

voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

#### J. Executive Order 12898

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

While EPA has not assessed the potential impact of this proposed rule on minority and low-income populations, EPA did assess the potential impact of the final RRP rule as a whole. As a result of the final RRP rule assessment, contained in the economic analysis for the final RRP rule, EPA has determined that the final RRP rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population (Ref. 9).

#### List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: April 15, 2009.

**Lisa P. Jackson,**  
*Administrator.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. Section 745.225 is amended by revising paragraphs (c)(14) introductory text, (c)(14)(i), (c)(14)(ii)(D)(6), and (c)(14)(iii) to read as follows:

#### § 745.225 Accreditation of training programs: target housing and child-occupied facilities.

\* \* \* \* \*

(c) \* \* \*

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) \* \* \*

(D) \* \* \*

(6) For renovator or dust sampling technician courses only, a digital photograph of the student.

\* \* \* \* \*

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following training courses can be accomplished by using either the sample form, entitled *Training Course Follow-up* or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

\* \* \* \* \*

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#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R8-ES-2008-0087; MO 92210 50083-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Tehachapi Slender Salamander (*Batrachoseps stebbinsi*) as Threatened or Endangered

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Tehachapi slender salamander (*Batrachoseps stebbinsi*) as a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Tehachapi slender salamander may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing this species is warranted. To ensure that the status review is comprehensive, we are soliciting information and data regarding this species. We will initiate a determination on critical habitat for this species, if and when we initiate a listing action.

**DATES:** To allow us adequate time to conduct this review, we request that information be received on or before June 22, 2009.

**ADDRESSES:** You may submit information 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: FWS-R8-ES-2008-0087; 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 information received at <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 information).

**FOR FURTHER INFORMATION CONTACT:** Michael McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2943 Portola Road, Suite B,

Ventura, CA 93003; telephone 805-644-1766 extension 372; facsimile 805-644-3958. If you use a telecommunications device for the deaf (TDD), 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 concerning the status of the Tehachapi slender salamander (*Batrachoseps stebbinsi*). 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 Tehachapi slender salamander. We are seeking information regarding:

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

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the 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; and

(3) Information on management programs for the conservation of the Tehachapi slender salamander.

(4) Factors that pose a threat to the Tehachapi slender salamander (those listed above, and otherwise) and the potential cumulative effects of these factors that may threaten or endanger the Tehachapi slender salamander.

If we determine that listing the Tehachapi slender salamander is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to specific areas within the geographical area occupied by the Tehachapi slender 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 specific 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.

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 status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not 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 Web site. 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 personal identifying 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>.

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, Ventura Fish and Wildlife 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 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 our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial 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 scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On February 28, 2006, we received a petition, dated February 17, 2006, requesting that we list the Tehachapi slender salamander as a threatened or endangered species. The petition, submitted by Mr. Jeremy Nichols of Denver, Colorado, was clearly identified as a petition for a listing rule, and contained the name, signature, and address of the petitioning private citizen. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline and active imminent threats.

In response to the petition, we sent a letter to the petitioner dated April 20, 2006, explaining that we would not be able to address his petition until fiscal year 2007. The reason for this delay was that responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded in our April 20, 2006, letter that emergency listing of the Tehachapi slender salamander was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements, until funding recently became available to respond to this petition.

##### Species Information

###### Description and Taxonomy

The Tehachapi slender salamander (*Batrachoseps stebbinsi*) is a member of

the lungless salamander family, Plethodontidae. The genus *Batrachoseps* includes the slender salamanders that are distributed along the Pacific coast region between Oregon and northern Baja California, Mexico (Jockusch and Wake 2002, p. 362). Most members of the genus *Batrachoseps* are adapted to digging and burrowing underground. Species in this genus are relatively large, and tend to have elongated bodies and tails and reduced limbs compared to other lungless salamanders (CaliforniaHerps 2007, p. 2; Hansen and Wake 2005, p. 694; Jockusch and Wake 2002, p. 362). The Tehachapi slender salamander is considered to be closely related to the Kern Canyon slender salamander (*Batrachoseps simatus*) (Hansen and Stafford 1994, p. 252).

