

Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule

would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 16, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99-33462 Filed 12-23-99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-Day Finding and Commencement of Status Review for a Petition to List the Sacramento Mountains Checkerspot Butterfly as Endangered

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 for a petition to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) as an endangered species and designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). We find the petition provides substantial scientific and commercial information to indicate that listing of this animal may be warranted. Therefore, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this action.

DATES: The finding in this document was made on December 7, 1999. To be considered in the status review and subsequent 12-month finding for the petition, your information and comments must be received by February 25, 2000.

ADDRESSES: You may submit data, information, comments, or questions relevant to this finding to the Field Supervisor, U. S. Fish and Wildlife Service, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Eric Hein, Endangered Species Biologist (see **ADDRESSES** section) (telephone 505/346-2525, extension 135).

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 demonstrating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90-days of receipt of the petition, and promptly publish notice of the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. The processing of this 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

We made a 90-day finding on a petition to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia* [= *chalcedona cloudcrofti*]) as endangered with critical habitat. Mr. Kieran Suckling of the Southwest Center for Biological Diversity in Tucson, Arizona, submitted the petition, dated November 1998, which we received on January 28, 1999.

The petitioner requested that we emergency list the Sacramento Mountains checkerspot butterfly as endangered. The petitioner stated that the animal merits listing because of its restricted range, adverse impacts resulting from a proposed U.S. Forest Service (Forest Service) land transfer, improvements to a Forest Service campground, construction of homes and other structures, aggressive non-native weeds that may be affecting the larval foodplants and adult nectar sources, global climate change, and livestock overgrazing. The petitioner requested emergency listing due to the perceived immediate threats to the species' continued existence from a proposed land transfer between the Forest Service and the Village of Cloudcroft in the Sacramento Mountains in Otero County, New Mexico.

Emergency listing is not a petitionable action under the Act. However, our above-mentioned listing priority guidance requires that petitions to list species be screened for the need to emergency list them. Emergency listing is allowed under the Act whenever immediate protection is needed to address a significant risk to the species' well being. Based on currently available information, we determined that emergency listing is not needed for the Sacramento Mountains checkerspot butterfly. The Forest Service modified its proposed land transfer to the Village of Cloudcroft so that the parcels containing the highest number of known butterflies are no longer under consideration. In addition, overcollection of butterflies, a threat not cited by the petitioner, but an activity of which we have extensive knowledge, has been prohibited in portions of the Lincoln National Forest, except under permit, for a period of one year. Therefore, we have determined that the species is not in imminent risk of extinction.

The Sacramento Mountains checkerspot butterfly is a small member of the brush-footed butterfly family (Nymphalidae). The adults have a wingspan of approximately 3 centimeters (1 inch) and they are checkered with dark brown, red, orange, white, and black spots and lines. The taxon was described in 1980 based on

162 adult specimens collected in the vicinity of the Village of Cloudcroft in Otero County, New Mexico (Ferris and Holland 1980); it is only known from this area. The Sacramento Mountains checkerspot butterfly inhabits non-forested openings within the mixed-conifer forest (Lower Canadian Zone) at an elevation between 2,450 and 2,750 meters (8,000 and 9,000 feet) in the vicinity of Cloudcroft. The adult butterfly is often found in association with the larval foodplant, New Mexico penstemon (*Penstemon neomexicanus*), and adult nectar sources such as sneezeweed (*Helium hoopesii*).

The Forest Service is evaluating a request from the Village of Cloudcroft for a transfer of land pursuant to the Townsite Act. The proposed land transfer originally included three parcels in which a number of Sacramento Mountains checkerspot butterflies have been observed by biologists. The Village of Cloudcroft and the Forest Service agreed to eliminate these three parcels from the current land transfer request (Jose Martinez, Lincoln National Forest Supervisor, *in litt.*, 1999). A decision on the other five parcels is being withheld by the Forest Service until we have made the 90-day finding on the petition for this species (Jose Martinez, pers. comm., 1999). Sacramento Mountain checkerspot butterflies have been observed on three of the five parcels that are currently being considered for the land transfer (Forest Service 1999a, 1999b). However, the Forest Service provided information that the vast majority of the habitat in the parcels being considered for exchange is forested and not suitable for the butterfly. We will attempt to gather more information on the amount of actual habitat proposed for exchange, and its importance to the butterfly, during the status review.

The New Mexico State Highway and Transportation Department (NMSHTD) is proposing to improve portions of an approximately 3.38-kilometer (2-mile)-long stretch of State Highway 130 between the Village of Cloudcroft and the intersection of SH 130 and Sunspot Road (Metric Corporation 1996; Steve Reed, NMSHTD, pers. comm., 1999). The project consists of widening the road and shoulders, constructing retaining walls, adding drainage ditches and culverts, and reconstructing a curve. The curve is located adjacent to a campground, where larvae and adult Sacramento Mountains checkerspot butterflies were located in 1998 (Forest Service 1999a, 1999b). This site would be eliminated by the proposed reconstruction of SH 130. However, since this species occupies open, non-

forested areas, it is unknown whether this project will ultimately reduce or increase the amount of butterfly habitat.

A campground located near Cloudcroft contains one of the greatest known concentrations of the Sacramento Mountains checkerspot butterfly. Reconstruction activities in the campground are proposed for the year 2003, including replacement of existing bathroom facilities, traffic control barriers, picnic tables, and campfire pits (Jose Martinez *in litt.*, 1999). The potential adverse impacts to the Sacramento Mountains checkerspot butterfly are not known as the proposal remains in a preliminary stage. The Forest Service has stated that it intends to work closely with us in addressing public safety and health issues at the campground in a manner that protects and improves management of the Sacramento Mountains checkerspot butterfly (Mark Crites, Biologist, Sacramento Ranger District, pers. comm., 1999; Don DeLorenzo, Wildlife, Fish, Rare Plants, and Forestry Staff Officer, Lincoln National Forest, pers. comm., 1999).

Roadside maintenance was cited by the petitioner as a threat to the Sacramento Mountains checkerspot butterfly. The NMSHTD uses mowing, rather than chemical agents, to control vegetation in the right-of-way (Steve Reed, pers. comm., 1999). The effect on the animal from mowing is unclear at this time.

The petitioner stated that overgrazing by livestock is causing adverse impacts that are affecting the Sacramento Mountains checkerspot butterfly. This activity could result in trampling of the early stages, reduction or elimination of the larval foodplant or adult nectar sources, and degradation of natural habitat. Grazing currently occurs in an allotment (Forest Service 1999a), where butterflies have been observed. The effect of grazing by both wildlife and domestic livestock is not well documented. We are aware of instances where livestock grazing appeared to significantly degrade habitat used by other checkerspot butterflies. Conversely, some areas currently used by the Sacramento Mountains checkerspot have been grazed by wildlife and domestic livestock for a number of years. We intend to further assess this subject during the status review.

The construction of homes and associated infrastructure in the habitat of the Sacramento Mountains checkerspot butterfly could directly affect the species or result in indirect effects, such as the introduction of nonnative plants and animals, loss of

movement corridors, or habitat fragmentation. There are a number of private inholdings within areas containing apparently suitable habitat for the species (Don DeLorenzo, pers. comm., 1999). We are unaware of any surveys conducted on private lands in the area, and available information on the amount of existing habitat and potential for development is insufficient to confidently predict the extent of this threat.

There likely is high interest by some collectors in the Sacramento Mountains checkerspot butterfly due to its extremely restricted distribution and apparent low numbers. High prices for prized species can provide an incentive for illegal take and trade. Listing in itself increases the publicity and interest in a species' rarity, and thus may directly increase the value and demand for specimens. Specimens of other subspecies of the anicia checkerspot butterfly have been offered for sale (Capps 1991; Entomological Clearing House 1986; Kral 1987, 1989).

Collecting from small colonies or repeated handling and marking, particularly of females and in years of low abundance, could seriously damage the populations through loss of individuals and genetic variability (Gall 1984b; Murphy 1988; Singer and Wedlake 1981). Since the known populations of the Sacramento Mountains checkerspot butterfly occur in a public campground, along public roadways, or in other areas readily accessible to the public, the species is easily collected, and the limited numbers and distribution of this species make it attractive to collectors and vulnerable to overcollection.

The Forest Service issued a one-year closure order for the collection of any butterflies without a permit on the Smokey Bear and Sacramento Districts of the Lincoln National Forest due to the threat of overcollection (Jose Martinez, *in litt.*, 1999). This closure order may offer protection from butterfly collecting; however, some butterfly collectors are known to have intentionally violated a similar closure order in the Uncomphagre National Forest in Colorado in order to collect the endangered Uncomphagre fritillary butterfly (*Boloria acrocneuma*) (U. S. Department of Justice 1993).

A significant long-term threat to the Sacramento Mountains checkerspot butterfly may be the change in community structure due to invasive exotic plants, and attempts to control them. According to the Forest Service (1999a), a 1993 survey found that approximately 737 hectares (1,822 acres) in the vicinity of Cloudcroft had

infestations of noxious weeds. Infestations occurring in non-forested openings and on road rights-of-way expanded and the densities of weeds increased where they have not been treated. These invasive foreign species may out-compete and reduce or eliminate the larvae food plant and adult nectar plants, resulting in adverse effects on the animal. Efforts to control the exotic plants with herbicides may pose a threat to the Sacramento Mountains checkerspot butterfly.

Periodic droughts, such as those that occurred in recent years in New Mexico, may adversely affect the Sacramento Mountains checkerspot butterfly. Drought is known to cause a decrease in the size of the populations of some butterfly species (C. Nagano, pers. obs., 1999). In addition to killing larvae by desiccation, drought conditions may—(1) cause the early senescence or death of the larvae food plant prior to the completion of larval development; or (2) lower the nutritional quality of the host plant (e.g., water content). Drought also may reduce the quantity and quality of adult nectar sources. Conversely, the species has evolved in an environment subject to extended droughts. It is unknown whether human-caused habitat changes have increased the species' susceptibility to droughts.

We reviewed the petition, the literature cited in the petition, other literature, and information in our files. Based on the best scientific information available, we find the petition presents substantial information that listing this species may be warranted. Therefore, with the completion of this 90-day finding, we will conduct a status review of the species and subsequently make a finding as to whether the petitioned action is warranted pursuant to section 4(b)(3)(B) of the Act.

We solicit information regarding occurrence and distribution of the species, threats to its continued existence, and any additional data or scientific information from the public, scientific community, Tribal, local, State, and Federal governments, and other interested parties concerning the status of the Sacramento Mountains checkerspot butterfly. Of particular interest is information regarding:

- (1) Additional historical and current population data which may assist in determining range and long-term population trends;
- (2) Pertinent information on biology and life history;
- (3) Additional information about habitat requirements; and,
- (4) Information on immediate and future threats to the Sacramento

Mountains checkerspot butterfly, and the areas inhabited by the species.

After consideration of additional information received during the comment period (see **DATES** section of this notice), we will prepare a 12-month finding as to whether listing of the species is warranted.

References Cited

You may request a complete list of all references we cited, as well as others, from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author: Chris Nagano (see **ADDRESSES** section).

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

Dated: December 7, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99-33481 Filed 12-23-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325-9325-01; I.D. 100699A]

RIN 0648-AJ52

Fisheries in the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement cost recovery for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to collect fees to recover actual costs incurred for Federal management and enforcement of these IFQ fisheries. This action is intended to collect such fees.

DATES: Comments on the proposed rule must be received at the following address not later than January 26, 2000.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional