regarding an opinion from The Nature Conservancy that recreation appeared to be a high priority at Crescent Dunes with no regard given to protection of the unique animals of the dune system and no analysis of the impacts of ORVs to these species or their habitat (BLM 1994, p. 5–116). We are unaware of any management plans or emergency restrictions being placed on motorized use at Crescent Dunes to protect the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab or their habitat. The adequacy of BLM’s regulations regarding this trail system in protecting the habitat of the dune beetles at Crescent Dunes is discussed under *Factor D* below.

We have no additional information in our files related to this potential threat.

#### Solar Energy Development

According to the petition, Tonopah Solar Energy, LLC submitted a right-of-way application and a plan of development to the BLM’s Tonopah Field Office for the construction and operation of a solar power generation facility (Crescent Dunes Solar Energy Project), associated transmission facilities to the Anaconda Substation located 6 mi (9.7 km) north of the project area, and access roads (74 FR 61364; November 24, 2009). This facility would have a generating capacity of up to 160 megawatts (MW) of electricity based on concentrating solar power technology. The proposed plant, including the heliostat array, power block, and associated facilities, would use approximately 1,600 ac (648 ha) of BLM-managed lands northwest of Tonopah, Nevada. This project is considered a “fast-track” project. According to the BLM Nevada State Office Web site, fast-track projects are those where the companies involved have demonstrated to BLM that they have made sufficient progress to formally start the environmental review and public participation process. Projects that were cleared for approval by the Department of the Interior by December 2010 are eligible for economic stimulus funding under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). All renewable energy projects proposed for BLM-managed lands receive full environmental reviews required by the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*) (BLM 2010a, p. 1). The scoping period for this project closed on December 24, 2009 (74 FR 61364; November 24, 2009). The petition claims that increased activity from construction and maintenance of the proposed solar array, which would be located adjacent to the sand dunes, may disturb beetles and their habitat.

We have no additional information in our files on this potential threat other than that a draft environmental impact statement is currently being prepared (BLM 2010b, p. 8).

Based on the information available in the petition and our files, we have determined that there is substantial information to indicate that listing the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab located at Crescent Dunes may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

## Big Dune and Lava Dune

The large aegialian scarab and Giuliani's dune scarab occur only at Big Dune and Lava Dune, Nye County (Gordon and Cartwright 1977, p. 43; BLM 1998a, p. 3–41), which are managed by the Southern Nevada District Office of the BLM. The petition provided information on possible threats from ORV use at Big Dune and Lava Dune. In addition, the petition provided information related to potential impacts from a solar facility proposed near the dunes. We discuss these potential threats below.

## ORV Recreation

According to information provided by the petition, there is an 11,600-ac (4,694-ha) Big Dune SRMA, which includes a 1,920-ac (777-ha) ACEC at Big Dune (BLM 1998b, pp. 7, 23; WildEarth Guardians 2010, p. 18). The objective of the SRMA is to provide for moderate, casual ORV use; camping; and other casual recreation opportunities. The ACEC was established in 1998 to protect beetle habitat, but only 200 ac (81 ha) of the 1,920 ac (777 ha) ACEC were set aside specifically as beetle habitat (BLM 1998b, p. 23). This is considered inadequate by the petitioner when compared to the Service's previous proposal to list Giuliani's dune scarab and designate critical habitat over the entire dune in 1978 (43 FR 35636; August 10, 1978) (WildEarth Guardians 2010, p. 18). In addition, ORV use is allowed on the designated route system within the 200 ac (81 ha) specified as beetle habitat (BLM 1998b, p. 23). Within the entire 1,920-ac (777-ha) ACEC, speed-based, competitive ORV events are prohibited (BLM 1998b, p. 23). Because nonvegetated portions of the Big Dune SRMA outside of designated beetle habitat are managed as open to ORV use, the petition indicates that heavy ORV use occurs over large areas of the rest of Big Dune and the immediate surrounding area (BLM 1998b, p. 24; WildEarth Guardians 2010, p. 18). Lava Dune has no special management designation. The petition does not provide any specific information regarding impacts to the large aegialian scarab and Giuliani's dune scarab from ORV use at Lava Dune. The adequacy of BLM's regulations regarding ORV use at Big Dune and Lava Dune is discussed under *Factor D*.

