

Date: August 5, 2009.

**Al Matera,**

Director, Office of Acquisition Policy.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2009-0041] [MO-922105 0083-B2]

### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Jemez Mountains Salamander (*Plethodon neomexicanus*) as Threatened or Endangered With Critical Habitat

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

**ACTION:** Notice of 90-day petition finding and initiation of a status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Jemez Mountains salamander (*Plethodon neomexicanus*) (salamander) as threatened or endangered and designate critical habitat under the Endangered Species Act of 1973, as amended. Following a review of the petition, we find that the petition provides substantial scientific or commercial information indicating that listing the Jemez Mountains salamander may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. At the conclusion of this review, we will issue a 12-month finding to determine if the petitioned action is warranted. We will make a determination on critical habitat for this species if we initiate a listing action.

**DATES:** We made the finding announced in this document on August 11, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before October 13, 2009.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for docket FWS-R2-ES-2009-0041 and then follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R2-ES-2009-0041; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

**FOR FURTHER INFORMATION CONTACT:**

Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Office, 2105 Osuna NE, Albuquerque, NM 87113, by telephone (505-346-2525) or by facsimile (505-346-2542). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Information Solicited**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the status of the Jemez Mountains salamander. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the salamander. We are seeking information regarding:

(1) The historical and current status and distribution of the Jemez Mountains salamander, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) The species' population size and population trend;

(3) Its taxonomy; and

(4) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

In this finding, we have identified gaps in the information provided in the petition to help to focus the public on areas where we would like relevant data submitted. If we determine that listing the Jemez Mountains salamander is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the salamander, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during this public comment period. Please note that submissions merely stating support for or opposition to the action under consideration, without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot

guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of 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 the petition presented substantial information, we are required to promptly commence a review of the status of the species.

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians requesting that the Jemez Mountains salamander be listed as threatened or endangered under the Act, and critical habitat be designated. The petition clearly identified itself as such, and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a November 26, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that, to the maximum extent practicable, we would address their petition within 90 days.

### Previous Federal Actions

We initially considered the Jemez Mountains salamander for listing under

the Act in the early 1980s (GAO August 1993, p. 30). In December 1982, we published a notice of review classifying the salamander as a Category 2 species (47 FR 58454, December 30, 1982). Category 2 status included those taxa for which information in the Service’s possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. On February 21, 1990, we received a petition to list the salamander as threatened. Subsequently, we published a positive 90-day finding, indicating that the petition contained sufficient information to suggest that listing may be warranted (55 FR 38342, September 18, 1990). In the candidate notice of review (CNOR) published on November 21, 1991, we announced the salamander as a Category 1 species with a “declining” status (56 FR 58814). Category 1 status included those species for which the Service had on file substantial information regarding the species’ biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. The “declining” status indicated decreasing numbers and/or increasing threats.

On May 30, 1991, the Service, the USDA Forest Service (Forest Service), and the New Mexico Department of Game and Fish (NMDGF) signed a Memorandum of Agreement (MOA) outlining actions to be taken to protect the salamander and its habitat on Forest Service lands, including the formation of a team of agency biologists to immediately implement the MOA and to develop a management plan for the species. The management plan was to be incorporated into the Santa Fe National Forest Plan. On April 3, 1992, we published a 12-month finding that listing the salamander was not warranted because of the conservation measures and commitments within the MOA (59 FR 11469). In the November 15, 1994, CNOR, we included the salamander as a Category 2 species, with a trend status of “improving” (59 FR 58982). A status of “improving” indicated those species known to be increasing in numbers and/or whose threats to their continued existence were lessening in the wild.

In the CNOR published on February 28, 1996, we announced a revised list of animal and plant taxa that were regarded as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants (61 FR 7596). The revised candidate list included only former Category 1 species. All former Category 2 species

were dropped from the list in order to reduce confusion about the conservation status of these species, and to clarify that the Service no longer regarded these species as candidates for listing. Because the salamander was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR.

