

Little specific information was presented in the petition documenting significant declines to the western brook and river lamprey. The western brook lamprey and river lamprey distribution overlaps with the petitioned range of the Pacific lamprey. Consequently, these two species likely experience some of the same threats as documented for Pacific lampreys. Like the Pacific lamprey, the river lamprey may be prone to threats common to the lower reaches of large developed rivers. In contrast, the non-anadromous western brook lamprey is not known to be subject to threats associated with ocean conditions. Most lamprey abundance data is based on counts of ammocoetes that have not been identified to species. While declines or extirpations in specific locations have been documented, very little quantitative information is available to evaluate population trends compared to historical conditions. The petitioners contend that all of the petitioned lamprey species have been subjected to habitat losses and population declines due to a variety of threats. While we have no information to the contrary, the petition does not provide the substantial scientific or commercial information required indicating that listing the western brook lamprey or the river lamprey may be warranted.

Finding

The Service has reviewed the petition to list the Pacific lamprey, western brook lamprey, and river lamprey, the literature cited in the petition that was available to us, and other available scientific literature and information in our files. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the Pacific lamprey located in the lower 48 states is a listable entity. Accordingly, we are unable to define a listable entity of the Pacific lamprey. Since the population of Pacific lamprey cannot be defined as a DPS at this time, thus ineligible to be considered for listing, we did not evaluate its status as endangered or threatened on the basis of either the Act's definitions of those terms or the factors in section 4(a) of the Act. We also find that there is not substantial scientific or commercial information indicating that listing the western brook lamprey or the river lamprey in California, Oregon, Washington, and Idaho may be warranted.

Even though we did not find that substantial scientific or commercial information has been presented to

indicate that the petitioned action may be warranted for these three species of lamprey, we encourage interested parties to continue to gather data that will assist with the conservation of the species. Although a nonsubstantial finding does not initiate a formal status review for these species, we encourage additional information gathering and research to increase our understanding of the status of these species on such topics as the following:

- (1) The Pacific, river, or western brook lamprey biology and ecology, their current and historical distribution and abundance, and habitat needs during all life stages;
- (2) The range, status, and trends of these species;
- (3) Specific threats to these species or their habitats;
- (4) Techniques for improving identification of lamprey ammocoetes to species;
- (5) Any other information that would aid in determining these species, population status, trends, and structure;
- (6) The adequacy of existing regulatory mechanisms to protect or conserve lampreys and their habitat.

If you wish to provide information regarding any of the three lamprey species, you may submit your information or materials to the State Supervisor, Oregon Fish and Wildlife Office (see **ADDRESSES** section above).

References Cited

A complete list of all references cited herein is available, upon request, from the Oregon Fish and Wildlife Office (see **ADDRESSES** section above).

Author

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES** section above), with support from staff of Service offices in California, Oregon, Washington, and Idaho.

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

Dated: December 20, 2004.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Resubmitted Petitions To List the Southern Idaho Ground Squirrel, Sand Dune Lizard, and Tahoe Yellow Cress

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-Month Findings on Resubmitted Petitions to List Three Species Under the Endangered Species Act.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our 12-month findings on resubmitted petitions to list the southern Idaho ground squirrel (*Spermophilus brunneus endemicus*), the sand dune lizard (*Sceloporus arenicolus*), and the Tahoe yellow cress (*Rorippa subumbellata*) pursuant to the Endangered Species Act (Act) of 1973, as amended. We find that proposed rules to list these species continue to be warranted but precluded by other higher priority listing actions. We will continue to consider each of these species as a candidate for listing.

We request additional status information that may be available for any of these three candidate species. This information will help us in monitoring changes in the status of these candidate species and conserving them. Also, we will consider this information in preparing subsequent reviews to determine whether listing remains warranted, and in the preparation of listing documents in the event that a proposal for listing for one or more of these species is no longer precluded.

DATES: This finding was made on December 17, 2004. We will accept comments on these three candidate species at any time.

ADDRESSES: Submit your comments regarding any of the three species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. Written comments and materials received will be available for public inspection by appointment at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION**.

A species assessment form with information and references regarding each of these three candidate species' range, status, habitat needs, and listing priority assignment is available for review at the appropriate Regional

Office listed below in **SUPPLEMENTARY INFORMATION** or on our Internet Web site, which is <http://endangered.fws.gov/candidates/index.html>.

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species.

