20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Basin, Channel 300C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. E9–2378 Filed 2–4–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–52; MB Docket No. 04–318; RM–11040]

Radio Broadcasting Service; Culebra and Vieques, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: The Audio Division, Media Bureau, has issued a *Memorandum Opinion and Order* that denies a Petition for Reconsideration filed by Western New Life, Inc. (''Petitioner''), permittee and operator by Special Temporary Authority (''STA'') of Station WJZG(FM), Channel 293A, Culebra, Puerto Rico, directed against the *Report and Order* in MB Docket No. 04–318. The *Memorandum Opinion and Order* denies Petitioner's request to substitute Channel 291A for Channel 254A at Culebra, Puerto Rico, in an attempt to obtain a permanent authorization for Station WJZG(FM). It also denies Petitioner's request to accommodate the foregoing allotment by deleting vacant Channel 291B at Vieques, Puerto Rico. Petitioner's alternative proposal to substitute Channel 254A for Channel 291B at Vieques so that Station WJZG(FM) could obtain a permanent authorization on Channel 291A at Culebra is also denied.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MB Docket No. 04–318, adopted January 14, 2009, and released January 16, 2009. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–2395 Filed 2–4–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0131; MO 9221050083–B2]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 206 Species in the Midwest and Western United States as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on 165 species from a petition to list 206 species in the mountain-prairie region of the United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that, for these 165 species, the petition does not present substantial scientific or commercial information indicating that listing may be warranted. Therefore, for these 165 species, we will not initiate a further status review in response to this petition; however, we are making no determination at this time on whether substantial information has been presented on the remaining 39 species included in the petition. A finding (or findings) will be made on the remaining 39 species at a later date. We ask the public to submit to us any new information that becomes available concerning the status of these 165 species, or threats to them or their habitat, at any time. This information will help us monitor and encourage the conservation of these species. An additional 2 species of the 206 were reviewed in a concurrent 90-day finding and, therefore, were not considered in this finding (see Petition).

DATES: The finding announced in this document was made on February 5, 2009. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov.* Supporting information we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mountain-Prairie Regional Ecological Services Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80255. Please submit any new information, materials, comments, or questions concerning these species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Ann Carlson, Listing Coordinator, Mountain-Prairie Regional Ecological Services Office (see **ADDRESSES**); telephone 303–236–4264. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

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

Our standard for ''substantial information,'' as defined in the Code of Federal Regulations at 50 CFR 424.14(b), with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' If we find that substantial information was presented, we are required to promptly commence a status review of the species.

In making this finding, we based our decision on information the petitioner provided that we determined to be reliable after reviewing sources referenced in the petition and otherwise available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Petition

On July 30, 2007, we received a formal petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service: (1) Consider all full species in our Mountain Prairie Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened. The petition incorporates all analysis, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* into the petition. The petition clearly identified itself as a petition and included the identification information, as required in 50 CFR 424.14(a). We sent a letter to the petitioners dated August 24, 2007, acknowledging receipt of the petition and stating that, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition. On June 18, 2008, we received a petition from WildEarth Guardians dated June 12, 2008, to emergency list 32 species under the Administrative Procedure Act (APA) and the Endangered Species Act. Of those 32 species, 11 were included in the July 24, 2007 petition for listing on a non-emergency basis. In a letter dated July 25, 2008, we stated that the information provided in both the 2007 and 2008 petitions and in our files did not indicate that an emergency situation existed for any of the 11 species. The July 25, 2008 letter concludes our processing of the emergency aspect of the 2008 petition under the APA. The following discussion presents our evaluation of a portion of the species included in the July 24, 2007 and June 23, 2008 petitions, using information in the petition and our current understanding of the species.

The 2007 petition included a list of 206 species. Two species, *Cymopterus beckii* and *Camissonia gouldii,* were included in a petition to list 475 species that we received on June 18, 2007. We reviewed the species files for *Cymopterus beckii* and *Camissonia gouldii* under the June 18, 2007 petition and made a 90-day finding on the two species on January 6, 2009 (74 FR 419); therefore, we reviewed only 204 actual species files for this 90-day finding. This finding addresses 165 of the 206 species for which we were petitioned. We will address the remaining 39 species in the future in one or more additional 90-day findings. Although we are not making a finding on the remaining 39 species at this time, the lack of inclusion of those species in this finding does not imply that we are making or will make a finding that the petitions present substantial scientific or commercial information indicating that listing may be warranted on any or all of the remaining species.