In January 2000, the New Mexico Endemic Salamander Team (NMEST), a group of interagency biologists representing NMDGF, the Service, the U.S. Geological Survey, and the Forest Service, finalized a Cooperative Management Plan for the salamander on lands administered by the Forest Service (Management Plan), and the agencies signed an updated Conservation Agreement that superseded the MOA. The stated purpose of the Conservation Agreement and the Management Plan was to provide for the long-term conservation of salamanders by reducing or removing threats to the species and by proactively managing their habitat (NMEST 2000 Conservation Agreement, p. 1).

In a Decision Notice and Finding of No Significant Impact for the Forest Plan Amendment for Managing Special Status Species Habitat, signed on December 8, 2004, the Management Plan was incorporated into the Santa Fe National Forest Plan.

### Species Information

The Jemez Mountains salamander is a member of the family of lungless salamanders (Plethodontidae), the largest family of salamanders. The salamander is uniformly dark brown above, with occasional fine gold/brassy stippling dorsally (on the back and sides) and is sooty gray ventrally (underside). The body form is slender and elongate. The salamander possesses foot webbing and a reduced fifth toe. The salamander was originally reported as *Spelerpes multiplicatus* (= *Eurycea multiplicata*) in 1913 (Degenhardt *et al.* 1996, p. 27); however, it was described as a new and distinct species (*Plethodon neomexicanus*) in 1950 (Stebbins and Riemer, pp. 73-80).

Two species of plethodontid salamanders occur in New Mexico: The Jemez Mountains salamander and the Sacramento Mountains salamander (*Aneides hardii*). Molecular studies on plethodontid salamanders in North America indicate that western species of the genus *Plethodon* (the woodland salamanders) may be more closely related to species of the genus *Aneides* (the climbing salamanders) than to eastern species of *Plethodon* (Larson *et al.*, 1981, p. 419; Mahoney 2001, p. 174). The relationship of the Jemez

Mountains salamander to other western plethodontids is not completely understood, but the salamander is considered basal (the earliest grouping that branches to larger groupings of relative relatedness) (Mahoney 2001, p. 184). No subspecies of the salamander are recognized.

The Jemez Mountains salamander is strictly terrestrial, does not possess lungs, and does not require standing surface water for any life stage. Respiration occurs through the skin and requires a moist microclimate for gas exchange. Reproduction in the wild remains unobserved, but it is presumed that the salamander lays eggs in spaces underground. Fully-formed salamanders hatch from the eggs. Based on examination of 57 female salamanders, Williams (1978, p. 475) concluded that females likely lay 7 or 8 eggs every other year, either in mid-August or, more likely, the spring after mating occurs in late July and August. Sexual maturity is reached at 3 to 4 years in females and 3 years in males (Degenhardt *et al.* 1996, p. 28).

The salamander occurs in the Jemez Mountains in northern New Mexico in Los Alamos, Rio Arriba, and Sandoval Counties. The species predominantly occurs in mixed-conifer forest at an elevation between 2,200 and 2,900 meters (7,220 and 9,510 feet), consisting mainly of Douglas fir (*Pseudotsuga menziesii*), blue spruce (*Picea pungens*), Engelmann spruce (*Picea engelmannii*), white fir (*Abies concolor*), limber pine (*Pinus flexilis*), and aspen (*Populus tremuloides*) (Degenhardt *et al.* 1996, p. 28), but occasionally can be found in Ponderosa pine (*Pinus ponderosa*) stands. The microhabitat is characterized by deep, igneous, subsurface rock with high soil moisture (NMEST 2000, p. 2). The salamander spends much of its life underground, and can be found at the surface when conditions are warm and wet, which is typically July through September, but the period may extend from May through October depending on conditions. When surface-active, the species is usually found under rocks, bark, logs, moss mats, or inside decomposing logs. The species is restricted to the moist habitats of the Jemez Mountains.

A feeding habits study for the Jemez Mountains salamander was conducted by NMDGF in 1992. Salamander prey items were diverse in size and type; however, there were three categories of prey that were recognized as more important than the remaining groups: ants, mites, and beetles (Cummer 2005, p. 43). Cummer (2005, pp. 45–50) stated that prey specialization on any

particular species of invertebrate was unlikely in the salamander; however, she did observe that selection of food appeared to not be random.

Although the petitioner believes that the number of salamanders likely exceeds 10,000, we are not aware of any current information from which a population estimate can be made. The petitioner's population estimate was derived from survey efforts conducted from 1967 through 2003; however, the petitioner acknowledges, and we agree, that these surveys are potentially unreliable because salamander observations are dependent on multiple factors, such as environmental conditions (e.g., temperature or moisture), detection probabilities, and time when the observations were made. Because of these variables, it is difficult to determine population size or trends. Based upon the information presented in the petition and in our files, we believe that a comprehensive assessment of all of the survey and population information is needed.

#### Five-Factor Evaluation

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

In making this 90-day finding, we evaluated whether information regarding threats to the salamander, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

##### Information Provided in the Petition

The petitioner asserts that the Jemez Mountains salamander or its habitat is threatened by the following conditions or actions: habitat loss and fragmentation, climate change, stand-

replacing fires, fire suppression and rehabilitation, salvage logging, slash removal, forest thinning treatment projects, use and construction of roads and dams, chemical use, trail construction, and mining. We will address climate change and chemical use under Factor E.

The petitioner contends that the main threat and cause of Jemez Mountains salamander habitat loss is extensive, stand-replacing fires (severe fires in which most mature trees are destroyed). The petitioner reports on land area burned during the Dome (1996), Cerro Grande (2000), and BMG/Lakes (2002) wildfires. Information in our files indicates that these stand-replacing fires overlapped with salamander habitat; however the petition did not contain, nor we do have, a complete analysis of the extent or degree of salamander habitat that burned. The NMEST (2000, p. 9) stated that, "the greatest threat to this species is thought to be the potential for extensive stand-replacing fires." The petitioner contends that there were negative effects to the salamander and its habitat from the Cerro Grande Fire, such as removal of canopy cover and increased soil temperatures (WildEarth Guardians 2008, pp. 23–24). Cummer and Painter (2007, p. 26) reported significant changes in microhabitat temperatures following the Cerro Grande Fire. The petitioner asserts that impacts on the salamander and its habitat from other stand-replacing wildfires (e.g. Dome Fire, BMG/Lakes Fires) was likely the same as effects from the Cerro Grande fire. We agree; however, we are not aware of an analysis that estimates the amount of salamander habitat affected by other wildfires. Finally, our files indicate that future stand-replacing wildfires in salamander habitat remain a threat.

The petitioner also claims that the effects of fire suppression and rehabilitation activities following wildfire threaten the Jemez Mountains salamander. For example, the petitioner indicates that, during the Cerro Grande Fire, suppression activities included the construction of 26 kilometers (km) (16 miles (mi)) of hand line (hand-dug trenches 1.5 to 3 meters (m) (5 to 10 feet (ft)) wide from which all combustible material was removed), 63 km (39 mi) of bulldozer line (larger fire breaks with vegetation removed by bulldozing), and safety zones; release of 514,000 liters (135,800 gallons) of fire retardant; and 53 km (32 mi) of road improvement resulting in vegetation removal within 30 m (100 ft) of either side of the roads (WildEarth Guardians 2008, p. 26). However, while information in our files

indicates that some of these activities occurred in salamander habitat and corroborate some of the claims of the petitioner on fire suppression and rehabilitation, the petitioner does not provide, nor are we aware of, a complete assessment of the extent of these activities in salamander habitat. Please note that chemical use resulting from fire suppression activities is addressed separately in Factor E.

The petitioner describes how historical grazing and fire suppression have contributed to changes in forest structure and composition in the Jemez Mountains. Scientific literature (e.g., Allen 1989; Touchan *et al.* 1996) supports this conclusion; however, we are not aware of an assessment of how such changes may affect the salamander or its habitat.

