

D. Add a new paragraph (d) to read as set forth below.

The revisions read as follows:

§ 204.5 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.

(a) * * *

(2) The change substantially alters the factors upon which its latest fitness finding is based, even if no new authority is required.

* * * * *

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to Docket Operations, M-30, U.S. Department of Transportation, 400 Seventh Street, SW., PL-401, Washington, DC 20590, or by electronic submission at [<http://dms.dot.gov>].

(d) Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, management, or ownership, including changes that may affect the air carrier's citizenship, shall be addressed to the Chief, Air Carrier Fitness Division, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

* * * * *

PART 399—STATEMENTS OF GENERAL POLICY

5. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

6. Add a new § 399.88 to read as set forth below:

§ 399.88 Actual control of U.S. air carriers.

(a) *Applicability.* This policy shall apply to each direct air carrier submitting information to the Air Carrier Fitness Division under part 204 of this title, with respect to its status as a "Citizen of the United States" as defined in 49 U.S.C. 40102(a)(15), of the Act. This policy shall only apply to the interpretation of "actual control" contained in 49 U.S.C. 40102(a)(15)(C) in determining air carrier fitness/citizenship to receive or retain a certificate of public convenience and necessity.

(b) *Policy.* In cases where there is significant involvement in investment by non-U.S. citizens and either where their home country does not deny citizens of the United States reciprocal access to investment in that country's carriers and does not deny U.S. air carriers full and fair access to its air

services market, as evidenced by an open-skies agreement, or where it is otherwise appropriate to ensure consistency with U.S. international legal obligations, the Department will consider the following when determining whether U.S. citizens are in "actual control" of the air carrier:

(1) All organizational documentation, including such documents as charter of incorporation, certificate of incorporation, by-laws, membership agreements, stockholder agreements, and other documents of similar nature. The documents will be reviewed to determine whether U.S. citizens have and will in fact retain actual control of the air carrier through such documents.

(2) The air carrier's operational plans or actual operations to determine whether U.S. citizens have actual control with respect to:

(i) Decisions whether to make and/or continue Civil Reserve Air Fleet (CRAF) or other national defense airlift commitments, and, once made, the implementation of such commitments with the Department of Defense;

(ii) Air carrier policies and implementation with respect to aviation security, including the transportation security requirements specified by the Transportation Security Administration; and

(iii) Air carrier policies and implementation with respect to aviation safety, including the requirements specified by the Federal Aviation Administration.

Issued in Washington, DC, on May 1, 2006.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 06-4227 Filed 5-3-06; 1 pm]

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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 on a Petition To List the Andrews' Dune Scarab Beetle as Threatened or 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 on a petition to list the Andrews' dune scarab beetle (*Pseudocolpa andrewsi*) as threatened

or endangered under the Endangered Species Act of 1973, as amended. We find the petition does not provide substantial information indicating that listing the Andrews' dune scarab beetle may be warranted. Therefore, we will not be initiating a status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of the species or threats to it or its habitat at any time.

DATES: The finding announced in this document was made on May 5, 2006.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92011. New information, materials, comments, or questions concerning this species may be submitted to us at any time at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section above), by telephone at 760-431-9440, or by facsimile to 760-431-9624.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (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 to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish a notice of this finding promptly in the **Federal Register**.

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

In making this finding, we relied on information provided by the petitioners and information otherwise available in

our files at the time of petition review and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the “substantial information” threshold.

On December 13, 2002, we received a formal petition dated December 12, 2002, from the Center for Biological Diversity requesting the Andrews’ dune scarab beetle (*Pseudocotalpa andrewsi*) be listed as threatened or endangered in accordance with section 4 of the Act.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2003. On December 9, 2004, we received a 60-day notice of intent to sue, and on December 1, 2005, we received a complaint regarding our failure to make the 90-day and 12-month findings on the status of the Andrews’ dune scarab beetle. On January 12, 2006, we reached an agreement with the plaintiffs to submit to the **Federal Register** a completed 90-day finding by April 28, 2006, and to complete, if applicable, a 12-month finding by January 26, 2007 (Case No. 05 CV 1988 BEN (BLM) S.D.CAL). This notice constitutes the 90-day finding for the December 12, 2002, petition.