We have no additional information in our files related to this potential threat.

## Solar Energy Development

According to the petition, Pacific Solar Investments, Inc., submitted a right-of-way application and plan of development to the BLM's Southern Nevada District Office for the construction, operation, maintenance, and termination of a solar power generation facility (Amargosa North Solar Project), transmission substation, and switchyard facilities (74 FR 66146; December 14, 2009). This facility would have a generating capacity of about 150 MW of electricity based on concentrating solar power technology and would be located on about 7,500 ac (3,035 ha) of BLM-managed lands in the Amargosa Valley, Nye County. A portion of Big Dune lies within the proposed project area. All renewable energy projects proposed for BLM-managed lands receive full environmental reviews required by the National Environmental Policy Act. The scoping period for this project closed on February 12, 2010 (74 FR 66146; December 14, 2009).

According to information in our files, the reconnaissance-level biological survey completed for the plan of development states that "due to the proximity of the endemic beetles ACEC, it will be important to address the potential affect [sic] of any adjacent development to the continued habitat function and viability of this ACEC" (CH2MHILL 2008, p. 3–1). We have no additional information in our files on this potential threat to the large aegialian scarab and Giuliani's dune scarab at Big Dune.

Based on the information available in the petition and our files, we have determined that there is substantial information to indicate that listing the large aegialian scarab and Giuliani's dune scarab at Big Dune and Lava Dune may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

## Summary of Factor A

We find that the petition and information in our files provide substantial information that ORV recreation is a potential threat to the Crescent Dunes aegialian scarab and Crescent Dunes serican scarab that occur at Crescent Dunes and to the large aegialian scarab and Giuliani's dune scarab that occur at Big Dune and Lava Dune. We also find that the petition provides substantial information that solar energy development may be a threat to the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's

dune scarab at Crescent Dunes and Big Dune.

While ORV use occurs at Sand Mountain, we find that the comprehensive, mandatory route restrictions put in place in 2006 (72 FR 12187; March 15, 2007; 72 FR 24253; May 2, 2007) to protect the shrub habitat used by the Sand Mountain blue butterfly also protects the two dune beetles (Hardy's aegialian scarab and Sand Mountain serican scarab) as they also depend upon this shrub habitat (see also *Factor D* discussion). We do not have information indicating that violations of the 2006 ORV restrictions occur, or occur frequently enough to impact the shrub habitat at Sand Mountain. Off Road Vehicle recreation does not occur throughout much of the Blowsand Mountains' dune system because much of this area is not open to public access due to its location within the Fallon Range Training Complex Military Operation Area, an active practice bombing range. The bombing operations at the Blowsand Mountains are of limited geographic scope, and therefore have been ranked as a low stress by an interagency assessment team. For these reasons, we do not find that the petition provides substantial information indicating that the Hardy's aegialian scarab or Sand Mountain serican scarab may be warranted for listing under *Factor A*, the present or threatened destruction, modification, or curtailment of their habitat or range.

Therefore, based on our evaluation of the information available in the petition and our files, we find that the petition does not present substantial information to indicate that listing Hardy's aegialian scarab and the Sand Mountain serican scarab may be warranted, but the information available in the petition and in our files does present substantial information to indicate that listing may be warranted for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, the large aegialian scarab, and Giuliani's dune scarab due to the present or threatened destruction, modification, or curtailment of their habitat or range.

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

## Information Provided in the Petition

The petition notes that collection of individuals for scientific purposes has occurred over the years, but does not provide information about whether this constitutes a threat to any of the six sand dune beetle species (WildEarth Guardians 2010, p. 7).

#### Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide information that overutilization for commercial, recreational, scientific, or educational purposes has negatively impacted any of the six petitioned beetle species. We have no information in our files to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to any of the six species.