The petitioner believes that salvage logging after wildfire and associated thinning with removal of snags and slash in Jemez Mountains salamander habitat has had negative impacts to salamanders and their habitat. Logging can interrupt the development of salamander habitat by removing the requisite habitat components of canopy cover and dead and downed logs, while increasing temperature, erosion, runoff, and soil compaction (NMEST 2000, p. 5). Additionally, if these activities occur when salamanders are surface active, salvage logging could result in direct injury or mortality to individuals. The petitioner identifies that salvage logging and forest thinning have been proposed within salamander habitat, but we have no estimate on the amount of salamander habitat that has been impacted by these activities. Nevertheless, we found substantial information indicating that the Forest Service has conducted, and will likely continue to conduct, salvage logging in salamander habitat.

The petitioner asserts that habitat alteration due to road and trail building in salamander habitat has deleterious effects to the Jemez Mountains salamander and its habitat. The petitioner believes that construction of roads and trails fragments habitat, and high vehicular traffic or heavy equipment could cause excessive vibration resulting in settling of the subsurface rock and elimination of the underground spaces, presumed necessary as subterranean habitat. The petitioner provides information on the length of roads that were re-opened during and subsequent to wildfire. These roads likely affected the salamander and its habitat through vegetation removal, soil compaction, and the elimination of subsurface spaces. Roads are known to fragment

terrestrial salamander habitat and act as partial barriers to movement (deMaynadier and Hunter 2000, p. 56; Marsh *et al.* 2005, p. 2004). Moreover, roads can reduce the quality of adjacent habitat by increasing light and wind penetration, exposure to pollutants, and the spread of invasive species (Marsh *et al.* 2005, pp. 2004–2005). Although the petitioner does not quantify the amount of salamander habitat impacted by roads, information in our files supports the claim that roads may have led, and may continue to contribute in the future, to the degradation of salamander habitat.

The petitioner asserts that the improvement and realignment of New Mexico State Highway 126 (also called Forest Highway 12) has threatened, and will continue to threaten, the Jemez Mountains salamander. Information concerning the project provided by the petitioner was found to be reliable. For example, our files indicate that portions of the Highway 126 project resulted in the removal of salamander habitat as well as the destruction of individual salamanders and fragmentation of a relatively isolated population of salamanders.

The petitioner also notes that construction and maintenance of log skidder trails, while not likely to be as destructive as road construction and maintenance, still has similar effects on the Jemez Mountains salamander. The petitioner believes that trail construction and salvage logging operations are a threat to the salamander. The petitioner correctly indicates that approximately 4 km (2.5 mi) of trail were constructed by bulldozer in occupied salamander habitat.

The petitioner asserts that one of the common techniques used to survey for the presence or absence of the salamander destroys habitat because it involves destructive sampling by rearranging cover objects such as rocks and logs as well as tearing apart decayed logs. We have no information regarding the effects to salamander habitat from survey techniques (NMEST 2000, pp. 27–36); however, we will examine this claim more closely in our status review, and we request any additional information the public may have on this potential threat.

The petitioner asserts that the construction of dams and mining modify Jemez Mountains salamander habitat. Information in our files supports the claim that dams or water retention structures may have been constructed in salamander habitat. Specifically, the petitioner contends that an extension of the El Cajete Mine

in the Jemez Mountains affects the salamander. Our files indicate that the Forest Service determined that the mine would not impact the salamander because the project was not located on northerly or moist slopes greater than 35 to 40 percent that support mature or old growth mixed conifer (Forest Service 1995a, pp. 12–13; Forest Service 1995b, p. 2). At the time of the project, steep slopes (greater than 30 percent) were thought to be a critical element of salamander habitat (Ramotnik 1988, p. 50). However, salamanders have been documented in areas of no significant slope (less than 5 percent) (NMDGF 2000, p. 8), and steep slopes are no longer considered a requirement of occupied habitat. Based on this more recent information, this project may have affected the salamander and its habitat, and there is potential for future mining activities to affect the salamander and its habitat. We find that the petition and information in our files indicate that construction of dams and future mining activities may result in adverse modifications to salamander habitat.

#### Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner provides substantial and reliable information that the salamander and its habitat may be threatened from stand-replacing fires; salvage logging; fire suppression; construction, maintenance, and use of roads and trails; construction of dams; and mining activities. The information presented in the petition is supported by information in our files, and presents substantial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the habitat or range of the salamander.

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

##### Information Provided in the Petition

The petitioner asserts that the salamander is threatened by loss of individuals through collection of specimens and surveying. The petition cites a report by the NMEST (2000) that summarizes the history of collection of the species. According to the petition, 977 Jemez Mountains salamanders were collected for scientific purposes from 1910 to 1999. The petitioner cites the report (NMEST 2000) in concluding that such collecting has likely reduced populations in localized areas. The petitioner also cites the report (NMEST

2000) in asserting that a 2 person-hour survey protocol was developed to search for Jemez Mountains salamanders. Following this protocol, likely cover objects (rocks, bark, and decayed logs) are searched for salamanders (NMEST 2000). The petition cites a NMDGF (2000) report in claiming that this technique can destroy habitat and that continual searches in the same habitat have been shown to result in a decrease in salamander populations.

#### Evaluation of Information Provided in the Petition and Available in Service Files

We find that the petition presents substantial information indicating that the petitioned action may be warranted due to overutilization for scientific purposes.

#### C. Disease or Predation

##### Information Provided in the Petition

The petitioner states that disease is affecting the salamander. Information in our files indicates that the amphibian pathogenic fungus, *Batrachochytrium dendrobatidis* (*Bd*), was found in one salamander in 2003 (Cummer *et al.* 2005, p. 248). The individual salamander was collected and sent to the U.S. Geological Survey National Wildlife Health Center in Madison, Wisconsin, for diagnostic analysis. Results from the analysis included a dual infection of *Bd* and a bacterial species (*Cladosporium* spp). The virulence of *Bd* relative to the Jemez Mountains salamander remains unknown. However, because information in our files indicates that *Bd* can be highly infectious and lethal in other species of amphibians, we believe there is substantial information that the petitioned action may be warranted due to the threat of disease.

The petitioner provides no information addressing predation. Cummer (2005, p. 30) speculated that predation could increase subsequent to stand-replacing wildfire because of lack of sufficient cover objects while salamanders are surface active; however, we are not aware of any information to support this.

#### Evaluation of Information Provided in the Petition and Available in Service Files

Because of the presence of *Bd* in the Jemez Mountains salamander's range and the deleterious effect of *Bd* on other species of amphibians, we believe the threat of disease to the Jemez Mountains salamander may be substantial. On the other hand, neither the information in our files nor that presented by the

petitioner is substantial to suggest that predation on the salamander is a significant threat to the species. In summary, we have information in our files indicating that the petitioned action may be warranted due to disease, but not due to predation.

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

##### Information Provided in the Petition

The petitioner asserts that the salamander is threatened by inadequacy of existing regulatory mechanisms. The petitioner states that the regulatory mechanisms in place—the 2000 Conservation Agreement, the Management Plan, the Forest Plan and its amendments, and State law—are ineffective and unenforceable. The Management Plan was prepared by NMEST biologists “to provide guidance for the conservation and management of sufficient habitat to maintain viable populations of the species” (NMEST 2000, p. i.). Known and potential threats to the species were identified and detailed; management areas based on habitat zones were identified; potential management actions in salamander habitat and their potential impacts were identified; and guidelines were set forth pertaining to certain management actions relative to habitat categories (NMEST 2000, pp. 4–22). The intent of the Conservation Agreement, the Management Plan, and amendment of the Forest Plan was to protect the Jemez Mountains salamander and its habitat on lands administered by the Forest Service. However, the petitioner identifies multiple projects, both on and off Forest Service lands, that were counter to guidelines set forth in the Management Plan and recommendations by the NMEST (WildEarth Guardians 2008, pp. 28–54).