Previous Federal Actions

In a proposed rule that included 10 North American beetles, the Service proposed to list as threatened and designate critical habitat for the Andrews’ dune scarab beetle on August 10, 1978 (43 FR 35636). Without citing any literature, species experts, or other scientific authority to support the various claims in the proposal, we indicated that the action was being taken for the 10 beetles because of “decreased population levels and anticipated adverse modification of * * * habitat.” Specifically regarding the Andrews’ dune scarab beetle, the Service stated that the “continued disruption of dune troughs by off-road vehicles [ORVs] prevents the accumulation of dead organic matter upon which the immature stages of this beetle feed.” On October 1, 1980 (45 FR 65137), we published a notice of withdrawal for the proposed rule to list the Andrews’ dune scarab beetle and seven other beetles because the 1978 amendments to the Act mandated withdrawals for all proposals not finalized within two years. As a result, the Andrews’ dune scarab beetle currently has no Federal regulatory status.

Species Information

Within the subtribe Areodina of North American scarab beetles (family Scarabaeidae), Hardy described the Andrews’ dune scarab beetle (*Pseudocotalpa andrewsi*) as a monotypic species within a new genus in 1971. Subsequently, Hardy (1974) described two additional species of *Pseudocotalpa* (*P. guilianii* and *sonorica*), along with the note that an additional 82 specimens of *P. andrewsi* had been collected from the type locality near Glamis in Imperial County, California. Andrews’ dune scarab beetles are golden-brown and covered with long, pale, fine hairs, and range in length from 0.51 to 0.71 inches (in) (13 to 18 millimeters (mm)) (Hardy 1971). The Andrews’ dune scarab beetle can be differentiated from other closely related scarab beetles by its smaller size, the deep concave shape of the clypeus, and the poorly developed prothoracic post-coxal spine or knob (Hardy 1971, Hardy 1974).

The Service described the “specific habitat of the beetles [as] troughs of loose drifting sand between dunes” in the 1978 proposed rule (43 FR 35636). Habitat vegetation type was described as creosote bush scrub by Hardy and Andrews (1980), but many collections occurred in areas described as psammophytic (“sand loving”) scrub (Hardy and Andrews 1980; BLM 2002). Psammophytic scrub vegetation occurs in the interior portions of sand dunes, most frequently between active dunes in areas that form depressions (BLM 2003). The Andrews’ dune scarab beetle appears to prefer low dunes on the margin of thickets (dense patches of scrub vegetation) that form finger-like extensions into the dunes (Scarabaeus Associates 1991). Andrews reported that all of the Andrews’ dune scarab beetle burrowing mounds that he identified were in bare ground near thickets and, therefore, density appeared to be positively correlated with thicket density (Scarabaeus Associates 1991). Thickets are typically dominated by large creosote (*Larrea tridentata*); palo verde (*Cercidium floridum*); ironwood (*Olneya tesota*) (Scarabaeus Associates 1991); and other associated plants include desert buckwheat (*Eriogonum deserticola*) and desert needle (*Palafoxia arida*) (Hardy and Andrews 1980). Bureau of Land Management (BLM 2002) noted that the “Andrews’ dune scarab beetle is found primarily along the eastern edge of the dunes in the transitional zone between creosote bush scrub, psammophytic scrub, and microphyll woodland habitats.”

During periods of inactivity, Andrews’ dune scarab beetles remain buried at the interface of the wet and dry sand, at depths of 2 to 11.8 in (5 to 30 centimeters (cm)) (Hardy and Andrews 1980; Scarabaeus Associates 1991). Adults have been collected from mid-April through the first week of May (Hardy and Andrews 1980). The adult flight season runs from late March to early May (Scarabaeus Associates 1991). Adults emerge in “large” numbers at dusk (Hardy 1971) and fly for 10 to 30 minutes, while congregating in groups of 3 to 20 individuals around nearby bushes, then move away in pairs to copulate (Hardy and Andrews 1980; Scarabaeus Associates 1991). After copulation, adults rapidly bury themselves in the sand (Hardy and Andrews 1980). We do not have information on the life span of this species.

Hardy and Andrews (1980) reported that the Andrews’ dune scarab beetle “is a species that is (as far as can be determined) endemic to the Algodones Dunes in Imperial County, California, and probably the portion of the same dune system that occurs in Baja California Norte, Mexico.” However in Hardy’s (1971) article describing the new species and its habitat, the author included a male specimen collected from the “Yuma Dunes” in 1960 as referable to the species. Hardy and Andrews (1980) noted this same collection in their article as well. The Yuma Dunes occur approximately 15 miles (mi) (28 kilometers) southeast of the Algodones Dunes, across the Colorado River, in extreme southwestern Arizona. Moreover, given that such plants as the Peirson’s milk-vetch (*Astragalus magdalenae* var. *peirsonii*) are known from the Algodones Dunes, Yuma Dunes, and Gran Desierto de Altar (Felger 2000), and the dune sunflower (*Helianthus niveus* ssp. *tephrodes*) is known from the Algodones Dunes and Gran Desierto de Altar (Seiler *et al.* 2006), it is possible that the Andrews’ dune scarab beetle occurs farther south as well in the large dune systems of the Gran Desierto de Altar in northwestern Sonora, Mexico. The Algodones Dunes, Yuma Dunes, and Gran Desierto are geologically part of the same active dune system (Rinker *et al.* 1991). As a result, the Andrews’ dune scarab beetle does not appear to be restricted to the Algodones Dunes of southeastern California or northeastern Baja California Norte, but rather occurs at least within the Yuma Dunes of Arizona and potentially within the Gran Desierto de Altar in northwestern Sonora, Mexico.

No population estimates are available for this species.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of 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 finding, we evaluated whether threats to the Andrews' dune scarab beetle presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to its survival. Our evaluation of these threats is presented below.

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

The petitioners state that ORV activity destroys and modifies Andrews' dune scarab beetle habitat and curtails its range (range estimate based on Andrews *et al.* 1979; Hardy and Andrews 1980). The petitioners state that the congregating behavior of adult Andrews' dune scarab beetles during the active season (generally February through May) renders colonies vulnerable to direct mortality by ORV activity. The petition uses the arthropod observations of Luckenbach and Bury (1983) as substantiation.

The petitioners assert that ORVs can also "adversely modify dune habitat." According to the petition, accumulations of vegetable matter collected in wind-made troughs may serve as nurseries for Andrews' dune scarab beetle larval stages, and creosote bushes may be host plants for the species. The petitioners maintain that because Andrews' dune scarab beetle reproduction occurs once a year from mid-April through early May, ORV destruction of accumulated vegetable matter in which larvae may be developing could eliminate an entire generation. Citing Carpelan (1995), the petitioners claim that dune buggies adversely modify Andrews' dune scarab beetle habitat, while they note "Hardy and Andrews (1976) concluded that ORVs destroy plant growth within and

near the Algodones Dunes, scatter or crush accumulations of organic matter likely used by *P. andrewsi* larvae for nurseries, disrupt layers of crust which stabilize the dunes, and may upset beetle reproduction."

The petitioners also claim that if protected areas of the Algodones Dunes are reopened to ORVs, as described in the draft environmental impact statement (DEIS) for the Proposed Recreation Area Management Plan and Amendment to the California Desert Conservation Area Plan (BLM 2002), habitat for the Andrews' dune scarab beetle will be modified or destroyed and its range within the dune system will likely be curtailed. The petitioners contend that not only is the Andrews' dune scarab beetle endemic to the Algodones Dunes, but no recolonization source exists in the event of population extirpation.

The petition does not discuss or provide specific scientific or commercial information on distribution and population status of the Andrews' dune scarab beetle in Mexico or outside of the Algodones Dunes system.

Evaluation of Information in the Petition and Our Files

The petition and our files contain little information regarding the threat of ORV use to the Andrews' dune scarab beetle. Luckenbach and Bury (1983) reported that "arthropod (mostly beetle) tracks were twenty-four times more abundant in control plots than in ORV-impacted plots." However, this work was not species-specific (observed tracks may not be the Andrews' dune scarab beetle or reflect the abundance of the species), and the sampled plots were placed in areas where no Andrews' dune scarab beetles have been collected, therefore it is not clear from these results that Andrews' dune scarab beetle is adversely impacted by ORV use, or that ORV use constitutes a significant threat to the beetle. Despite the claim in the petition that Hardy and Andrews (1976) concluded that ORVs destroy plants within and near the Algodones Dunes and impact larval nurseries of Andrews' dune scarab beetle, Hardy and Andrews (1976) did not survey the Algodones Dunes in their insect surveys in six California and Nevada dune systems and the authors provided only generalized data of potential adverse effects of off-highway vehicles (OHVs, also known as ORVs) to "dune restricted or adapted insects." Carpelan (1995) focused his book chapter on dune stabilization and the adaptation and speciation of dune insects. Carpelan's work was largely derived from Hardy and Andrews (1976) and he gave