Therefore, based on our evaluation of the information provided in the petition, we do not consider the petition or information in our files to provide substantial scientific or commercial information indicating that listing of any of the six petitioned beetles may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

#### Factor C. Disease or Predation

##### Information Provided in the Petition

According to information provided by the petition, nighthawks (*Chordeiles minor*) were observed preying on Andrew's dune scarab (*Pseudocotalpa andrewsi*) at Algodones Dunes in southern California (Hardy and Andrews 1986, p. 137), a dune system similar to those used by the petitioned beetles (WildEarth Guardians 2010, p. 7). Foxes (*Vulpes macrotis*) and coyotes (*Canis latrans*) may also prey on sand dune beetles (Hardy and Andrews 1986, p. 137). Rust (1985, p. 109) stated that no predation of Guiliani's dune scarab was observed at Big Dune or Lava Dune although many potential predators were observed.

The petition states that disease is not known to be a threat to any of the six petitioned beetles (WildEarth Guardians 2010, p. 7).

#### Evaluation of Information Provided in the Petition and in Our Files

The petition does not provide specific information that predation or disease has negatively impacted the six petitioned sand dune beetles. While predation of the sand dune beetles would be a common occurrence, it is unknown whether predation may be occurring at such a level that it is negatively affecting these species. We do not have information in our files to indicate that predation or disease is a potential threat to any of these species.

Therefore, based on our evaluation of the information in the petition and in our files, we have determined that the petition does not provide substantial information to indicate that listing any

of the six sand dune beetles may be warranted due to disease or predation.

#### Factor D. The Inadequacy of Existing Regulatory Mechanisms

##### Information Provided in the Petition

The petitioned dune beetles occur on Federal lands managed either by the BLM or the Department of Defense. The populations on BLM lands all occur within or adjacent to areas managed primarily for ORV use and designated as SRMAs. The petition states that none of the six petitioned sand dune beetle species has legal protection (WildEarth Guardians 2010, pp. 7–18). All six petitioned species are listed as BLM sensitive species (BLM 2007, pp. J–3, J–35). According to information in our files, BLM sensitive species are defined as “species that require special management or considerations to avoid potential future listing” (BLM 2008, Glossary p. 5). The stated objective for sensitive species is to initiate proactive conservation measures that reduce or eliminate threats to minimize the likelihood of and need for listing (BLM 2008, Section 6840.02). Conservation, as it applies to BLM sensitive species, is defined as “the use of programs, plans, and management practices to reduce or eliminate threats affecting the status of the species, or improve the condition of the species’ habitat on BLM-administered lands” (BLM 2008, Glossary p. 2).

The petition also notes that although some of the petitioned beetles may occur at “preliminary focal areas” identified in the Nevada Wildlife Action Plan, this plan does not prescribe conservation measures for sensitive invertebrates in Nevada (WAPT 2006). Moreover, the petition points out that Nevada Revised Statute 501.110 provides only for the protection of invertebrates classified as either mollusks or crustaceans, and not other invertebrates. Under current statute, therefore, beetles cannot be provided State protection (WildEarth Guardians 2010, p. 7).

The petition provides some information on the Federal management of the three SRMAs at which the dune beetles occur (WildEarth Guardians 2010, pp. 11, 14–15, 18–19). Each of the SRMAs includes habitat for only two of the six petitioned species and none of these species occur at more than one SRMA, although some of the six petitioned beetles also occur at other nearby dune systems. In addition, each of the three SRMAs has specific management restrictions. For these reasons, existing regulatory mechanisms are more easily assessed for the pairs of

species that are unique to each SRMA. Occurrences outside of the SRMAs are discussed within this framework.

#### Evaluation of Information Provided in the Petition and in Our Files

##### Sand Mountain and Blowsand Mountains

Hardy's aegialian scarab and the Sand Mountain serican scarab are known only from Sand Mountain and nearby Blowsand Mountains. Sand Mountain is a designated SRMA managed by the BLM Stillwater Field Office that extends over 4,795 ac (1,941 ha). The petition states that the BLM has closed some areas to ORV use (BLM 2001, pp. REC–3 and REC–4; WildEarth Guardians 2010, p. 14). The petition also cites a 2009 anonymous source who stated that some ORV users have ignored these 2001 restrictions and ride in closed areas (WildEarth Guardians 2010, p. 14).