SUPPLEMENTARY INFORMATION:

Background

Petition for a Candidate Species

Under section 4 of the Act the Service may identify and propose species for listing based on the factors identified in section 4(a)(1). Section 4 also provides a mechanism for the public to petition us to add a species to the lists of species determined to be threatened species or endangered species ("Lists") pursuant to the Act. Under section 4(b)(3)(A) of the Act, to the maximum extent practicable we must determine within 90 days of receiving such a petition whether it presents substantial information that listing may be warranted; we refer to this as a "90-day finding." The Act requires that in the event of a positive 90-day finding, we must promptly commence a status review of the species.

Section 4(b)(3)(B) specifies that in the event of a positive 90-day finding, we shall make and publish in the **Federal Register** one of three possible findings within 12 months of the receipt of the petition, which we refer to as a "12-month finding":

1. The petitioned action is not warranted;
2. The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action); or
3. The petitioned action is warranted but that (a) the immediate proposal of a regulation and final promulgation of regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the lists of endangered or threatened species. (We refer to this as a "warranted but precluded" finding.)

Section 4(b)(3)(C) of the Act requires that when we make a warranted but precluded finding on a petition, we are to annually treat such a petition as one that is resubmitted on the date of such a finding. Thus we are required to publish a new finding on these "resubmitted" petitions on an annual basis.

On June 21, 2004, the United States District court for the District of Oregon (*Center for Biological Diversity v.*

Norton, Civ. No. 03-1111-AA) found that our resubmitted petition findings for the southern Idaho ground squirrel, the sand dune lizard, and the Tahoe yellow cress that we published as part of the Candidate Notice of Review (CNOR) on May 4, 2004 (69 FR 24876) were not sufficient. The court indicated we did not specify what listing action is proposed for the higher priority species that precluded publishing a proposed rule for these three species, and that we did not adequately explain the reasons why actions for the identified species are deemed higher in priority, or why such actions result in the preclusion of listing actions for the southern Idaho ground squirrel, sand dune lizard, or Tahoe yellow cress. The court ordered that we publish updated findings for these species within 180 days of the order.

We previously received petitions and made findings that listing each of these species was warranted but precluded; the most recent resubmitted petition findings for these species were part of the CNOR published on May 4, 2004 (69 FR 24876). We subsequently have updated our information and incorporated any new information in updated assessments of the status of and threats to these three species. As a result of these updated assessments and after taking into consideration available funding in relation to pending listing actions (described below), we now are making continued warranted-but-precluded 12-month findings on the petitions for these three species. (In the "Summary of Petitioned Candidates," below, we present summaries of why these three species continue to warrant listing and we specify the listing priority number that we have assigned to each species.) These findings mean that the immediate publication of proposed rules to list these species remains precluded by our work on higher priority listing actions. A description and evaluation of the reasons and data on which these findings are based is provided below, including specific reasons why the issuance of a proposed listing rule is precluded for each of these species, as well as a description of expeditious progress being made by the Service to add qualified species to the Lists. We will continue to monitor the status of these three species as new information becomes available to determine if a change in status is warranted, including the need to emergency-list any or all of the three species under section 4(b)(7) of the Act.

Preclusion and Expeditious Progress

Preclusion is a function of a species' listing priority in relation to the resources that are available and competing demands for those resources. (The listing priority of a species is represented by the listing priority number (LPN) we assign to it in accordance with our priority guidance as published on September 21, 1983 (48 FR 43098)). Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual appropriations process and we cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act. The Listing Program includes work related to proposed and final listing regulations under the Act, critical habitat designations, and petitions from the public to list species (including work on petitions being addressed for the first time as well as the annual review to make findings on resubmitted petitions for "warranted but precluded" candidate species).

The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions, i.e., more complex actions generally are more costly and this affects the number of listing actions that we can work on with a fixed amount of funding in a given year. For example, for FY 2002 to FY 2004, the costs (excluding publication costs) for conducting a 12-month finding, without a proposed rule, ranged from approximately \$9,600 for one species with a restricted range and involving a relatively uncomplicated analysis, to \$305,000 for another species that was wide-ranging and with a complex analysis.

In FY 1998 and for each fiscal year since then, Congress placed a statutory cap on funds which may be expended for listing and critical habitat actions (*i.e.* the Listing Program), equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other ESA functions, or for other Service programs, from being used for listing or critical habitat actions (see House Report 105-163, 105th Congress, 1st Session).

Beginning in FY 2002, Congress also put in place the critical habitat "subcap," which put an upper limit on the Listing Program funds that could be

spent on work related to critical habitat designations for already listed species. Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress put the subcap in place to ensure that some funds would be available to make other listing determinations: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (H.R. Rep. No. 103, 107th Cong., 1st Sess. 2001 at 30, 2001 WL 695998). Because the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, Congress in effect determined, through the listing cap and the critical habitat subcap, the amount available for other listing activities.

Congress also has recognized that the availability of resources was the key element in deciding whether there would be a listing proposal or a "warranted but precluded" finding for a given species. The Conference Report accompanying Pub. L. 97-304, which established the current statutory deadlines and the "warranted but precluded" finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e. for a lower-ranking species] unwise." Therefore, in fiscal year 2004, the outer parameter within which "expeditious progress" must be measured is that amount of progress that could be achieved by spending \$3.38 million, which was the amount available in the Listing Program appropriation other than the critical habitat subcap (all the critical habitat subcap funds were used for designations required by court order or court-approved settlement agreements).

Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. However, through court orders and court-approved settlements, federal district courts have mandated that FWS must complete certain listing activities with respect to specified species and established the schedules for completing those activities. The species involved in these court-mandated listing activities are not

always those that we have identified as being most in need of listing. A large majority of the appropriation available for new listings of species was consumed by such court-mandated listing activities in FY 2004, and by ordering or sanctioning these actions the courts essentially determined that these were the highest priority actions to be undertaken with available funding. Accordingly, in FY 2004, FWS had little discretion to determine what listing activities to undertake and what species to address. Copies of all of the court orders and settlement agreements referred to below are available from the Service and are part of the administrative record for these resubmitted petition findings.

On November 10, 2003, the President signed the 2004 Interior and Related Agencies Appropriations Act (Pub. L. 108-108), which included \$3,386,000 for listing activities not related to critical habitat designations for species that already are listed. This appropriation was fully allocated to fund the following categories of actions in the Listing Program: Emergency listings; essential litigation-related, administrative, and program management functions; compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 listing actions with absolute statutory deadlines; and high-priority listing actions. Based on the available funds and their allocation for these purposes, no FY 2004 funds were available for listing actions for the southern Idaho ground squirrel, sand dune lizard, or Tahoe yellow cress. Specific details regarding the individual actions taken using the FY 2004 funding, which precluded our ability to undertake listing proposals for any of these three candidate species, are provided below.

We note here that the category of "high-priority listing actions" mentioned above refers to actions for which no timeline has been established by a court order or settlement agreement, and that also are not subject to a statutory deadline. Our ability to work on such listing actions is quite limited. In recent years, our allocation of Listing Program funds has included a limited amount of funding (\$100,000) to each Regional office to ensure that the office maintains minimal core capacity for listing actions (e.g., tracking the status of species to help ensure that an emergency listing action can be taken if necessary, participating in work to meet the statutory requirement to annually review and make findings on

resubmitted petitions). In a Region that faces a relatively limited workload in the Listing Program with regard to deadlines resulting from court orders or settlement agreements, and a relatively limited workload related to meeting statutory deadlines, some of this "capability" funding may be available to address high priority listing actions. However, in most Regions, including the Regions with responsibility for listing actions involving the southern Idaho ground squirrel, Tahoe yellow cress, and sand dune lizard, the limited amount of capability funding in Regional offices included in an allocation is used for work associated with supporting listing actions related to court orders or settlement agreements, and for meeting statutory deadlines (i.e., there are no funds available for high priority listing actions).

The overall Listing Program situation in FY 2005 is similar to that in FY 2004. For FY 2005, Congress recently appropriated \$4,043,000 for listing actions other than critical habitat for already listed species (Pub. L. 108-447, signed on December 8, 2004). The Service is in the process of preparing the allocation of this appropriation. We anticipate that the \$4,043,000 will be fully allocated to fund the following listing actions: Any emergency listings; essential litigation-related, administrative, and program management functions; compliance with court orders or court-approved settlement agreements requiring petition findings or listing determinations; and high-priority listing actions. As was the case in FY 2004, during the current fiscal year, we will issue proposed listing rules for the highest priority candidate species only if doing so does not jeopardize our ability to comply with court orders, court-approved settlement agreements, or unqualified statutory deadlines. Consequently, at this time we do not anticipate that we will have any FY 2005 funds available to work on proposals to list the southern Idaho ground squirrel, sand dune lizard, or Tahoe yellow cress, and consequently we continue to find that proposals to list these species are warranted but precluded. We note also that all of the actions that demonstrate our expeditious progress on listing (see below) contribute to the preclusion of work on listing proposals for these three candidate species.