The petitioner provides examples of projects that they claim demonstrate the inadequacy of existing regulatory mechanisms and ongoing threats to the Jemez Mountains salamander and its habitat. Examples provided by the petitioner include actions following the 1996 Dome Fire, the 2000 Cerro Grande Fire, and the 2003 BMG/Lakes Fires; actions relative to the Valles II project (forest thinning and fuel reduction activities in areas adjacent to residential development); the Highway 126 project; dams at Los Alamos National Laboratory; and the El Cajete mine extension (WildEarth Guardians 2008, pp. 28–54). Our files support the claim that the Cooperative Agreement, Management Plan, and Federal or State laws have been ineffective at preventing

actions that may threaten the salamander and its habitat.

The petitioner acknowledges that because the Jemez Mountains salamander was uplisted in New Mexico in 2005 from State threatened to endangered (NMDGF 2005, p. 2), it gained the protection of the Wildlife Conservation Act. The Wildlife Conservation Act prohibits direct take of the species except under issuance of a scientific collecting permit. However, this law only conveys protection from collection or intentional harm; no New Mexico State statutes address habitat protection, indirect effects, or other threats to the species identified by the State as endangered. NMDGF has the authority to consider and recommend actions to mitigate potential adverse effects to the salamander during its review of development proposals. The petitioner pointed out that the New Mexico State Game Commission, a part of the NMDGF, received financial reimbursement and provided easements for construction of the Highway 126 project (New Mexico Game Commission, 2006, p. 13). We could not find that any measures were incorporated to limit impacts to the salamander or its habitat (New Mexico Game Commission, 2006, pp. 12–13). Information in our files indicates that the Highway 126 project directly impacted salamanders and destroyed habitat.

Additionally, the petitioner asserts that threats to the species are not addressed on lands where the salamander occurs outside of the Santa Fe National Forest. Populations of salamanders have been observed on Tribal lands, Los Alamos National Laboratory lands, the Valles Caldera National Preserve, and private lands. Information in our files demonstrates that outside of State protection from collection and intentional harm, there are no State or Federal regulations providing specific protections for the salamander or its habitat beyond those populations within the Santa Fe National Forest.

#### Evaluation of Information Provided in the Petition and Available in Service Files

The information provided by the petitioner was found reliable and was corroborated by information in our files. Consequently, we find that the petition contains substantial information that listing the salamander due to the inadequacy of existing regulatory mechanisms may be warranted.

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

#### Information Provided in the Petition

The petitioner asserts that fire suppression, chemical use, and climate change threaten the salamander. Fire suppression is addressed under Factor A. Chemical use in salamander habitat includes fire suppression retardant and insecticides to prevent tree loss. Although information in our files indicates that fire retardant has been used in salamander habitat, it is unknown how much salamander habitat has been affected. Prior to 2006 (71 FR 42798, July 28, 2006) fire retardant used by the Forest Service contained sodium ferrocyanide, which is highly toxic to fish and amphibians (Pilliod *et al.* 2003, p. 175). Because the salamander breathes and carries out physiological functions through its skin, chemicals that are toxic to fish and other amphibians may have had negative effects to the salamander. It is unclear whether the chemicals used in current fire retardants or insecticides affect the salamander. Thus, the information provided by the petition and in our files is not substantial to indicate adverse effects of fire retardant or insecticides on the salamander or its habitat.

The petitioner asserts that climate change is likely an increasing threat to the salamander due to overall habitat drying and the species' requirement of moist microhabitats. In addition, the petitioner states that warmer springs and summers, earlier snowmelt, and increased forest fire severity, frequency, and duration will likely impact the salamander. The petitioner provides citations on climate change (Wildearth Guardians 2008, p. 55) and references Enquist and Gori (2008) to provide information regarding climate change in the Jemez Mountains. Enquist and Gori (2008, p. iii) report the Jemez Mountains as one of three areas in New Mexico that may be most vulnerable to climate change, in part, due to warmer-drier conditions or greater vulnerability in temperature and precipitation. The petitioner contends that the identified threats are exacerbated by the salamander's restricted distribution.

#### Evaluation of Information Provided in the Petition and Available in Service Files

In general, the information currently available on the effects of climate change does not make sufficiently precise estimates of the location and magnitude of the effects in order to predict impacts to specific wildlife. However, given a specific prediction in

scientific literature of warmer and drier conditions for the Jemez Mountains, and that such change would likely have a negative impact on the salamander, which requires moist microclimates, we find that the petitioned action may be warranted due to climate change.

Regarding the potential threat of chemical use, even though fire retardants and insecticides are currently being used, we did not find any substantial information that chemical use is actually affecting the salamander. We will investigate this potential threat further in our status review, and request any additional information the public may have on this potential threat.

We reviewed the petition and readily available supporting information and find that the petition presents substantial information for this factor under the threat of climate change, but not under the threat of chemical use.

#### Finding

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

Our 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 presents "substantial scientific and commercial information," which is interpreted in our regulations as "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)). We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the petitioned actions. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. Based on our evaluation of the information provided in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Jemez Mountains salamander may be warranted. The petitioner presents substantial information indicating that the salamander may be threatened by

Factor A (the present or threatened destruction, modification, or curtailment of its habitat or range), Factor C (disease), Factor D (inadequacy of existing regulatory mechanisms), and Factor E (other natural or manmade factors affecting its continued existence) throughout the entire range of the Jemez Mountains salamander. The petitioner does not present substantial information that Factor B (overutilization for commercial, recreational, scientific, or educational purposes) is currently, or in the future may be, considered a threat to the salamander.

Based on this review and evaluation, we find that the petition has presented substantial scientific or commercial information that listing the salamander throughout all or a portion of its range may be warranted due to current and future threats under Factors A, C, D, and E. Therefore, we are initiating a status review to determine whether listing the Jemez Mountains salamander under the Act is warranted. We will issue a 12-month finding as to whether any of the petitioned actions are warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the salamander.

The "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding to determine whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination of whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, as part of the 12-month finding on a petition, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the salamander. The petitioner requests that critical habitat be designated for this species. If we determine in our 12-month finding that listing the salamander is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

#### References Cited

A complete list of all references cited in this finding is available upon request from the New Mexico Ecological

Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

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

Dated: July 31, 2009.

**James J. Slack,**

*Acting Deputy Director, Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[FWS-R9-MB-2008-0124; 91200-1231-9BPP-L2]

RIN 1018-AW31

#### **Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2009-10 Season**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009-10 migratory bird hunting season.

**DATES:** We will accept all comments on the proposed regulations that are postmarked or received in our office by August 21, 2009.

**ADDRESSES:** You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018-AW31, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the

Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:** In the April 10, 2009, **Federal Register** (74 FR 16339), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2009-10 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 29 Indian Tribes, based on the input we received in response to the April 10, 2009, proposed rule. As described in that proposed rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to Tribal requests for recognition of their reserved hunting rights and, for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal hunters on their reservations. The guidelines include possibilities for:

- (1) On-reservation hunting by both Tribal and nontribal hunters, with hunting by nontribal hunters on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);
- (2) On-reservation hunting by Tribal members only, outside of the usual Federal frameworks for season dates and length, and for daily bag and possession limits; and
- (3) Off-reservation hunting by Tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Convention between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal hunters on all lands within the exterior boundaries of reservations where Tribes

have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal hunters on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the Tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a Tribe and State with the aim of facilitating an accord. We also will consult jointly with Tribal and State officials in the affected States where Tribes wish to establish special hunting regulations for Tribal members on ceded lands. Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of **Federal Register** publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by Tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource. Before developing the guidelines, we reviewed available information on the current status of migratory bird populations, reviewed the current status of migratory bird hunting on Federal Indian reservations, and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by Tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal hunters on dates that are within Federal frameworks, but which are different from those established by the State(s)