The Tehachapi slender salamander is sexually dimorphic. The average size of adult females is 2.24 inches (in) (57 millimeters (mm)), and adult males average 2.13 in (54 mm) snout to vent length (Hansen and Wake 2005, p. 694). The species has a broader head, longer legs, a shorter tail, and broader feet compared to other *Batrachoseps* species (Brame and Murray 1968, p. 20; CaliforniaHerps 2007). Both front and hind feet have four toes and are more webbed than other *Batrachoseps* species (Brame and Murray 1968, p. 18; Californiaherps 2007). The species lacks lungs and breathes through its smooth, thin skin (Hansen and Stafford 1994, p. 252; Californiaherps 2007, p. 2). The dorsal color may be dark red, brick red, or light or dark brown with light tan or black patches or blotches that may form a band-like pattern (Brame and Murray 1968, p. 18; Californiaherps 2007, p. 2).

The petition provided information indicating that the two known populations of the Tehachapi slender salamander may represent separate species, based on Hansen and Wake (2005, p. 694). Hansen and Wake (2005, p. 694) report high levels of differences in coloration, size, and genes between the Caliente Canyon population and the population found in the Tehachapi Mountains and suggest that these two populations represent different species. According to Hansen (2007, p. 1), the morphological and genetic differences between the two populations provide evidence that they have been separated for a long time and are likely not interbreeding. Due to the distance between the Tehachapi Mountain and the Caliente Creek Canyon populations (closest estimated distance is 13 miles (21 kilometers)) and Highway 58 dividing them, it is unlikely that any gene flow occurs between them.

However, the petitioner clarifies that the petition applies to both populations.

#### Distribution

The Tehachapi slender salamander was first described in 1968. The species is found in two locations, both of which are in Kern County, California (Brame and Murray 1968, p. 20; Hansen and Wake 2005, pp. 693 and 695). The Caliente Canyon location, also referred to as the Caliente Creek area, is situated in the southern foothills of the Sierra Nevada Mountains and south of Kern Canyon. This area is known to contain the highest diversity of species of the *Batrachoseps* genus (Jockusch 1996, p. 79). The majority of the Caliente Canyon distribution occurs on private land. The second location is southwest of the Caliente Canyon area, in the Tehachapi Mountains. The Tehachapi Mountains connect the Southern Sierra Mountain Range with the Transverse Ranges and form the southeastern boundary of the Central Valley of California. The majority of the Tehachapi Mountain population occurs on Tejon Ranch.

The home range size of the Tehachapi slender salamander is unknown, although the species is believed to be sedentary (Jockusch 1996, p. 80; Hansen and Wake 2005, p. 694). Genetic studies of *Batrachoseps* species indicate that females have limited movement, suggesting that home ranges are likely to be small. Jockusch (1996, p. 80) observed genetic differences in black-bellied slender salamander (*Batrachoseps nigriventris*) populations over short geographic distances, indicating that the females have not moved between populations for millions of years.

The Caliente Canyon and Tehachapi Mountain populations are sympatric (co-occur) with the yellow-blotched ensatina salamander (*Ensatina eschscholtzii croceater*). The Tehachapi Mountain population also co-occurs with the black-bellied slender salamander in the Pastoria and Tejon Creek drainages (Hansen and Wake 2005, p. 694). Although the range of the Tehachapi slender salamander overlaps with that of the black-bellied slender salamander, the Tehachapi slender salamander appears to be more of a habitat specialist (Hansen and Wake 2005, p. 694).

The Service has limited information about the size and distribution of the Tehachapi Mountain and Caliente Canyon populations of the Tehachapi slender salamander; however, the Service does have documented occurrence information based on CNDDDB data and published literature

(CNDDDB 2007, Jockusch and Wake 2002, p. 367, *in litt.* Flaxington 2007).

#### Habitat Characteristics

Although all the species in the genus *Batrachoseps* are strictly terrestrial during all life stages, they are dependent on moisture. Species in this genus are either restricted to moist microhabitats or are only seasonally active above the soil surface in arid regions (Jockusch and Wake 2002, p. 362). The Tehachapi slender salamander has been observed in mesic (moderately to constantly moist) microhabitats in areas that are moderately arid in southern California. Specifically, the species has been recorded only on north-facing slopes within canyons or ravines, beneath rocks, fallen logs, talus, or leaf litter in Caliente Canyon and the Tehachapi Mountains in Kern County (Hansen and Wake 2005, p. 694; CaliforniaHerps 2007, p. 2).

The Caliente Canyon population is found at lower elevations (1,660 to 2,999 feet (ft) (506 to 914 meters (m)) in Caliente Canyon (CNDDDB 2007; Hansen and Wake 2005, p. 693) in limestone or granite talus and scattered rocks (Hansen and Wake 2005, p. 694). The Tehachapi Mountain population is found in the canyons of the Tehachapi Mountains, at higher elevations (3,350 ft to 4,600 ft (1,021 m to 1,402 m)) under wood, leaf litter, or talus (CaliforniaHerps 2007, p. 2; CNDDDB 2007; Hansen and Wake 2005, p. 694). The species has been found in microhabitats containing areas of hardwood (e.g., open canopies of sycamores (*Platanus racemosa*), California buckeyes (*Aesculus californica*), and live oaks (*Quercus* spp.)), conifers, and riparian vegetation (CNDDDB 2007).

#### Life History

Tehachapi slender salamanders spend most of their time below ground. Individuals emerge during periods of precipitation. The surface activity period is February to March, but may extend to April or May in years with high precipitation (Hansen and Wake 2005, p. 694).

The breeding season is unknown; however, Hansen and Wake (2005, p. 694) suggest that the timing of mating and egg deposition may vary with climate pattern. The Tehachapi slender salamander breeds on land; however, breeding behavior and specific habitat requirements are unknown (Hansen and Wake 2005, p. 694). Although nests have not been found for the species, it is likely that eggs are deposited deep within the rock talus or litter (Hansen and Wake 2005, p. 694). Young hatch

fully formed (CaliforniaHerps 2007, p. 2).

Information on the diet of the species is sparse, as is information on its predators. The diet is comprised of small arthropods and other invertebrates (Brame and Murray 1968, p. 1; Hansen and Wake 2005, p. 694; Californiaherps 2007, p. 2). Possible predators include larger vertebrates, such as snakes.

A unique behavioral characteristic of *Batrachoseps* species is that they can coil their bodies much like a snake or a wire spring (Brame and Murray 1968, p. 1). In addition to coiling, defensive behaviors of the Tehachapi slender salamander include immobility, rapid crawling, and the ability to detach and regenerate the tail (Hansen and Wake 2005, p. 694; Californiaherps 2007, p. 2).

#### *Current Status*

The Tehachapi slender salamander was listed as threatened under the California Endangered Species Act (CESA) by the State of California on June 27, 1971 (California Natural Diversity Database 2007). The species has a global heritage ranking of G2 meaning that the species is considered globally imperiled (NatureServe 2006, p. 1). The species currently has no status under the Federal Endangered Species Act.

#### **Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding species to the Federal List 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) 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 90-day finding, we evaluate whether information concerning threats to the Tehachapi slender salamander, as presented in the petition and clarified by information available in our files at the time of the petition review, constitutes substantial scientific or commercial information such that listing under the Act may be warranted. Our evaluation of this information is presented below.

#### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The petitioner states that population declines and localized extirpation of the Tehachapi slender salamander may be occurring and that these may be due to the modification and destruction of salamander habitat by residential and commercial development, road construction, mining, domestic livestock grazing, and flood control projects.

