

(f) The design pressure for polyamide-11 (PA-11) pipe produced after February 7, 2008 may exceed a gauge pressure of 100 psig (689 kPa) provided that:

- (1) The design pressure does not exceed 200 psig (1378 kPa);
- (2) The pipe size is nominal pipe size (IPS) 4-inch or less;
- (3) The pipe has a standard dimension ratio of SDR-11 only; and
- (4) Pipes with design pressures above 100 psig (689 kPa) shall be buried with a warning tape or other device sufficient to warn an excavator of the presence of a high pressure gas line near the tape or other device before reaching the burial depth of the pipeline.

Issued in Washington, DC, on December 27, 2007.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R8-ES-2007-0022; 1111 FY07 MO; ABC Code: B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Pygmy Rabbit (*Brachylagus idahoensis*) as Threatened or Endangered

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

**ACTION:** Notice of 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 pygmy rabbit (*Brachylagus idahoensis*) as threatened or endangered 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 pygmy rabbit may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. We will make a determination on critical habitat for this species, which was also requested in the petition, if and when we initiate a listing action.

**DATES:** The finding announced in this document was made on January 8, 2008.

To be considered in the 12-month finding for this petition, data, comments, and information must be submitted to us on or before March 10, 2008.

**ADDRESSES:** You may submit comments 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-2007-0022; 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:**

Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office by mail (see **ADDRESSES**), by telephone (775-861-6300), or by facsimile (775-861-6301). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Information Solicited**

When we make a finding that a petition presents substantial information to indicate 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 pygmy rabbit. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We are opening a 60-day comment period to allow all interested parties an opportunity to provide information on the status of the pygmy rabbit throughout its range, including:

(1) Information regarding the species' historical and current population status, distribution, and trends; its biology and ecology; and habitat selection;

(2) information on the effects of potential threat factors that are the basis for a listing determination under section 4 (a) of the Act, which are:

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

(b) overutilization for commercial, recreational, scientific, or educational purposes (in relation to the pygmy rabbit, this includes hunting and research);

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence; or

(3) information on management programs for the conservation of the pygmy rabbit.

Please note that comments merely stating support 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 (16 U.S.C. 1531 *et seq.*) 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." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your comments and materials concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments 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's Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502-7147; telephone 775-861-6300.

#### Background

For more information on the biology, habitat, and range of the pygmy rabbit, please refer to the "Species Information" section in our previous 90-day finding published in the **Federal Register** on May 20, 2005 (70 FR 29253).

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 April 21, 2003, we received a formal petition, dated April 1, 2003, from the Committee for the High Desert, Western Watersheds Project, American Lands Alliance, Oregon Natural Desert Association, Biodiversity Conservation Alliance, Center for Native Ecosystems, and Mr. Craig Criddle, requesting that the pygmy rabbit found in California, Idaho, Montana, Nevada, Oregon, Utah, and Wyoming be listed as threatened or endangered in accordance with section 4 of the Act. The petition also requested that we designate critical habitat concurrently with listing, if listing occurs. The petition, which was clearly identified as such, contained information on the natural history, biology, and distribution of the pygmy rabbit. It also contained information on what the petitioners reported as potential threats to the species, including but not limited to, habitat loss due to agricultural practices, sagebrush conversion, livestock grazing, fire, mining, energy development, and recreation; hunting; research practices; disease; predation; intra- and inter-specific competition; natural stochastic events such as floods and drought; mortality caused by collisions with off-road vehicles, snowmobiles, and automobiles; and life history traits. The petition also discussed existing regulatory mechanisms and their perceived inadequacies.

In response to the petitioner's requests, we sent a letter to the petitioners dated June 10, 2003, explaining that we would not be able to address their petition until fiscal year 2004. Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2003. On May 3, 2004, we received a 60-day notice of intent to sue, and on September 1, 2004, we received a complaint regarding our failure to carry out the 90-day and 12-month findings on the status of the pygmy rabbit. On March 2, 2005, we reached an agreement with the plaintiffs to submit to the **Federal Register** a completed 90-day finding by May 16, 2005, and to complete, if applicable, a 12-month finding by February 15, 2006 (*Western Watersheds Project et al. v. U.S. Fish and Wildlife Service* (CV-04-0440-N-BLW) (D. Idaho)).

On May 20, 2005, we published a 90-day finding in the **Federal Register** (70 FR 29253) stating that the petition did not present substantial information indicating that listing the pygmy rabbit may be warranted. On March 28, 2006, we received a complaint regarding alleged violations of the Act and the Administrative Procedure Act with regard to our May 20, 2005, 90-day finding (*Western Watersheds Project et al. v. Gale Norton and U.S. Fish and Wildlife Service* (CV 06-CV-00127-S-EJL) (D. Idaho)). On September 26, 2007, the court issued a judgment and memorandum order stating that the Service improperly imposed a higher standard than required for a 90-day petition finding when we reviewed the petition, and therefore found the Service's denial of the petition was contrary to the applicable law. More specifically, the court found that the Service inappropriately disputed the accuracy and the reliability of the information offered in the petition as to habitat and population loss without providing a rationale based on more accurate evidence of the species' range and reduction of population or habitat. The ruling states, and the Service agrees, that what is required at this stage of the listing process is a review of the petition for a determination of whether or not it presents substantial information indicating to a reasonable person that the petitioned action may be warranted. This standard is in contrast to the "best scientific and commercial

data" standard applied to actually listing a species. The court's order remanded our May 20, 2005, 90-day finding and required the Service to issue a new 90-day finding on or before December 26, 2007. This notice constitutes our new 90-day finding to comply with the September 26, 2007, court ruling.

This finding does not address our prior listing of the Columbia Basin distinct population segment (DPS) of the pygmy rabbit. On November 30, 2001, we published an emergency listing and concurrent proposed rule to list this DPS of the pygmy rabbit as endangered (66 FR 59734 and 66 FR 59769, respectively). We listed the Columbia Basin DPS of the pygmy rabbit as endangered in our final rule dated March 5, 2003 (68 FR 10388).

### Finding

Based on our reconsideration of the information provided in the petition, we find that it presents substantial scientific information that listing the pygmy rabbit may be warranted. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific and commercial information" threshold (as mentioned above). Therefore, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species.

If we determine that listing the pygmy rabbit is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species.

### Author

The primary author of this notice is the staff of the Nevada Fish and Wildlife Office (see **ADDRESSES**).

### Authority

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

Dated: December 17, 2007.

### Kenneth Stansell,

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

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