Our priority for responding to a petition is a function of the resources that are available and competing demands for those resources. Thus, in any given fiscal year, multiple factors dictate whether it will be possible to undertake work on particular listing actions. The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to revise critical habitat and to add species to the Lists of Endangered and Threatened Wildlife and Plants or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

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

In Fiscal Year 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which we may be used for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (e.g., Recovery funds for removing species from the Lists), or for other Service programs, from being used for listing actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). Through the listing cap and the amount of funds needed to address court-mandated listing actions, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated listing actions, set the limits on our ability to fully respond to this petition. When funds become available, we will continue our review of the remaining petitioned species that are not addressed in this finding and publish one or more findings for those species.

Species Information

The petitioners presented two tables that collectively listed the 206 species for consideration and requested that the Service incorporate all analysis, references and documentation provided by NatureServe in its online database into the petition. The information presented by NatureServe (*http://www.natureserve.org/*) is found in peer-reviewed professional journal articles

and is considered to be a reputable source of scientific information. We judge this source to be reliable with regard to the information it presents.

We accessed the NatureServe database on August 10, 2007. We saved hardcopies of each species file and used this information, including references cited within these files, during our review. Therefore, all information we used from the species files in NatureServe was current to that date. All petitioned species were ranked by NatureServe as G1 (critically imperiled) or G1G2 (between critically imperiled and imperiled).

We reviewed all references cited in the NatureServe database species files that were available to us. For some species in NatureServe, there is a ''Local Programs'' link to the Web sites of the State programs that contribute information to NatureServe. We found this ''Local Programs'' link to have additional information for very few of the 206 species. We reviewed information in references cited in NatureServe and information readily available in our files, on the Internet, or in local libraries that was directly relevant to the petition. Following review of the available information, we separated the 206 species into one of four categories based on the level of information. The 165 species included in this finding are listed in Table 1; they fit into four distinct information level categories.

Category A

The first category, titled Category A in Table 1, has only minimal information about each species, and in some cases no more information than the name of the species. An example of a species in this category that had minimal information is a tiger moth with no common or species name (*Arctia* sp. 1). The NatureServe file for this species only states that it is found in Colorado. The file provides no references. The magnitude and type of information provided for other species that we placed in this category was similar in nature, or was taxonomic without much locational information. Category A contains 90 species, of which 50 are invertebrates and 40 are plants.

Occasionally, generic information was presented in the NatureServe species files for a larger group of species, such as for the class or family the species belongs to, but not specific information on the individual species. The references were taxonomic in nature or simply checklists (lists of species, for example Robbins *et al.* 1991) of keys (which provide anatomical characteristics for identification of species) and did not address threats to the species. An example of a species for which generic information was presented is a cave obligate harvestman (no common name) (*Cryptobunus cavicolus*). The NatureServe file for this species states the name of the species, that it is found in Montana, and has one reference listed that lists harvestmen recently discovered in North American lava tubes (Briggs 1974). The file contains no other information specific to the species. The file provides descriptions of members of the family Triaenonychidae, but provides no information specific to *C. cavicolus.*

Category B

The information we reviewed for the species in Category B (see Table 1) contained basic information on the range of the species, based on some level of survey effort. Habitat was frequently mentioned as well as other aspects of the species' biology, such as food habitats. Population size or abundance, if addressed, was rarely quantified, and the database instead used descriptors such as large, small, or numerous. The available information we reviewed did not address specific threats to the species. Category B contains 25 species, of which 10 are invertebrates and 15 are plants.

An example of a species for which Category B information was presented is a caddisfly (no common name) (*Allomyia hector*). The NatureServe file for this species provides a general description of caddisflies, and two references, which are a Trichoptera World Checklist (Clemson University Department of Entomology 2002) and an article about the origins of Canadian adult Rhyacophilidae and Limnephilidae (Nimmo 1971). Neither NatureServe nor the references address threats to *A. hector.* The NatureServe file for this species cites Giersch and Hauer (1999), and states the species was recently found in source areas of snowmelt driven streams of Logan and Kootenai passes in Glacier National Park, Montana.