In addition to being precluded by lack of available funds, work on proposed rules to list the southern Idaho ground squirrel, Tahoe yellow cress, and sand dune lizard also is precluded by work on candidate species with higher listing

priorities. For the southern Idaho ground squirrel and Tahoe yellow cress, which each have an LPN of 6, this means that the 210 candidate species with a LPN of 1 through 5 are of higher priority. The sand dune lizard, with an LPN of 2, has a higher priority than the southern Idaho ground squirrel and Tahoe yellow cress. However, there are 12 other candidate species with this same LPN in the Southwest Desert Region, which has the lead for the sand dune lizard. Of these 12 species, 8 have been candidate species longer than the sand dune lizard and, thus, we likely would work on proposed listing determinations for these species prior to working on a proposal for the sand dune lizard. Additionally, there are more than 70 candidate species nationwide that have LPNs of 2, and thus have the same or higher priority (based on length of time on the candidate list) than the sand dune lizard.

As explained above, part of the basis for making a warranted-but-precluded finding is that expeditious progress is being made to add qualified species to the Lists. Our progress in FY 2004 includes work in the following categories: (1) Evaluation of the potential need for emergency listing of 1 species; (2) preparation and publication of final listing determinations involving 10 species; (3) preparation and publication of a proposed listing action for 1 species; (4) preparation of proposed or final listing actions (not yet completed so not yet published) for 6 species; (5) and work on petition findings for 54 species. Specific information regarding each of these categories for FY 2004 is provided below.

(1) Emergency listings—We are currently working on a proposed rule to list the Miami blue butterfly. The Miami blue butterfly is restricted to one isolated population on Bahia Honda Key in Florida and is threatened by the combined influences of catastrophic environmental events, habitat destruction or modification, mosquito control activities, potential illegal collection, potential loss of genetic heterogeneity, and potential predation. Work on assessing the status of the species and preparing a listing rule originally was approved for funding and was initiated in FY 2004 because at the time, the Region considered that it was an emergency. When senior officials in Washington reviewed the draft emergency listing material, they did not concur that emergency listing action was needed (because of an existing captive-bred population). However, because a review of the species had been conducted and the emergency rule

already was drafted, and because it is a high-priority species (with imminent threats of a high magnitude, which is the equivalent of a LPN of 3 for this subspecies), continuing work on the proposed listing rule was approved. At that point, the small amount of resources required to complete the proposed rule would not have made a significant contribution to issuing a proposed rule to list a species with an LPN of 2. Moreover, failure to continue work to complete the proposed rule would have resulted in a significant waste of resources, as the work already completed would to some degree go stale over time and thus would have to be re-done.

(2) Final listing determinations—We prepared and published in the **Federal Register** final listing determinations for ten species, all of which involved deadlines mandated by court orders or court-approved settlement agreements. These included final regulations listing eight species, which are: Rota bridled white-eye (69 FR 3022; January 22, 2004; LPN = 2), Santa Catalina Island fox, Santa Rosa Island fox, San Miguel Island fox, and Santa Cruz Island fox (69 FR 10335 for all four fox subspecies; March 5, 2004; LPN = 3); two plant species (*Nesogenes rotensis* and *Osmoxylon mariannense*) from the Commonwealth of the Northern Mariana Islands (69 FR 18499; April 8, 2004; LPN = 1 and 2, respectively); and the California tiger salamander (69 FR 47211; August 4, 2004; LPN = 3). (We note here that the work on the salamander included funding for the designation of critical habitat for the central California distinct population segment (DPS). The critical habitat subcap pertains to critical habitat designations for species already listed; we may use listing funds for critical habitat designation work conducted in conjunction with a listing action, as was the case with this DPS.) Also included in this category of final listing actions is the work involved in FY 2004 in completing the preparation of, and publishing, final listing determinations for the slickspot peppergrass (69 FR 3094; January 22, 2004; it had been an LPN = 2), and *Tabernaemontana rotensis* (a plant species with LPN = 2); the determination for the latter species was included as part of the **Federal Register** publication of the final rules listing the two plant species from the Commonwealth of the Northern Mariana Islands, mentioned above (69 FR 18499).

(3) We prepared and published a proposed regulation to list the southwest Alaska distinct population segment (DPS) of the northern sea otter, which has an LPN = 3 (69 FR 6600;

February 11, 2004)). This population of northern sea otter occurs in nearshore locations from Attu Island in the west to Kamishak Bay in the east, including waters along the Aleutian Islands, the Alaska Peninsula, and the Kodiak archipelago. Although its range has not been curtailed, this population has declined by 56–68 percent since the mid-1980's and the decline shows no evidence of abating. The cause of the decline is not known, but predation by killer whales (*Orcinus orca*) has been hypothesized (see proposed rule for additional information). This proposal was not the result of a deadline established by a court order or a court-approved settlement agreement. Rather, this was the highest priority listing action for the Alaska Region. (Initially we determined that the Aleutian Islands DPS of the northern sea otter was a candidate with LPN = 3 (66 FR 54807), and subsequently determined that the DPS encompasses southwest Alaska.) The Alaska Region generally has not faced the relatively heavy Listing Program workload experienced by several other Regions, and consequently was able to use their limited Regional office capability funding in FY 2004 to support the completion of this proposed listing regulation. We could not have utilized this capability funding to complete listing actions in other Regions without eliminating the ability of this Region to monitor the status of candidate species and address any emergency situations that might arise.

(4) We funded work on proposed or final listing actions for 6 species for which work was not completed in FY 2004. This included work on final listing actions for the Sacramento Mountains checkerspot butterfly, the Mariana fruit bat (LPN = 3), and the southwest Alaska DPS of the northern sea otter (LPN = 3). It also included work on proposed listing actions for the boreal toad (LPN = 3), Salt Creek tiger beetle (LPN = 3), and Miami blue butterfly. The work on all these species, except on the northern sea otter (see (3) above) and Miami blue butterfly (see (1) above), was in response to a court order or a court-approved settlement agreement.

(5) We funded work on 54 petition findings. This involved 90-day findings, 12-month findings, and findings on resubmitted petitions. In some instances, the work has been based on meeting deadlines established by court order or by settlement agreements. In other instances, the work has been related to meeting statutory deadlines. All 12-month findings are subject to an unqualified statutory deadline. With regard to 90-day findings, we note that

the decision in *Biodiversity Legal Foundation v. Badgley*, 309 F. 3d 1166 (9th Cir. 2002), held that the Act requires that 90-day petition findings (i.e., the initial finding as to whether a petition contains substantial information, which the Act directs us to make within 90 days of receipt of a petition, if practicable) must be made no later than 12 months after receipt of the petition, regardless of whether it is practicable to do so. Thus, all 90-day findings are arguably subject to an absolute statutory deadline. As a result of this ruling, which changed our interpretation of section 4(b)(3) of the Act, we have been working on addressing petition findings on most or all of the outstanding petitions for those species that we have not previously determined to warrant candidate status.

Some petition findings are "complete" actions. This includes 12-month petition findings in which we determine that listing was not warranted and 90-day petition findings in which we determine that the petition did not present substantial information. In these cases, our listing work is complete.

In FY 2004, we funded work and published 10 petition findings that involved the following species: wolverine (not-substantial 90-day finding) (68 FR 60112; October 21, 2003); eastern subspecies of the greater sage-grouse (not-substantial 90-day finding) (69 FR 933; January 7, 2004); Midvalley fairy shrimp (not-warranted 12-month finding) (69 FR 3592; January 26, 2004); *Cymopterus deserticola* (desert cymopterus—substantial 90-day finding) (69 FR 6240; February 10, 2004); fisher (West coast DPS) (warranted-but-precluded 12-month finding) (69 FR 18769; April 8, 2004); Florida black bear (partial remand of not-warranted 12-month finding) (69 FR 2100; January 14, 2004); greater sage-grouse (substantial 90-day finding;) (69 FR 21484; April 21, 2004); Colorado river cutthroat trout (not-substantial 90-day finding) (69 FR 21151; April 20, 2004); New England cottontail (substantial 90-day finding) (69 FR 39395; June 30, 2004); and black-tailed prairie dog (not-warranted 12-month resubmitted petition finding) (69 FR 51217; August 18, 2004). The work on all these species, with the following exceptions, was in response to court orders or court-approved settlement agreements. The New England cottontail was the highest priority listing action for the Northeast Region. The Northeast Region generally has not faced the relatively heavy Listing Program workload experienced by several other Regions, and consequently was able to use their limited Regional office

capability funding in FY 2004 to support the completion of this petition finding. We could not have utilized this capability funding to complete listing actions in other Regions without eliminating the ability of this Region to monitor the status of candidate species and address any emergency situations that might arise. Work on the greater sage-grouse was a high priority action since we were already working on sage-grouse issues related to the court-ordered petition finding for the eastern sage-grouse. Work on the black-tailed prairie dog was a high priority listing action; we had previously funded much of the work on this species in 2000 when we made the initial 12-month warranted-but-precluded petition finding and in 2001–2003 when we made resubmitted petition findings that listing was still warranted but precluded. The Mountain-Prairie Region was able to use some of their capability funds from FY 2004 to make the not-warranted petition finding for the black-tailed prairie dog.

The allocated funds also supported work on petition findings that were not completed in FY 2004. These included work on findings for the following 4 species: white-tailed prairie dog (90-day finding), greater sage-grouse (12-month finding), *Bromus arizonicus* (Arizona brome 90-day finding), and *Nasselia cernua* (nodding needlegrass 90-day finding). Work on the white-tailed prairie dog was in response to a court order, while the work on the sage-grouse was a high priority listing action with a statutory deadline (see above). Initial work on the statutorily-required petition findings for Arizona brome and nodding needlegrass was started using a small amount of capability funds that was left at the end of the fiscal year; this was a high priority for the Pacific Region.

In addition, we completed resubmitted petition findings required by statute for 40 petitioned species that are candidates. We published these findings on May 4, 2004, as part of the 2003 Candidate Notice of Review (CNOR) (69 FR 24876). Since we had identified many of these species as candidates prior to receiving a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program (a separate budget item within the Endangered Species Program).

Our anticipated progress in FY 2005 includes work in the following categories: (1) Preparation and publication of final listing actions for 10 species; (2) preparation and publication of proposed listing actions for 3 species; (3) and work on petition findings for 11 species and resubmitted petition

findings for 268 candidate species. Specific information regarding each of these categories for FY 2005 is provided below. We note also that Regions will continue to monitor the status of candidates and prepare emergency listing packages as needed.

(1) We are funding work on the final listing determinations for the following species: Mariana fruit bat, southwest Alaska DPS of the northern sea otter, boreal toad, Gila chub, Salt Creek tiger beetle, Sacramento Mountains checkerspot butterfly, and four Southwestern invertebrates (Koster's tryonia snail, Pecos assiminea snail, Roswell springsnail, and Noel's amphipod). All of these final listing determinations are responding to court orders or court-approved settlement agreements, with the exception of the work on the final listing determination for the southwest Alaska DPS of the northern sea otter (see above for explanation on why this work was funded). Now that the sea otter is proposed for listing, a final listing determination is subject to an absolute statutory deadline.

(2) We are funding proposed listing determinations for the boreal toad and the Salt Creek tiger beetle, pursuant to court-approved settlement agreements. We also are funding completion of work on the proposed listing determination for the Miami blue butterfly (see above background information regarding work in FY 2004).

(3) We also are funding work on petition findings for the following species: white-tailed prairie dog (not-substantial 90-day finding completed and published on November 9, 2004 (69 FR 64889)), Queen Charlotte goshawk (remanded not-warranted 12-month finding), greater sage-grouse (entire range) (12-month finding), *Cicurina cueva* (cave spider—90-day finding), four species of Pacific lamprey (90-day and 12-month findings), *Cymopterus deserticola* (desert cymopterus—12-month finding), (12-month finding), *Dalea tentaculooides* (Gentry's indigobush—90-day and 12-month findings), *Ptilagrostis porteri* (porter feathergrass—90-day and 12-month findings). The work on all of the above species is per court orders or court-approved settlement agreements, except for work on the greater sage-grouse (which is needed to meet the statutory deadline). We are also funding work on initial and resubmitted petition findings for 268 petitioned candidate species. These initial and resubmitted petition findings are required by statute and will be published as part of the next CNOR, which we anticipate completing in early 2005. Because the majority of these

species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program. We also continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

As with our “precluded” finding, “expeditious progress” is a function of the resources that are available and the competing demands for those funds. As discussed above, the funds in the Listing Program that would be otherwise available for adding other qualified species to the Lists in FY 2004 and FY 2005 have been spent or must be spent on complying with court orders and court-approved settlement agreements to designate critical habitat and make petition findings, court orders and court-approved settlement agreements to make final listing determinations for other species, a few high-priority Service-initiated listing determinations, essential litigation support, and administrative and management tasks.

Because virtually all of the money to add qualified species to the list is consumed in complying with court orders or court-approved settlement agreements requiring petition findings or listing determinations, and essential litigation-related, administrative, and program management functions related to these findings and determinations, we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions collectively constitute expeditious progress.

Summary of Petitioned Candidates

Here we present summaries of why the southern Idaho ground squirrel, sand dune lizard, and Tahoe yellow cress continue to warrant listing, and we specify the listing priority number that we have assigned to each species. More complete information, including references, is available in the species assessment form for each species. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and

Wildlife Service’s Internet Web site: <http://endangered.fws.gov/candidates/index.html>.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—The following summary is based on information contained in our files and the petition received on January 29, 2001. During the past 30 years, a population decline of the southern Idaho ground squirrel has occurred. The southern Idaho ground squirrel occupies only 44 percent of its historical range and within its range, populations have declined precipitously. Scientists attribute the decline to invasive nonnative plants associated with a change in the fire frequency and the lack of reclamation or restoration of habitat by various land management agencies and private landowners.

Even though habitat degradation is pervasive in many areas of this species’ range, suitable habitat areas that can support southern Idaho ground squirrels still persist. Conservation and habitat rehabilitation actions have begun in some areas, and in 2001 and 2002, over 100 squirrels were captured from the Weiser Golf Course (the largest known colony site) and translocated to suitable habitat on lands covered by a Candidate Conservation Agreement with Assurances. Survey results in 2002 and 2003 found a total of 75 new active population sites.

The magnitude of threats to this species has been reduced due to the significant conservation efforts that have been implemented and are ongoing (described in the species assessment form) and because additional populations have recently been found. While there is still concern for genetic constriction and isolation due to generally low numbers of individuals at existing sites, natural dispersal is occurring at some sites, and translocation efforts are being implemented each year. Additionally, to reflect that the existing threats meet the definition of “imminent” (*i.e.*, they are ongoing), we are changing the listing priority number from a 6 to a 9.

Sand dune lizard (*Sceloporus arenicolus*)—The following summary is based on information in our files and the petition received on June 6, 2002. The sand dune lizard is endemic to a small area in southeastern New Mexico (Chaves, Eddy, Lea, and Roosevelt Counties) and adjacent west Texas (Andrews, Crane, Ward, and Winkler Counties). Within this area, the known occupied and potentially occupied habitat is only 1,697 square kilometers (655 square miles) in New Mexico, and an unknown amount in west Texas. The lizard’s distribution is localized and

fragmented (*i.e.*, known populations are separated by vast areas of unoccupied habitat), and the species is restricted to sand dune blowouts associated with active sand dunes and shinnery oak (*Quercus harvardii*) and scattered sandsage (*Artemisia filifolia*) vegetation. Sand dune lizards are not found at sites lacking shinnery oak dune habitat.

Extensive surveys within New Mexico, conducted in conjunction with a 5-year study, documented sand dune lizards at only half of the sites surveyed. It is clear that shinnery oak removal (*e.g.*, by treating with the herbicide Tebuthiuron for livestock range improvements) results in dramatic reductions and extirpation of sand dune lizards. Scientists repeatedly confirmed the extirpation of sand dune lizards from areas with herbicide treatment to remove shinnery oak. In 1999, biologists estimated that about 25 percent of the total sand dune lizard habitat in New Mexico had been eliminated in the previous 10 years. The population of sand dune lizards has also been affected by oil and gas field development. An estimated 50 percent decline in sand dune lizard populations can be expected in areas with approximately 25 to 30 oil and/or gas wells per section. The distribution of sand dune lizards is localized and fragmented, and this species is a habitat specialist. Therefore, impacts to its habitat will most likely greatly decrease populations. If current herbicide application continues and oil and gas development progresses as expected, the magnitude of threat to sand dune lizards will increase. Continued pressure to develop oil and gas resources in areas with sand dune lizards poses an imminent threat to the species. Therefore, we continue to assign this species a listing priority number of 2.