Habitat destruction, degradation, and fragmentation have occurred in the past, and continue to occur within the range of the Tehachapi slender salamander, although we do not have information on the degree of these impacts at this time. Based on maps from the Tejon Ranch's Web site, the habitat range, reported sightings of the species (CNDDDB 2007), and the research of Jockusch and Wake (2002, p. 367), general plans for future development on the ranch appear to overlap with 5 of the 9 known Tehachapi Mountain population occurrences (CNDDDB 2007, Jockusch and Wake 2002, p. 367). That said, we do not have detailed information concerning where development footprints would occur. Tejon Ranch Corporation is currently developing a multispecies Habitat Conservation Plan that is proposed to include conservation of the Tehachapi slender salamander on Tejon Ranch lands. That document has not yet been completed, and we are continuing to work with Tejon Ranch Corporation on the development of this conservation strategy.

The petition also generally cites road construction and maintenance, mining, livestock grazing, and flood control projects as having a negative effect on the species and its habitat. Sources cited in the petition, in addition to the information provided in the CNDDDB (2007) records, confirm the claims in the petition that habitat disturbances from roads and livestock grazing continue to occur in the Caliente Canyon area occupied by the species. Of the nine known occurrences of the Caliente Canyon population, three occur on Bureau of Land Management lands (BLM) where road construction and maintenance, livestock grazing, and mining activities are known to occur (CNDDDB 2007; Kuritsubo pers. com. 2008). Additionally, Hansen and Wake (2005, p. 693) state that freeway and highway construction have adversely affected the Tehachapi slender salamander and its habitat. Based on current information in our files regarding Tejon Ranch Corporation's development plans, mining, livestock

grazing, road construction and maintenance, and information regarding impacts to Tehachapi slender salamander habitat on BLM lands, we believe that the threats associated with Factor A documented in the petition continue to exist.

The data presented in the petition, as well as information in our files, relating to threats to the Tehachapi slender salamander and its habitat from road construction and maintenance, residential and commercial development, livestock grazing, and mining are credible and substantial. We find that the petition presents substantial information that the Tehachapi slender salamander may be threatened by the present or threatened destruction, modification, or curtailment of habitat or range.

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

The petition did not provide information or list any threats to the Tehachapi slender salamander from overutilization for commercial, recreational, scientific, or educational purposes, nor do we have any information in our files regarding potential threats to the species due to this factor. As a result, we have determined that the petition does not present substantial information that the Tehachapi slender salamander may be threatened by overutilization for commercial, recreational, scientific, or educational purposes.

#### *C. Disease or Predation*

The petition did not provide information or list any threats to the Tehachapi slender salamander resulting from disease or predation, nor do we have any information in our files regarding potential threats to the species due to this factor. As a result, we have determined that the petition does not present substantial information that the Tehachapi slender salamander may be threatened by disease or predation.

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

The petition discussed existing regulatory mechanisms and their perceived inadequacy. The petitioner claimed that protections afforded the species under the CESA are limited because the State statute does not bind Federal agencies, such as the BLM, that manage lands containing Tehachapi slender salamander habitat and lacks explicit protections for habitat and recovery plan requirements to protect habitat and develop recovery plans. The petitioner also asserted that BLM's

designation of the Tehachapi slender salamander as a sensitive species provides no protection to the salamander.

The California Endangered Species Act (CESA) provides protections for the Tehachapi slender salamander both through the prohibition on take of state listed species without authorization and the requirement that any take authorized under the statute must be fully mitigated. However, the interpretation of “take” under state law may be narrower than under the ESA and may not fully address impacts to the species resulting from habitat loss or degradation. Moreover, while CESA offers protections for the Tehachapi slender salamander on state and privately owned land, it does not constrain Federal activities, particularly those occurring on Federal lands, where a substantial proportion of Tehachapi slender salamanders occur. Because the Tehachapi slender salamander is not protected under Federal law, Federal agencies are not required to consider the effects of their actions on the species or mitigate for those impacts.

Based on CNDDDB data and land boundary confirmation from BLM, we believe that approximately one third of the known occurrences of the Caliente Canyon population of the Tehachapi slender salamander occurs on BLM land (Kuritsubo pers. com. 9/2/2008). BLM has identified the Tehachapi slender salamander as a sensitive species and surveys for the salamander prior to conducting activities that may affect the species in areas containing suitable habitat in accordance with agency policy directives. However, although BLM considers the presence of salamanders when planning and implementing management activities (Kuritsubo 2007, p. 1; Larson 2008, p. 1) it is not legally required to, and does not necessarily, avoid or mitigate the impacts of agency actions on the species.

The prohibition on “take” of the Tehachapi slender salamander under CESA may not fully address impacts to the species resulting from habitat loss on state and private lands, and neither CESA nor Federal law currently protects the salamander and its habitat from the impacts of Federal activities, particularly those that occur on Federal lands. Therefore, we believe that there are potential threats to the species with respect to this factor. We have determined that the petition presents substantial information that the Tehachapi slender salamander may be threatened due to the inadequacy of existing regulatory mechanisms. We hope to gain further information on the

magnitude of the threats under Factor D during the status review.

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

The petitioner pointed out that the small size of the populations and localized occurrences of the species make it particularly vulnerable to environmental, genetic, and demographic stochastic events. In addition, the petitioner states that available scientific information indicates that climate change exemplified by hotter and drier summers and more extreme weather patterns threatens the Tehachapi slender salamander.

#### **Stochastic Events**

The petition did not include information on the size of the Caliente Creek and Tehachapi Mountain populations of the Tehachapi slender salamander, and we have no information on this in our files. Nor do we have information concerning the species’ status to indicate whether the populations are increasing, decreasing, or stable. We note that the number of documented occurrences of the species since it was discovered is small. Based on the best scientific and commercial information that we have to date, the species does appear to be rare because of its limited distribution, few recorded individuals, and specific habitat requirements. The species may be vulnerable to stochastic events (*e.g.*, severe drought) because the range of the species is limited, the species is composed of only two populations that are separate from each other, there is an apparent lack of gene flow between the two populations, and the species occupies a restricted mesic habitat (Hansen and Wake 2005, p. 694; Hansen 2007, p. 1).

Therefore, we find the petition and information readily available to the Service presents substantial information to indicate stochastic events may be a threat to the species.

#### **Climate Change**

As cited in the petition, the Environmental Protection Agency (EPA) reported in 1997 (p. 1) that the earth’s climate is predicted to change as a result of human activities that alter the atmosphere by causing a cumulative increase in greenhouse gases, particularly carbon dioxide, methane, nitrous oxide, and chlorofluorocarbons. In the report, the EPA (1997, p. 2) states that average temperatures and frequency of extreme rainfall in the United States are expected to rise. The EPA predicts that California may experience an

increase of 5 degrees Fahrenheit (2.8 degrees Celsius) and an overall increase in precipitation of 20 to 30 percent by 2100. The report states that Fresno, California, approximately 162 mi (261 km) north of the Tehachapi Mountains, has experienced an average increase in temperature of 1.4 degrees Fahrenheit (0.8 degrees Celsius) over the past 100 years. Despite the trend observed for the United States in increased rainfall, Fresno has experienced a decrease in precipitation by up to 20 percent over the past century (EPA 1997, p. 2). The Intergovernmental Panel on Climate Change provides a more recent report that supports EPA’s prediction on a global scale and adds that rising air and ocean temperature is unquestionable (IPCC 2007, p. 4).