Category C

The information we reviewed for the species in Category C (see Table 1) described one or more threats for a general area, but did not link the threats to the species or the habitat occupied by the species. Information for species in this category was sometimes provided on distribution, habitat, population size, or other aspects of the species' biology. Category C contains 47 species, of which 4 are vertebrates, 10 are invertebrates, and 33 are plants.

An example of a species for which Category C information was presented is the Arapahoe snowfly (*Capnia arapahoe*), which is restricted to two small tributaries of the Cache La Poudre River in Colorado. The NatureServe file states that a small lake has been constructed in the headwaters of one tributary, and recreational use occurs along the length of the other tributary; however, these actions are not linked to the species and effects of potential threats are not described in a way that indicates they affect the species' habitat. One reference was cited in NatureServe (Stark 1996) that is a list of North American stoneflies.

Category D

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

This finding addresses the 165 petitioned species that are listed in Table 1. Of the 165 species, 4 are vertebrates, 71 are invertebrates, and 90 are plants.

TABLE 1—LIST OF 165 SPECIES INCLUDED IN THIS FINDING

Category	Scientific name	Common name	Range	Group
A	*Ameletus edmundsi*	A Mayfly	UT	Invertebrate.
A	*Aquilegia grahamii*	Graham's Columbine	UT	Plant.
A	*Aquilegia loriae*		UT	Plant.
A	*Arctia sp. 1*	Arctiidae *Arctia*	CO	Invertebrate.
A	*Aschisma kansanum*	(Moss)	KS	Plant.
A	*Blancosoma scaturgo*	A Cave Obligate Millipede	CO	Invertebrate.
A	*Brachycercus tuberculatus*	A Mayfly	CO, UT	Invertebrate.