Rorippa subumbellata (Tahoe yellow cress)—The following summary is based on information in our files and the petition received on February 8, 2001. Tahoe yellow cress is a small perennial herb known only from the shores of Lake Tahoe in California and Nevada. Data collected over the last 25 years suggest a relationship between lake level and site occupancy by Tahoe yellow cress. The data generally indicate that species occurrence fluctuates yearly as a function of both lake level and the amount of exposed habitat. Records kept since 1900 indicate a preponderance of years with high lake levels that would isolate and reduce Tahoe yellow cress occurrences at higher beach elevations. From the standpoint of the species, less favorable peak years have occurred almost twice as often as more favorable low-level

years. In addition, there has been widespread and intensive use of the shorezone since European settlement. Today, shorezone conditions are influenced by heavy recreational use, boating, construction of piers and boat launches, and dam operations that control lake elevation.

Annual surveys are conducted to determine population numbers, site occupancy, and general disturbance regimes. During the 2003 annual survey period, the lake level was approximately 6,224 ft (1,898 m). This was the third consecutive year of low water. The survey located Tahoe yellow cress at 45 of the 72 sites surveyed (65 percent occupied), up from 15 sites (19 percent occupied) in 2000 when the lake level was high at 6,228 ft. Approximately 25,200 stems were counted or estimated in 2003, whereas during the 2000 annual survey, the estimated number of stems was 4,590. Over the past 3 years, the survey effort has increased considerably, largely due to our elevation of this species to candidate status.

Many Tahoe yellow cress sites are intensively used for commercial and public purposes and are subject to various activities such as erosion control, marina developments, pier construction, and recreation. The U.S. Forest Service, California Tahoe Conservancy, and California Department of Parks and Recreation have management programs for Tahoe yellow cress that include monitoring, fenced enclosures, and transplanting efforts when funds and staff are available. Public agencies (including the Service), private landowners, and environmental groups collaborated to develop a conservation strategy, coupled with a Memorandum of Understanding/Conservation Agreement. The conservation strategy, completed in 2003, contains goals and objectives for recovery and survival and a research and monitoring agenda, and will serve as the foundation for an adaptive management program.

Because of the continued commitments to conservation demonstrated by regulatory and land management agencies participating in the conservation strategy, we have determined the threats to Tahoe yellow cress from various land uses have been reduced from a high magnitude to a moderate magnitude. However, since these threats are still ongoing, they are imminent. Thus, based on the change in magnitude of threats, we are changing the LPN from a 2 to an 8.

Request for Information

We request you submit any further information on these three species as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(2) Documenting threats to any of these three species;

(3) Describing the immediacy or magnitude of threats facing these species; and

(4) Pointing out taxonomic or nomenclature changes for any of the species.

Submit your comments on southern Idaho ground squirrel or *Rorripa subumbellata* (Tahoe yellow cress) to the Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (503/231-6158).

Submit your comments on the sand dune lizard to the Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87102 (505/248-6920).

Our practice is to make comments, including names and home addresses of respondents, available for public inspection. Individual respondents may request that we withhold their home addresses from the public record, which we will honor to the extent allowable by law. In some circumstances, we can also withhold from the public record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: December 17, 2004.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 121504I]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing to solicit comments on "Draft Amendment 3 for Addressing EFH Requirements, Habitat Areas of Particular Concern (HAPCs), and Adverse Effects of Fishing in the Following Fishery Management Plans of the Gulf of Mexico: Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reef in the Gulf of Mexico and Spiny Lobster and the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic." The Amendment contains proposed alternatives to further identify essential fish habitat (EFH), establish HAPCs, and, to the extent practicable, prevent adverse impacts of fishing activities on coral in HAPCs.

DATES: The public hearing will be held January 4, 2005, beginning at 7 p.m. and concluding no later than 10 p.m. Public comments received by mail that are received in the Council office by 5 p.m., January 5, 2005, will be presented to the Council.

ADDRESSES: The public hearing will be held at the DoubleTree Grand Key Resort, 3990 South Roosevelt Boulevard, Key West, FL 33040; phone: (888) 310-1540.

Send written comments to: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; phone: (813) 228-2815.

SUPPLEMENTARY INFORMATION: Following the judicial decision in *American Oceans Campaign v. Daley* (Civil Action No. 99-982), NOAA Fisheries and the Council prepared an "Environmental Impact Statement (EIS) for the Generic Essential Fish Habitat (EFH) Amendment to the Following Fishery Management Plans of the Gulf of Mexico: Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reef in the