We acknowledge that temperatures in southern California where the Tehachapi slender salamander occurs are likely to increase. We also agree that, if hotter and drier summers and more extreme weather patterns were to occur within its range, the Tehachapi slender salamander may be negatively affected. However, we believe that climate change models that are currently available are not yet capable of making meaningful predictions of climate change for specific, local areas such as the range of the Tehachapi slender salamander (Parmesan and Matthews 2005, p. 354). We do not have models to predict how the climate in the range of the Tehachapi slender salamander will change, and we do not know how any change may alter the range of the species. Although the petitioner provides information on climate change models and trends, we do not have information on past and future weather patterns within the specific range of the species to conclude that the species may be threatened by climate change.

Therefore, we find the information presented in the petition does not provide substantial information to indicate that climate change may be a threat to the species. However, we will continue to evaluate the potential affects of climate change on the species and its habitat during our status review.

Based on the information submitted in the petition, we have determined that substantial information has been presented that the Tehachapi slender salamander may be threatened due to other natural or manmade factors (stochastic events) affecting its continued existence (Factor E).

#### **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 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 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 reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition. The petition and supporting information identified numerous factors affecting the Tehachapi slender salamander including: road construction, residential and commercial development, mining, grazing, and flood control projects (Factor A); lack of regulatory mechanisms protecting the species and its habitat (Factor D); and climate change and environmental, genetic, and demographic stochastic events (Factor E). Of the factors listed above, we conclude that substantial information was provided that road construction, residential and commercial development, livestock grazing, and mining (Factor A) may threaten Tehachapi slender salamanders. We also found that the species may be threatened by the inadequacy of existing regulatory mechanisms (Factor D) and stochastic events (Factor E).

On the basis of information provided in the petition and other information readily available to us, we have determined that the petition presents substantial scientific or commercial information that listing the Tehachapi slender salamander may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. During the status review, we will consider threats to the Tehachapi slender salamander under all of the listing factors above. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

The petitioner also requested that critical habitat be designated for the Tehachapi slender salamander. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding following the status review of the species that listing the Tehachapi slender salamander is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

#### **Significant Portion of the Species' Range**

The petitioner seeks to list the entire Tehachapi slender salamander species. During our status review we will evaluate whether the best available scientific and commercial information supports listing the species throughout its entire range, or whether there may be a significant portion of the range that may be threatened or endangered. As a result, we will defer our analysis and determination of issues of significant portion of range to our status review and the 12-month finding.

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 as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, a positive 90-day finding does not mean that the 12-month finding also will be positive.

#### **References Cited**

A complete list of all references cited is available, upon request, from our Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

#### **Author**

The primary author of this notice is the staff of the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

#### **Authority**

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

Dated: April 15, 2009.

#### **Rowan W. Gould,**

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

[FR Doc. E9-9220 Filed 4-21-09; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[FWS-R3-ES-2009-0017; 92210-1117-0000-FY09-B4]

**RIN 1018-AW47**

#### **Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Hine's Emerald Dragonfly**

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

**ACTION:** Revised proposed rule; reopening of public comment period, proposal to designate additional critical habitat unit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our July 26, 2006, proposed rule on the designation of critical habitat for the Hine's emerald dragonfly (*Somatochlora hineana*) under the Endangered Species Act of 1973, as amended (Act). At this time the Service is reconsidering designating critical habitat on the Hiawatha National Forest in Michigan and the Mark Twain National Forest in Missouri as identified in the July 26, 2006, proposal. During the process of reconsidering the exclusion of these Federal lands, critical habitat designated by the September 5, 2007, final rule remains in place, while the Federal lands as described in the July 2006 proposed rule are considered as proposed critical habitat. Through this notice, the Service is also taking the opportunity pursuant to section 4(a)(3)(B) of the Act to propose a new unit on the Mark Twain National Forest that was not known to be occupied by the Hine's emerald dragonfly at the time of the September 5, 2007, final rule but has since been discovered. The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on the proposed rule, specifically regarding the new proposed unit and the exclusion of U.S. Forest Service lands from the 2007 final designation. Comments previously submitted on the proposed critical habitat designation need not be resubmitted; they have already been incorporated into the public record and will be fully considered in the final decision.

**DATES:** We will consider comments received on or before June 22, 2009.

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