We have information in our files that the ORV restrictions mentioned in the 2001 Carson City Field Office Resource Management Plan (CCRMP) (BLM 2001) cited by the petition have been superseded by more comprehensive ORV restrictions implemented in 2006 to prevent adverse effects to the habitat of the Sand Mountain blue butterfly (72 FR 12187; March 15, 2007). The Service has previously found that implementation of this closure, which includes a designated ORV route system throughout the vegetated portions of the SRMA, effectively reduces the threat posed by ORVs to the Sand Mountain blue butterfly's habitat and ensures that further habitat destruction is prevented and will ensure, over the long-term, natural shrub regeneration (72 FR 24253; May 2, 2007). The reduction of this ORV threat to the butterfly's habitat also applies to this shared habitat with Hardy's aegialian scarab and the Sand Mountain serican scarab since these two beetles occupy similar habitat as the Sand Mountain blue butterfly.

The Blowsand Mountains dune system is under the jurisdiction of the Department of Defense and is within a practice bombing range used by the Fallon NAS. The petition provides no information on the management of the Blowsand Mountains. As previously noted under *Factor A*, information in our files states that because of its use for military bombing training operations, much of the area is not open to public access and therefore is not used for ORV recreation (TNC 2004, p. 12). An interagency assessment team concluded that while direct mortality to dune biota from bomb drops can be severe, it was of small geographic scope within the Blowsand Mountains and, therefore, its



overall stress ranking was considered low (TNC 2004, p. 48).

Therefore, based on the information provided in the petition and available in our files, we have determined that the petition does not present substantial information to indicate that listing the Hardy's aegialian scarab or the Sand Mountain serican scarab may be warranted due to the inadequacies of existing regulatory mechanisms.

#### Crescent Dunes

The Crescent Dunes aegialian scarab and Crescent Dunes serican scarab are known only from the Crescent Dunes, where a total of 3,000 ac (1,214 ha) has been designated as the Crescent Sand Dunes SRMA in the Tonopah Resource Management Plan (TRMP) (BLM 1997, p. 21). The petition provides no information, nor do we have any information in our files, regarding whether either of these species occurs outside of the designated SRMA boundary. The Record of Decision (ROD) for the TRMP states that vehicle use within the SRMA will be limited to existing roads and trails, although ORV use on unvegetated areas may be allowed provided that such vehicle use is compatible with the area's values (BLM 1997, p. 21). The Crescent Dunes SRMA is closed to competitive recreational events to protect sensitive resource values (BLM 1997, p. 20). Fluid mineral leasing is allowed, subject to a no-surface-occupancy stipulation (BLM 1997, p. 21). The TRMP does not specifically address management of renewable resources such as solar energy (BLM 1997). No specific mention is made of either beetle species in the TRMP, although it states that Nevada BLM Sensitive Species will be managed to maintain or increase current population levels (BLM 1997, p. 9). We are not aware of any specific conservation actions or plans for either the Crescent Dunes aegialian scarab or the Crescent Dunes serican scarab.

The petition noted that during the public participation process for the proposed TRMP, the BLM received a letter from the Nevada Outdoor Recreation Association, Inc. urging them to designate the Crescent Dunes as an ACEC to protect endemic species, including the Crescent Dunes aegialian scarab (BLM 1994, pp. 5–12). The BLM responded that a 14,000-ac (5,666 ha) area at Crescent Dunes was examined for ACEC potential and determined not to meet the importance criterion as defined in BLM policy (BLM 1994, pp. 5–125); no further explanation was provided. In the ROD for the TRMP, the BLM stated that as a result of several points of protest concerning ACECs that