TABLE 1—LIST OF 165 SPECIES INCLUDED IN THIS FINDING—Continued

Category	Scientific name	Common name	Range	Group
A	*Caecidotea metcalfi*	A Cave Obligate Isopod	KS	Invertebrate.
A	*Caecidotea tridentate*		IL, KS	Invertebrate.
A	*Camissonia bairdii*	Baird's Camissonia	UT	Plant.
A	*Campylium cardotii*	(Moss)	CAN:QC USA:MT	Plant.
A	*Chaetarthria utahensis*	Utah Chaetarthrian Water Scavenger Beetle.	UT	Invertebrate.
A	*Chiloscyphus gemmiparus*	(Liverwort)	AK, CA, OR, UT	Plant.
A	*Cirsium scapanolepis*	Mountainslope Thistle	CO	Plant.
A	*Cryptobunus cavicolus*	A Cave Obligate Harvestman	MT	Invertebrate.
A	*Didymodon anserinocapitatus*	(Moss)	CO	Plant.
A	*Draba brachystylis*	Wasatch Draba	NV, UT	Plant.
A	*Draba inexpectata*	Uinta Mountains draba	UT	Plant.
A	*Draba ramulosa*	Tushar Mountain Whitlow-grass	UT	Plant.
A	*Ephemerella apopsis*	A Mayfly	CO	Invertebrate.
A	*Ericameria lignumviridis*	Greenwood's Heath-goldenrod	UT	Plant.
A	*Erigeron abajoensis*	Abajo Daisy	UT	Plant.
A	*Erigeron awapensis*	Awapa Daisy	UT	Plant.
A	*Erigeron huberi*		UT	Plant.
A	*Erigeron zothecinus*	Alcove Daisy	UT	Plant.
A	*Eriogonum hylophilum*	Gate Canyon Wild Buckwheat	UT	Plant.
A	*Eriogonum mitophyllum*	Lost Creek wild buckwheat	UT	Plant.
A	*Eriogonum phoeniceum*		NV, UT	Plant.
A	*Hesperonemastoma packardi*	A Cave Obligate Harvestmann	UT	Invertebrate.
A	*Hygrotus diversipes*	Narrow-foot Hygrotus Diving Beetl	WY	Invertebrate.
A	*Lepidium huberi*	Huber's Pepperwort	UT	Plant.
A	*Lepidium integrifolium*	Thickleaf Pepperwort	CO, UT, WY	Plant.
A	*Leptophlebia konza*	Konza Prairie Mayfly	KS	Invertebrate.
A	*Melanoplus missoulae*	Spur-throat Grasshopper	MT	Invertebrate.
A	*Melanoplus sp. 1*		MT	Invertebrate.
A	*Melanoplus sp. 40*		CO	Invertebrate.
A	*Melanoplus sp. 41*		CO	Invertebrate.
A	*Melanoplus sp. 42*		UT	Invertebrate.
A	*Melanoplus sp. 47*		UT	Invertebrate.
A	*Melanoplus sp. 49*		CO	Invertebrate.
A	*Mentzelia goodrichii*	Goodrich's Blazingstar	UT	Plant.
A	*Micarea ternaria*	(Lichen)	MT	Plant.
A	*Neotrichia downsi*	A Caddisfly	CO	Invertebrate.
A	*Oenothera murdockii*		UT	Plant.
A	*Ogaridiscus subrupicola*	Southern Tightcoil	ID, OR, UT	Invertebrate.
A	*Oncopodura cruciata*	A Springtail	MT	Invertebrate.
A	*Oreohelix hendersoni*	Pallid Mountainsnail	CO	Invertebrate.
A	*Oreohelix howardi*	Mill Creek Mountainsnail	UT	Invertebrate.
A	*Oreohelix parawanensis*	Brian Head Mountainsnail	UT	Invertebrate.
A	*Ozobryum ogalalense*	(Moss)	KS, NE	Plant.
A	*Packera castoreus*	Beaver Mountain Groundsel	UT	Plant.
A	*Packera malmstenii*	Podunk Groundsel	UT	Plant.
A	*Paraleptophlebia calcarica*	A Prongill Mayfly	AR, KS	Invertebrate.
A	*Phacelia argylensis*	Argyle Canyon Phacelia	UT	Plant.
A	*Phacelia indecora*	Drab Phacelia	NN, UT	Plant.
A	*Pheidole elecebra*	An Ant	CO	Invertebrate.
A	*Physaria grahamii*	Graham's Twinpod	UT	Plant.
A	*Physaria repanda*	Repand Twinpod	UT	Plant.
A	*Physaria stylosa*	Duchesne River Twinpod	UT	Plant.
A	*Planorbella oregonensis*	Lamb Rams-horn	OR, UT	Invertebrate.
A	*Polydesmus cavicola*	A Millipede	UT	Invertebrate.
A	*Potentilla macounii*	Macoun's Cinquefoil	CAN:AB USA:MT	Plant.
A	*Proctacanthus sp. 1*	Robber Fly From Colorado	CO	Invertebrate.
A	*Pyrgulopsis chamberlini*	Smooth Glenwood Pyrg	UT	Invertebrate.
A	*Pyrgulopsis inopinata*	Carinate Glenwood Pyrg	UT	Invertebrate.
A	*Pyrgulopsis nonaria*	Ninemile Pyrg	UT	Invertebrate.
A	*Pyrgulopsis plicata*	Black Canyon Pyrg	UT	Invertebrate.
A	*Ranunculus coloradensis*	Colorado Buttercup	CO	Plant.
A	*Riccia ozarkiana*	(Liverwort)	AR, KS, MO	Plant.
A	*Senecio musiniensis*	Musinea Ragwort	UT	Plant.
A	*Senecio spribillei*		MT	Plant.
A	*Speodesmus aquiliensis*	A Cave Obligate Millipede	CO	Invertebrate.
A	*Sphaeralcea janeae*	Jane's Globemallow	UT	Plant.
A	*Sphalloplana kansensis*	Kansas Planarian (flatworm)	KS	Invertebrate.
A	*Stagnicola elrodiana*	Longmouth Pondsnail	MT	Invertebrate.
A	*Stygobromus coloradensis*	A Cave Obligate Amphipod	CO	Invertebrate.
A	*Stygobromus fontinalis*	Spring Amphipod	CO	Invertebrate.
A	*Stygobromus holsingeri*	An Amphipod	CO	Invertebrate.

TABLE 1—LIST OF 165 SPECIES INCLUDED IN THIS FINDING—Continued

Category	Scientific name	Common name	Range	Group
A	*Stygobromus montanensis*	A Cave Obligate Amphipod	MT	Invertebrate.
A	*Stygobromus obscurus*	A Cave Obligate Amphipod	MT	Invertebrate.
A	*Stygobromus puteanus*	A Cave Obligate Amphipod	MT	Invertebrate.
A	*Stygobromus simplex*	Simple Amphipod	CO	Invertebrate.
A	*Stygobromus tritus*	A Cave Obligate Amphipod	MT	Invertebrate.
A	*Stygobromus utahensis*	Utah Amphipod	UT	Invertebrate.
A	*Stygobromus wardi*	Ward's Amphipod	CO	Invertebrate.
A	*Suwallia salish*	A Stonefly	MT	Invertebrate.
A	*Sweltsa cristata*	A Stonefly	UT	Invertebrate.
A	*Verrucaria kootenaica*	(Lichen)	MT	Plant.
A	*Vertigo hannai*	Hanna's Vertigo	CAN:ON USA:IL, KS	Invertebrate.
A	*Webbhelix chadwicki*	Kaw Whitelip	KS, NE	Plant.
B	*Allomyia hector*	A Caddisfly	CAN:AB USA:MT	Invertebrate.
B	*Amblyderus werneri*	Great Sand Dunes Anthicid Beetle	CO	Invertebrate.
B	*Cryptomastix sanburni*	Kingston Oregonian	ID, MT	Invertebrate.
B	*Cryptantha compacta*	Compact Cat's-eye	UT	Plant.
B	*Cryptantha johnstonii*	Johnston Catseye	UT	Plant.
B	*Draba kassii*	Kass's Rockcress	UT	Plant.
B	*Erigeron wilkenii*	Wilken's Fleabane	CO	Plant.
B	*Hackelia gracilenta*	Colorado Stickseed	CO	Plant.
B	*Helisoma newberryi*	Great Basin Rams-horn	CA, WY, ID (Extirpated), NV, OR, UT (Extirpated).	Invertebrate.
B	*Heterocampa rufinans*	A Notodontid Moth	CO	Invertebrate.
B	*Hymenoclea sandersonii*	Sanderson's Cheesebush	UT	Plant.
B	*Hymenoxys lapidicola*	Rock Hymenoxys	UT	Plant.
B	*Mentzelia shultziorum*	Shultz Stickleaf	UT	Plant.
B	*Oreohelix alpine*	Alpine Mountainsnail	MT	Invertebrate.
B	*Oreohelix pygmaea*	Pygmy Mountainsnail	WY	Invertebrate.
B	*Penstemon franklinii*	Ben Franklin's Beardtongue	UT	Plant.
B	*Penstemon navajoa*	Navajo Beardtongue	NN, UT	Plant.
B	*Physella spelunca*	Cave Physa	WY	Invertebrate.
B	*Physella zionis*	Wet-rock Physa	UT	Invertebrate.
B	*Potentilla cottamii*	Cottam's Potentilla	NV, UT	Plant.
B	*Primula domensis*	House Range Primrose	UT	Plant.
B	*Pyrgulopsis fusca*	Otter Creek Pyrg	UT	Invertebrate.
B	*Sclerocactus blainei*	Blaine's Pincushion	NV, UT	Plant.
B	*Sclerocactus contortus*	Canyonland Fishhook Cactus	UT	Plant.
B	*Talinum thompsonii*	Thompson's Talinum	UT	Plant.
C	*Allium passeyi*	Passey's Onion	UT	Plant.
C	*Arabis falcatoria*	Grouse Creek Rockcress	NV, UT	Plant.
C	*Astragalus avonensis*		UT	Plant.
C	*Astragalus loanus*	Glenwood Milk-vetch	UT	Plant.
C	*Capnia Arapahoe*	A Stonefly	CO	Invertebrate.
C	*Cottus extensus*	Bear Lake Sculpin	ID, UT	Vertebrate.
C	*Cryptantha gypsophila*	Gypsum Valley Cateye	CO	Plant.
C	*Cryptantha ochroleuca*	Yellow-white Catseye	UT	Plant.
C	*Cuscuta plattensis*	Wyoming Dodder	WY	Plant.
C	*Cymopterus minimus*	Cedar Breaks Biscuitroot	UT	Plant.
C	*Descurainia torulosa*	Wyoming Tansymustard	WY	Plant.
C	*Eriogonum cronquistii*	Cronquist's Wild Buckwheat	UT	Plant.
C	*Eriogonum smithii*	Smith's Wild Buckwheat	UT	Plant.
C	*Gilia sedifolia*	Stonecrop Gily-flower	CO	Plant.
C	*Hackelia ibapensis*	Deep Creek Stickseed	UT	Plant.
C	*Lesquerella humilis*	Few-seeded Bladderpod or Bitterroot Bladderpod.	MT	Plant.
C	*Lesquerella lesicii*	Pryor Mountains Bladderpod or Lesica's Bladderpod.	MT	Plant.
C	*Lygodesmia entrada*	Entrada Skeletonplant	UT	Plant.
C	*Microcylloepus browni*	Brown's Microcylloepus Riffle Beetle	CAN:MB USA:MT	Invertebrate.
C	*Mimulus gemmiparus*	Weber's Monkeyflower	CO	Plant.
C	*Oreohelix elrodi*	Carinate Mountainsnail	CAN:MB USA:MT	Invertebrate.
C	*Oreohelix eurekensis*	Eureka Mountainsnail	UT	Invertebrate.
C	*Oreoxis humilis*	Pikes Peak Spring-parsley	CO	Plant.
C	*Oreoxis trotteri*	Trotter's Oreoxis	UT	Plant.
C	*Oreohelix sp. 5*	Brunson Mountainsnail	MT	Invertebrate.
C	*Oreohelix sp. 6*	Kintla Lake Mountainsnail	MT	Invertebrate.
C	*Oreohelix sp. 7*	Kitchen Creek Mountainsnail	MT	Invertebrate.
C	*Oreohelix sp. 11*	Subcarinate Mountainsnail	MT	Invertebrate.
C	*Perityle specuicola*	Alcove Rockdaisy	NN, UT	Plant.
C	*Physaria dornii*	Dorn's Twinpod	WY	Plant.
C	*Physaria pulvinata*	Cushion Bladderpod	CO	Plant.

TABLE 1—LIST OF 165 SPECIES INCLUDED IN THIS FINDING—Continued

Category	Scientific name	Common name	Range	Group
C	*Potentilla angelliae*	Angell Cinquefoil	UT	Plant.
C	*Prosopium abyssicola*	Bear Lake Whitefish	ID, UT	Vertebrate.
C	*Prosopium gemmifer*	Bonneville Cisco	ID, NV (Exotic), UT	Vertebrate.
C	*Prosopium spilonotus*	Bonneville Whitefish	ID, UT	Vertebrate.
C	*Pyrgulopsis bedfordensis*	A Freshwater Snail	MT	Invertebrate.
C	*Stagnicola elrodi*	Flathead Pondsnail	MT	Invertebrate.
C	*Thelesperma caespitosum*	Green River Greenthread	UT, WY	Plant.
C	*Thelesperma pubescens*	Uinta Greenthread	UT, WY	Plant.
C	*Townsendia microcephala*	Cedar Mountain Easter-daisy	WY	Plant.
C	*Trifolium barnebyi*	Barneby's Clover	WY	Plant.
C	*Viola clauseniana*	Clausen's Violet	UT	Plant.
C	*Viola frank-smithii*	Frank Smith's Violet	UT	Plant.
C	*Viola lithion*	Rock Violet	NV, UT	Plant.
C	*Xanthoparmelia idahoensis*	(Lichen)	CAN:AB USA:CO, ID	Plant.
C	*Xanthoparmelia neowyomingica*	(Lichen)	CO, WY	Plant.
C	*Xylorhiza cronquistii*	Cronquist's Woody-aster	UT	Plant.
D	*Eriogonum ammophilum*	Ibex Wild Buckwheat	UT	Plant.
D	*Optioservus phaeus*	Scott Optioservus Riffle Beetle	KS	Invertebrate.
D	*Penstemon pinorum*	Pinyon Penstemon	UT	Plant.

Threats Analysis

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species, subspecies, or distinct population segment of vertebrate taxa may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information on threats to the 165 species, as presented in the petition and other readily available information at the time of the petition review, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

The petition, including all available references and the NatureServe species files, does not present substantial information that the present or threatened destruction, modification, or curtailment of the species' habitat or range is a threat to 162 of the 165 species. For the one invertebrate and two plants in Category D (Table 1), information related to habitat impacts at one or more occupied sites is presented.

The Scott Optioservus riffle beetle (*Optioservus phaeus*) occurs in possibly one site in State Park in Kansas. Total population size is estimated at 2,000 to 4,000. The species is thought to be stable, according to NatureServe. The threat cited in NatureServe is reduced spring flows due to dewatering of the Ogallala Aquifer for irrigation purposes. NatureServe indicates that this is a potential threat of unknown degree. No other references substantiated or quantified this alleged threat, and we find that substantial information was not presented to indicate that the species is threatened by dewatering.

Eriogonum ammophilum (Ibex wild buckwheat) is known from 15 element occurrences in Utah, according to NatureServe. Bureau of Land Management (BLM) reports (Armstrong, no date) indicate that off-road vehicle (ORV) use and grazing are not significant threats to the species. No substantial information was presented in NatureServe, cited references, or our files indicating that the species is threatened by ORV use or grazing. Therefore, we find the petition and supporting information does not present substantial scientific or commercial information to indicate *E. ammophilum* is threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

Penstemon pinorum (Pinyon penstemon) is known from 3 element occurrences in Utah containing approximately 50,000 individuals, according to NatureServe. Kass (1995) indicated that mining and firewood removal has impacted the habitat at one site. The U.S. Forest Service and BLM (1995) signed a conservation agreement for the species. No substantial information was presented in NatureServe, cited references, or our files indicating that the species is threatened by mining or firewood removal.

We find the petition and supporting information does not present substantial scientific or commercial information to indicate the Scott Optioservus riffle beetle, *Eriogonum ammophilum*, or *Penstemon pinorum* are threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

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

The petition, including all available references and the NatureServe species files, does not include any information concerning threats to any of the 165 species from this factor. Therefore, we find that the petition does not present substantial information that overutilization for commercial, recreational, scientific, or educational purposes is a threat to any of the 165 species.

C. Disease or Predation

The petition, including all available references and the NatureServe species files, does not include any information concerning threats to any of the 165 species from this factor. Therefore, we find that the petition does not present substantial information that disease or predation is a threat to any of the 165 species.

D. Inadequacy of Existing Regulatory Mechanisms

The petition discusses the lack of protection under the Act for the petitioned species, stating that unless a

species is listed as threatened or endangered under the Act, it receives no protections from the statute. The petition provides no information addressing any other State or Federal regulations, and no information about the inadequacy of existing regulatory mechanisms.

The petitioner's claim that we could afford more protection to these petitioned species if they were listed under the Act does not provide substantial information that the existing regulatory mechanisms are inadequate. As the petitioner acknowledges, under 16 U.S.C. 1533(b)(1)(A), we must reach our determination solely on the basis of the best scientific and commercial data available. The petition did not present any specific information related to other Federal, State, or local government regulatory mechanisms that may exist to provide regulatory protections for the 165 species or their respective habitats. Therefore, we conclude that the petition does not present substantial information that any of the 165 species may warrant listing due to inadequacy of existing regulatory mechanisms.

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

While we recognize that many of the species contained within the NatureServe database have limited distribution or small population size, limited distribution and population size were not identified as threats faced by any of the 165 species in the petition, including all available references and the NatureServe species files and these two factors alone without elaboration may not be substantial information that may warrant listing under the Act. No other information that could be categorized under Factor E was presented in the petition. Therefore, we conclude that the petition does not present substantial information that other natural or manmade factors are a threat to any of the 165 species.

Finding

We have reviewed and evaluated the 5 listing factors with regard to 165 of the 206 petitioned species, based on the information in the petition and the literature cited in the petition. We evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available to us. Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information that listing these 165 species as threatened or endangered under the Act may be warranted. Although we will not commence a status review in response to these species included in the petition, we will continue to accept information and materials regarding any of the 165 species at our Mountain-Prairie Region Ecological Services Office (see **ADDRESSES**). Further, as previously indicated, we will address the remaining 39 species in future findings.

References Cited

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

Author

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

Authority

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

Dated: January 9, 2009.

Kenneth Stansell,

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

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