Andrews' dune scarab beetle as an example of a dune endemic. While Hardy and Andrews (1976) and Carpelan (1995) expressed concern regarding the general effects of OHVs to dunes (especially stabilized dunes), neither paper supported any assertion of OHVs "adversely modify dune habitat" of the Andrews' dune scarab beetle. Similarly, the statements in the 1978 proposal to list the Andrews' dune scarab beetle regarding the decreased population levels and OHV impacts were not supported by the available scientific information.

An additional report by Andrews (Scarabaeus Associates 1991) provides little additional insight into the potential impact ORV use may have on Andrews' dune scarab beetles or their habitat. Although his study was intended to investigate the potential impacts of ORV use on the Andrews' dune scarab beetle, conclusions regarding the impact of ORV use on Andrews' dune scarab beetle could not be derived from the study as designed. Plots were placed based on collection records and expert opinion of habitat suitability, not randomized within use designation areas or a larger reasonable subset of dune habitat, such as the central upland-lowland dune transition areas where most beetles have been collected. The only measure of ORV activity was BLM use classification (Intensive, Moderate, Limited, and Controlled (no access)). Andrews (Scarabaeus Associates 1991) did not detect any individuals in ORV Intensive use classification plots where most early collections of Andrews' dune scarab beetle were made. However, no individuals were detected in Controlled use (closed to ORV use) classification plots either, where habitat appeared "excellent," and "significant" populations had been detected in previous years. Most beetle detections were made in plots located within the two intermediate ORV use classification areas (Moderate and Limited). An "extensive" search of a greater area classified as Controlled resulted in detection of only two individuals. Andrews' study (Scarabaeus Associates 1991) indicates that occupancy of habitat patches may shift regardless of habitat suitability or ORV impacts but did not demonstrate impacts of ORV use on Andrews' dune scarab beetle abundance.

The petitioners assert that only one population of the Andrews' dune scarab beetle, a species endemic to the Algodones Dunes, exists. As discussed above, however, the species has been collected from the Yuma Dunes in Arizona. Moreover, given that the

federally threatened Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*) is known from the Algodones Dunes, Yuma Dunes, and Gran Desierto de Altar (Felger 2000), and the dune sunflower (*Helianthus niveus* ssp. *tephrodes*) is known from the Algodones Dunes and Gran Desierto de Altar (Seiler *et al.* 2006), it is possible that this dune species occurs farther south as well in the large dune systems of the Gran Desierto de Altar in northwestern Sonora, Mexico. Information provided with the petition and in our files does not indicate that the Yuma Dunes or the sand dune systems within the 5,000 square mi (1.3 million ha) of the Gran Desierto de Altar have been surveyed for the Andrews' dune scarab beetle.

We find that, due to weak, incomplete, or nonexistent information regarding impacts to the Andrews' dune scarab beetle from ORV use, the petition and our files do not present substantial information that the petitioned action may be warranted. No other information regarding Factor A was contained in the petition or our files. Because the known populations in the United States exist on lands owned and managed by BLM, it is unlikely to be subject to other forms of habitat modification under Factor A, such as loss of habitat due to development.

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

The petition states no data are available. We have no scientific or commercial information in our files indicating that overutilization of the beetle exists for commercial, recreational, scientific, or educational purposes, and the petition did not provide any such information.

C. Disease or Predation

The petition states that natural predation affects the population but does not describe any effects. The petition states that effects of disease on the Andrews' dune scarab beetle are unknown, and we have no information in our files to indicate that either disease or predation threatens the beetle.

Evaluation of Information in the Petition and Our Files

Some information available in our files provided specific observations of predation. Hardy and Andrews (1980) stated that "[d]uring evening flights, night hawks were observed to be important predators of *Pseudocotalpa*." Andrews (Scarabaeus Associates 1991) observed nighthawk and scorpion

predation, noting that nighthawks appeared to actively search occupied sites for Andrews' dune scarab beetles. However, review of the petition and information in our files did not provide substantial scientific or commercial information that mortality by predation or disease may threaten survival of the species across its range.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioners assert that existing regulatory mechanisms are inadequate to protect this Algodones Dunes species from extinction. The petition states that past administrative plans and legal requirements to monitor and conserve the Andrews' dune scarab beetle have not been implemented by BLM. Current management plans allow ORV activity in the majority of the known range of the Andrews' dune scarab beetle on BLM lands in the Algodones Dunes (94 percent of all creosote scrub and 84 percent of all psammophytic scrub).

All known Andrews' dune scarab beetle habitat in the United States is on land managed by the BLM (Andrews *et al.* 1979; Hardy and Andrews 1980; BLM and CDFG 1987). The petitioners state that, although the sensitive, potentially endangered status of the Andrews' dune scarab beetle and adverse impacts of ORVs on the species have been made known to BLM (Hardy and Andrews 1976), the use of ORVs continues to be permitted in sensitive beetle habitat. According to the petition, the preferred alternative management plan in the DEIS (BLM 2002) would result in relaxed conservation measures for the species, including reopening thousands of acres of protected habitat to ORV use (see Factor A discussion above).

The petition notes that three planning documents for the Algodones Dunes Wildlife Habitat Area have addressed management of ORV use and the Andrews' dune scarab beetle: the 1972 Recreation Management Plan, the 1980 California Desert Conservation Area Plan, and the 1987 Recreation Area Management Plan for the Imperial Sand Dunes (RAMP) (BLM and CDFG 1987). The previously implemented RAMP called for a reduction in the proposed level of recreation development and dispersal of intensive recreational use within Class I areas. The RAMP included the Algodones Dunes Wildlife Habitat Management Plan (HMP), implemented under the authority of the Sikes Act (16 U.S.C. 670a–670o). The HMP recommended biennial surveys for the Andrews' dune scarab beetle (p. 22): "Permanent plots will be evaluated biennially, and results will be compared

to existing information to determine trend, until a satisfactory amount of data are gathered. Supplementary and monitoring studies will be through contract * * *."

The petition reports that only one set of surveys was ever conducted (Scarabaeus Associates 1991), and although the report could not be located by the petitioners, it is in our files. The petition notes that permanent monitoring of the Andrews' dune scarab beetle was recommended in the HMP, but surveys have not been conducted for the past decade. The petition notes that the RAMP also stipulated that localized surveys be conducted for the Andrews' dune scarab beetle prior to approval of particular development projects. The petition concludes that no available documents indicate that the stipulated surveys were conducted, although a number of the named development projects were approved and completed.

The petition quotes a recent DEIS (BLM 2002) that "little is known about the biology of this beetle, [and] current information about the distribution and preferred habitat at the Plan Area is not available * * *. No information about threats to this species is available." The petition claims this assessment of the species is inaccurate given information presented in the petition. The petition notes that the HMP mandated collection of demographic and distributional information would have provided relevant additional information regarding the species. Additionally, no data were presented in the DEIS regarding the distribution of the Andrews' dune scarab beetle, although such data are required before land-use decisions are made to ensure the species is not jeopardized. The petitioners also note that the DEIS recognizes "OHV activity tends to be concentrated within the psammophytic scrub. As a consequence, some special-status wildlife species such as * * * endemic dune beetles occurring in these dunes would be killed or injured by OHV activity." The preferred alternative in the DEIS (Alternative 2) would allow 198,220 ac (80,217 ha) of the Algodones Dunes to be open to ORV use, and only the relatively small 27,695-ac (11,208-ha) portion of the Algodones Dunes would remain as off-limits to ORVs.

Evaluation of Information in the Petition and Our Files

Focusing on the concerns expressed by the petitioners, the final and currently implemented RAMP (BLM 2003) does not address specific conservation, research, or monitoring of the Andrews' dune scarab beetle. The only mention of Andrews' dune scarab

beetle is a note on page 32, recognizing that the beetle is a "poorly known" BLM sensitive species (Issues, Concerns, and Opportunities section). The final RAMP utilizes the preferred alternative in the DEIS (Alternative 2) discussed in the petition. Under the final RAMP, all-terrain vehicle, motorcycle, truck, and dune buggy ORV use will be prohibited in the 26,202 ac (10,601 ha) North Algodones Dunes Wilderness Recreation Management Area. The wilderness area closed to ORV use under the final RAMP is 18 percent of the BLM-managed Imperial Sand Dunes Recreation Area known to contain Andrews' dune scarab beetle habitat (not including the Dune Buggy Flats Recreation Management Area uplands where studies have not detected Andrews' dune scarab beetle) (Hardy and Andrews 1980; BLM 2002). Historically, most Andrews' dune scarab beetle observations were concentrated in the Glamis Recreation Management Area (Hardy and Andrews 1980), which has the highest allowable recreation impacts under the final RAMP. As stated above, interim vehicle use closure areas designated for the threatened Peirson's milk-vetch plant (*Astragalus magdalenae* var. *peirsonii*) and desert tortoise (*Gopherus agassizii*) through legal stipulation (BLM 2002), including approximately 49,000 ac (19,829.6 ha) of the Andrews' dune scarab beetle range, were not maintained (they were opened to ORV use) under the final RAMP (BLM 2003).

Regardless of whether the petition or the above description accurately details the historic, existing, and proposed management and monitoring of the Algodones Dunes by the BLM, the central issue is whether such management is inadequate because the associated ORV activity has adversely affected or will adversely affect the Andrews' dune scarab beetle such that listing may be warranted. Though the petitioners claim they "were unable to find a single study documenting positive or even neutral effects of ORVs" after completing a comprehensive review of scientific literature regarding ORV impacts on desert flora and fauna, the petition and our files do not contain any direct or substantial evidence that ORV activity is adversely affecting the Andrews' dune scarab beetle. Despite the assertion from the petitioners that "a sufficient body of information on negative effects of ORVs on arthropods in the Algodones Dunes exists to indicate the species is

imperiled," the often cited study by Hardy and Andrews (1976) did not address the Algodones Dunes or the Andrews' dune scarab beetle, while the counting of arthropod tracks in the Luckenbach and Bury study (1983), also cited many times by the petitioners, was not specific to Andrews' dune scarab beetle and does not necessarily correlate to the beetle. Moreover, the results of Andrew's study (Scarabaeus Associates 1991) intended to investigate the impact of ORV use on the Andrews' dune scarab beetle indicated that beetle abundance was not correlated with BLM ORV use designations, and that occupancy of habitat patches may shift regardless of habitat suitability or ORV impact. However, as noted above, due to study design limitations, the impact of ORV use could not be adequately determined. In fact, another possible hypothesis that could support the study data is that some disturbance of the dunes is beneficial to the beetles, as the most beetles were collected in areas open to moderate disturbance, and no beetles were collected in a formerly occupied area where disturbance may have been reduced by closure. Because of the weak information on the effects of ORVs to the Andrews' dune scarab beetle and the lack of information supporting species-specific threats, there is no basis for finding that existing regulatory protections are inadequate. Accordingly, we find that the petition and our files do not present substantial scientific or commercial information that the petitioned action may be warranted.

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

Without citing any scientific references or studies, the petition states that pesticide use in the agricultural areas of the Imperial Valley is likely having negative impacts on the species through pesticide drift into the dunes and that spraying programs for the curly top leafhopper virus are also likely directly impacting the species.

The petition also included the issue of direct mortality from OHV use in the Andrews' dune scarab beetle habitat.

Evaluation of Information in the Petition and Our Files

The assertion provided in the petition that pesticide use is likely having negative impacts was not supported by any scientific information, citations, or data. Thus, the petition does not provide substantial scientific or

commercial information documenting loss of Andrews' dune scarab beetles by pesticide use or how this may threaten survival of the species across its range, nor is there any additional information in our files.

The assertion provided in the petition that OHV use is likely to have negative impacts on direct mortality was not supported by any scientific information, citations, or data. Therefore, this petition does not provide substantial scientific or commercial information documenting loss of Andrews' dune scarab beetles by the use of OHVs.

Finding

We reviewed the petition and supporting information provided with the petition and evaluated that information in relation to other pertinent literature and information available in our files at the time of petition review. After this review and evaluation, we find the petition does not provide substantial scientific or commercial information to demonstrate that listing the Andrews' dune scarab beetle may be warranted at this time. The species information in the petition and in our files was collected between 1967 and 1991, when most of the specific data was collected. We encourage interested parties to continue to gather data that will assist with the conservation of the species. Information regarding the Andrews' dune scarab beetle may be submitted to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section above) at any time.

References Cited

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

Author

The primary author of this notice is Alison Anderson, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 1, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E6-6791 Filed 5-4-06; 8:45 am]

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