were found to be valid, decisions to designate ACECs were withheld and that an ACEC Plan Amendment would be prepared over the next 2 years to address these points of protest (BLM 1997, p. 3); we have no information in our files regarding whether this plan amendment was ever prepared. Another commenter, The Nature Conservancy, expressed the opinion that recreation appeared to be high priority at Crescent Dunes with no regard given to protection of the unique animals of the dune system and no analysis of the impacts of ORVs to these species or their habitat (BLM 1994, pp. 5–116). The BLM responded that impacts to sensitive species would be addressed in the SRMA plan (BLM 1994, pp. 5–159). According to the petition, no management plan has been prepared for the SRMA (WildEarth Guardians 2010, p. 11). We are unaware of any other restrictions being placed on motorized use at Crescent Dunes to protect the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab or their habitat as was done at Sand Mountain to protect the Sand Mountain blue butterfly and its habitat.

Therefore, based on the information provided in the petition and available in our files, we have determined that the petition does present substantial information to indicate that listing the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab may be warranted due to the inadequacies of existing regulatory mechanisms.

#### Big Dune and Lava Dune

The large aegialian scarab and Giuliani's dune scarab are known only from Big Dune and Lava Dune. According to the petition, in the Las Vegas Resource Management Plan (LVRMP), the BLM designated an 11,600-ac (4,694-ha) SRMA, which includes a 1,920-ac (777-ha) ACEC at Big Dune (BLM 1998b, pp. 7, 23). The objective of the SRMA is to provide for moderate, casual ORV use; camping; and other casual recreation opportunities. The ACEC was established to protect beetle habitat. The management direction is to prohibit ORV use within 200 ac (81 ha) of dune beetle habitat within the ACEC, except on the designated route through it, to ensure continued survival of the native beetle population. Speed-based competitive ORV events within the ACEC are also prohibited (BLM 1998b, p. 23). Other commercial activities and permitted events are allowed on a case-by-case basis. The management direction stipulates that long-term recreation management within the dunes be based on the minimum habitat

requirements of the beetles (BLM 1998b, p. 23). Lands within the ACEC are designated as a rights-of-way exclusion area and are closed to locatable mineral, salable mineral, and solid leasable mineral entry; fluid mineral leasing is allowed, subject to a no-surface-occupancy stipulation (BLM 1998b, p. 7). The LVRMP does not specifically address management of renewable resources such as solar energy (BLM 1998b). There is no livestock grazing within the ACEC. A BLM brochure states that a 5-ac (2-ha) area within the ACEC on the east side of the dunes has been set aside specifically for the protection of beetle habitat (BLM 2010c, p. 1). We have no information in our files that explains the discrepancy between the 200 ac (81 ha) protected area identified in the LVRMP and the 5 ac (2 ha) area described in the brochure.

In our files, we have correspondence that indicates that a study of the distribution of the beetles and their ecological requirements was initiated at Big Dune in 2007 (Murphy 2007, p. 1). This correspondence includes a statement that the researchers were successful in locating both endemic scarab beetles in "huge" numbers although ORV activities were having impacts (Murphy 2007, p. 1). This survey information, however, is anecdotal, and we lack sufficient details or a written report to evaluate this claim. We have no information on the status of the beetles at the nearby Lava Dune, which has no special management designations.

Therefore, based on the information provided in the petition and available in our files, we have determined that the petition does present substantial information to indicate that listing the large aegialian scarab and Giuliani's dune scarab may be warranted due to the inadequacies of existing regulatory mechanisms.

#### Summary of Factor D

We find that the petition provides substantial information that there may be inadequate existing regulatory mechanisms related to ORV use and solar facility siting and, therefore, a potential threat to the Crescent Dunes aegialian scarab and the Crescent Dunes serican scarab that occur at Crescent Dunes, and to the large aegialian scarab and Giuliani's dune scarab that occur at Big Dune and Lava Dune.

While ORV use also occurs at Sand Mountain (see also *Factor A* discussion), we believe that the mandatory route restrictions in place since 2006 protect the shrub habitat on which the two dune beetles that occur there depend. We do not have information indicating

that violations of the 2006 restrictions occur, or occur frequently enough to impact the dune beetles' shrub habitat. Off Road Vehicle recreation does not occur throughout much of the Blowsand Mountains' dune system because much of it is not open to public access. The bombing operations at the Blowsand Mountains are of limited geographic scope and, therefore, direct mortality to dune biota was given a low stress ranking by an interagency assessment team. Solar facilities are not being proposed at or near Sand Mountain or Blowsand Mountains. For these reasons, we do not consider the petition to provide substantial information that listing Hardy's aegialian scarab or the Sand Mountain serican scarab, endemic to Sand Mountain and the Blowsand Mountains, may be warranted due to the inadequacies of existing regulatory mechanisms.

Therefore, based on our evaluation of the information available in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing Hardy's aegialian scarab and the Sand Mountain serican scarab may be warranted, but the information available in the petition and our files does present substantial information to indicate that listing may be warranted for the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab, due to the inadequacies of existing regulatory mechanisms.

#### *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence*

##### Information Provided in the Petition

The petition states that the six petitioned sand dune beetles have limited distribution and apparently small populations, increasing the likelihood of extinction (WildEarth Guardians 2010, p. 8). In support of this claim, the petition cites Service status assessments for a ground-dwelling snail [Sisi (*Ostodes strigatus*)], and for Langford's tree snail (*Partula langfordii*), in which the Service found that the small number of individuals or the small number of extant populations made these species more vulnerable to extinction (Service 2009a, pp. 4–5; 2009b, pp. 5–6). These assessments differ substantially, however, from our current considerations for the six petitioned sand dune beetles. The total population of Sisi was estimated at fewer than 50 individuals in the early 1990s (Service 2009a, p. 3). In the case of Langford's tree snail, there is a record of historical declines in population

estimates from hundreds of individuals documented in 1970 to only a few individuals by the early 1990s; no live snails have been located in recent surveys (Service 2009a, p. 4). The petition notes that, in the case of Langford's tree snail, the Service relied on citations not specific to this species that state that small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and may suffer a loss of genetic variability over time due to random genetic drift (WildEarth Guardians 2010, p. 8). The petition also states that many species in the Great Basin and Mojave Deserts, especially species adapted to specialized habitats such as sand dunes, have evolved and continue to persist in isolation with limited distribution (Brussard *et al.* 1998, pp. 514–520).

##### Evaluation of Information Provided in the Petition and in Our Files

The petition provided no population estimates or trends for any of the six petitioned species, nor do we have definitive population estimates or trends for any of these beetles in our files. We do have anecdotal information in our files that indicates that "huge" populations of two scarab beetles (large aegialian scarab and Giuliani's dune scarab) were present as recently as 2007 at Big Dune (Murphy 2007, p. 1).

In a genetics study of five species of *Aegialia*, researchers found that three flightless species, which included Hardy's aegialian scarab and the large aegialian scarab, had low genetic distance measures but relatively high estimates of gene flow (Porter and Rust 1996, p. 719). They suggested that flightless *Aegialia* populations within Great Basin dune systems may be extremely large and have levels of gene flow high enough to maintain high genetic similarity, and therefore low genetic distances (Porter and Rust 1996, p. 719).

Neither the petition, nor the information in our files, provides information that directly indicates that limited distribution, in and of itself, is a substantial threat to the petitioned dune beetle species. The petition does not provide information on chance events or other threats to the six species and connect such threats to small population numbers or restricted range or the potential for such threats to occur in occupied habitats in the future.

Limited distribution and small population numbers or sizes are considered in determining whether the petition provides substantial information regarding natural or anthropogenic threat, or a combination

of threats, that may be affecting a particular species. However, in the absence of information identifying chance events or other threats and the potential for such chance events to occur in occupied habitats, and connecting them to a restricted geographic range of a species, we do not consider chance events, restricted geographic range, or rarity by themselves to be threats to a species.

Therefore, based on our evaluation of the information provided in the petition and our files, we have determined that the petition does not present substantial information to indicate that listing any of the six sand dune beetle species may be warranted due to other natural or manmade factors affecting these species' continued existence.

#### **Finding**

On the basis of our determination under section 4(b)(3)(A) of the Act, we find that the petition does not present substantial scientific or commercial information indicating that listing Hardy's aegialian scarab and the Sand Mountain serican scarab throughout their entire range may be warranted. On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information that listing the Crescent Dunes aegialian scarab, Crescent Dunes serican scarab, large aegialian scarab, and Giuliani's dune scarab throughout their entire range may be warranted.

The petition presents substantial information indicating that listing the Crescent Dunes aegialian scarab may be warranted due to *Factors A* and *D*. The petition does not present substantial information indicating that listing the Crescent Dunes aegialian scarab may be warranted due to *Factors B*, *C*, or *E*.

The petition presents substantial information indicating that listing the Crescent Dunes serican scarab may be warranted due to *Factors A* and *D*. The petition does not present substantial information indicating that listing the Crescent Dunes serican scarab may be warranted due to *Factors B*, *C*, or *E*.

The petition presents substantial information indicating that listing the large aegialian scarab may be warranted due to *Factors A* and *D*. The petition does not present substantial information indicating that listing the large aegialian scarab may be warranted due to *Factors B*, *C*, or *E*.

The petition presents substantial information indicating that listing Giuliani's dune scarab may be warranted due to *Factors A* and *D*. The petition does not present substantial information indicating that listing

Giuliani's dune scarab may be warranted due to *Factors B, C, or E*.

Because we have found that the petition presents substantial information that listing four of the six species may be warranted, we are initiating status reviews (12-month findings) to determine whether listing these four species under the Act 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 12-month findings, we determine whether a petitioned action is warranted after we have completed thorough status reviews of the species, which are conducted following substantial 90-day findings. 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 a 12-month finding will result in a warranted finding.

#### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this document are the staff members of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

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

Dated: July 21, 2011.

**Gregory E. Siekaniec,**

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

[FR Doc. 2011-19743 Filed 8-3-11; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2011-0045; MO 92210-0-0008-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition To Revise Critical Habitat for the Leatherback Sea Turtle

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and notice of 12-month determination.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding and 12-month determination on how to proceed in response to a petition to revise critical habitat for the leatherback sea turtle (*Dermochelys coriacea*) pursuant to the Endangered Species Act of 1973, as amended (Act). The petition asks the Service and the National Marine Fisheries Service (NMFS) (Services) to revise the existing critical habitat designation for the leatherback sea turtle by adding the coastline and offshore waters of the Northeast Ecological Corridor of Puerto Rico to the critical habitat designation. Our 90-day finding is that the petition, in conjunction with the information readily available in our files, presents substantial scientific information indicating that the requested revision may be warranted. Our 12-month determination is that we intend to proceed with processing the petition by assessing critical habitat during the future planned status review for the leatherback sea turtle.

**DATES:** The finding announced in this document was made on August 4, 2011.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R4-ES-2011-0045. Information and supporting documentation that we received and used in preparing this finding is available for public inspection by appointment, during normal business hours at the North Florida Ecological Services Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256 and at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, Puerto Rico 00622. Please submit any new information, materials, comments, or questions concerning this finding to the above mailing address or the contact

as listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Dave Hankla, Field Supervisor, North Florida Ecological Services Office, U.S. Fish and Wildlife Service, Attn: Leatherback CH Review; by mail at 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; by telephone (904-731-3336); by facsimile (904-731-3045); or by e-mail at [northflorida@fws.gov](mailto:northflorida@fws.gov). 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)(D) of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to revise critical habitat for a species presents substantial scientific information indicating that the revision may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. Our listing regulations at 50 CFR 424.14(c)(2) further require that, in making a finding on a petition to revise critical habitat, we consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain the physical and biological features essential to, and that may require special management to provide for, the conservation of the species; or information indicating that areas currently designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.

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**. 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. If we find that a petition presents substantial information indicating that the revision may be warranted, we are required to determine how we intend to proceed with the requested revision within 12 months after receiving the petition and promptly publish notice of such intention in the **Federal Register**.

Critical habitat is defined under section 3(5)(A) of the Act as: