

3. Amend §98.53 by revising paragraphs (f), (h)(3), and (h)(4) to read as follows:

§ 98.53 Matching fund requirements.

* * * * *

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this subsection. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds pursuant to § 98.16(c)(2).

* * * * *

(h) * * *

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to earn the State's full allotment of Federal matching funds available under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List *Cymopterus deserticola* (desert cymopterus) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list *Cymopterus deserticola* (desert

cymopterus) as endangered under the Endangered Species Act of 1973, as amended (Act). After reviewing the available scientific and commercial information, we find that listing the species as threatened or endangered throughout all or a significant portion of its range is not warranted at this time. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to the species. This information will help us monitor the status of this species.

DATES: The finding announced in this document was made on November 9, 2004. Although no further action will result from this finding, we request that you submit new information concerning the status of, or threats to, this species, whenever it becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Please submit any new information, materials, comments, or questions concerning this species to the above address.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section above) (telephone at 805/644-1766; facsimile 805/644-3958).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific and commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition. We may find that the petitioned action is: (a) Not warranted, or (b) warranted, or (c) warranted but precluded by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register**.

On April 15, 2002, we received a petition, dated March 29, 2002, from the California Native Plant Society and the Center for Biological Diversity, requesting us to list *Cymopterus deserticola* (desert cymopterus) as an endangered species and designate critical habitat. On June 12, 2002, we sent a letter to the petitioners explaining that we would not be able to address their petition in the current fiscal year because court orders and settlement agreements required nearly all of our listing funding. On April 25, 2003, the

California Native Plant Society and the Center for Biological Diversity filed a complaint against the Service for failure to make the mandatory 90-day and 12-month petition findings (*California Native Plant Society and the Center for Biological Diversity v. U.S. Fish and Wildlife Service*, C-03-1881-JCS). Settlement due dates were agreed to of February 1, 2004, for the 90-day finding, and, if the 90-day finding was found to be substantial, November 1, 2004, for the 12-month finding. The Director signed the 90-day finding on January 29, 2004. On February 10, 2004, we published a notice in the **Federal Register** announcing our initial petition finding that the petitioned action may be warranted (69 FR 6240) and initiated a status review at that time. We have now completed our status review of the best available scientific and commercial information on *Cymopterus deserticola*, and have reached a determination regarding the petitioned action.

Species Information

Cymopterus deserticola, an herbaceous perennial plant, is a member of the carrot family (Apiaceae). Individual plants generally reach 6 inches (in) (15 centimeters (cm)) in height when in flower. *Cymopterus deserticola* is unusual in having herbaceous above-ground leaves and inflorescences (flowering parts of plant) that die back at the end of the growing season, leaving only the perennial taproot to overwinter. The plant may only produce the leaves and inflorescences in years when favorable climatic conditions, including sufficient rainfall, are present. In some years, individuals may produce leaves but not inflorescences. In years when flowering does occur, the inflorescences emerge in early spring. During unfavorable climatic conditions, such as severe drought, the plant may persist solely as a dormant taproot; the length of time the perennial taproot of *C. deserticola* can survive is unknown.

Cymopterus deserticola grows on loose, sandy soils in Joshua tree woodland, saltbush scrub, and Mojavean desert scrub communities in the western Mojave Desert, at elevations between 2,000 and 3,000 feet (610 and 915 meters) (Bagley 1998). The sandy soils that *C. deserticola* requires can be found on alluvial fans and basins, stabilized sand fields, and occasionally sandy slopes of desert dry lake basins. This species typically grows in the cool, moist conditions of winter and early spring, and goes dormant as the warmer weather progresses in April and May (Bagley 1998). Very little is known

about the reproduction and recruitment of *C. deserticola*.

Range and Distribution

In 1915, Thomas Brandegee first described *Cymopterus deserticola* from material collected near Kramer Junction, San Bernardino County, California. The historic distribution of *C. deserticola* ranges from Apple Valley, San Bernardino County, northward approximately 55 miles (mi) (89 kilometers (km)) to the Cuddeback Lake basin in San Bernardino County, and westward approximately 45 mi (73 km) to the Rogers and Buckhorn Dry Lake basins on Edwards Air Force Base (EAFB) in Kern and Los Angeles Counties, California (Mitchell *et al.* 1995; California Department of Fish and Game's California Natural Diversity Database (CNDDDB) 2003).

The Apple Valley sites are known only from historic collections made in 1915, 1920, and 1941. Recent attempts to locate *Cymopterus deserticola* in areas of the historic Apple Valley collections have been unsuccessful, and it appears that these sites have been lost as a result of urban development and off-highway vehicle (OHV) use (Moe 1988). The Apple Valley sites are also disjunct by at least 28 mi (45 km) from the nearest known extant populations (*i.e.*, group of individuals of the same species living and interacting in the same geographic area). The known extant range of the species is confined mostly to the Rogers Dry Lake, Harper Dry Lake, Cuddeback Dry Lake, and Superior Dry Lake basins. The Rogers Dry Lake basin, where most of the plants are known to occur, is located mainly on EAFB in the southwestern portion of the species' range. The Harper Dry Lake basin located in the central portion of the species' range is under the jurisdiction of the Bureau of Land Management (BLM) and private land owners. The Cuddeback Dry Lake basin located in the northern portion of the species' range is under the jurisdiction of BLM. The Superior Dry Lake basin located in the eastern portion of the species range is mainly on Ft. Irwin, including the Ft. Irwin expansion area. This extant range extends approximately 50 mi (80 km) from east to west and 35 mi (56 km) from north to south.

Since we published our 90-day finding on the petition to list the species on February 10, 2004 (69 FR 6240), the CNDDDB received one new record of occurrence of *Cymopterus deserticola* in San Bernardino County. This brings the total number of known records in the CNDDDB to 71 populations as of May 2004. We also received additional

records of occurrence for Kern and San Bernardino Counties in 2003 and 2004 (Service files) which have not been entered into CNDDDB. Currently there are a total of 105 known populations of *C. deserticola*.

The greatest number of known populations and individuals is located within the Rogers Dry Lake basin. The vast majority of the populations (approximately 87 percent) in this basin are located on EAFB, with a few of the known plants on BLM and private land to the north of the base. Intensive surveys for *Cymopterus deserticola* were conducted on EAFB in 1995 (Mitchell *et al.* 1995), during which 56 new populations were discovered. In all, 85 *C. deserticola* populations were observed within this basin in 1995, with 14,362 plants counted.

In 2003, EAFB developed a habitat model for *Cymopterus deserticola* and two other plant species of concern, *Calochortus striatus* (alkali mariposa lily) and *Eriophyllum mohavense* (Barstow woolly sunflower). The model used the habitat attributes of the known occurrences of these species. The purpose of the model was to identify other potential sites where these species might occur. EAFB then conducted field surveys to validate the model. Six new populations of *C. deserticola* were found on EAFB and just to the north of the base during these field surveys (Wood 2003). These new populations increased the known distribution and abundance of this species within the Rogers Dry Lake basin. Therefore, at least 91 (not 92 as incorrectly reported in the 90-day finding (69 FR 6240)) populations of *C. deserticola* are currently known to occur within the basin. According to the CNDDDB (2004), the number of individuals reported ranges from a single individual on less than 10.7 square feet (1 square meter) to a population of 5,377 individuals on 376.3 acres (ac) (152.3 hectares (ha)).

The Cuddeback Dry Lake basin is under the jurisdiction of BLM, and the grazing privileges to this area have been acquired by non-profit environmental groups. Although extensive surveys for *Cymopterus deserticola* have not been conducted within the Cuddeback Dry Lake basin, four populations are currently known to occur within the basin. The number of individual plants in these populations varies from a few to more than 40 (CNDDDB 2004), and additional data collected by BLM and the Department of Defense (DOD) in 2003 and 2004 (Service files) regarding these populations are being submitted to the CNDDDB. Dr. Michael Conner of the Desert Tortoise Preserve Committee has observed individuals of *C. deserticola*

within the Cuddeback Dry Lake basin and believes that the number of individuals would be found to be higher than is currently known if focused surveys for *C. deserticola* were conducted in the Cuddeback Dry Lake basin (M. Conner, pers. comm. 2004). Glenn Harris of the BLM has also found *C. deserticola* to be more prevalent and widespread within this basin than reported in the petition and the CNDDDB. He has found that the reported distribution and abundance of this species within this basin increases as suitable habitat is surveyed (G. Harris, pers. comm. 2004). He also believes the distribution of individuals within this basin would potentially increase if surveys focusing on *C. deserticola* and its habitat were conducted, and the actual number of individuals within this basin probably ranges from several hundred to a few thousand.

Six known populations of *Cymopterus deserticola* occur in the Harper Dry Lake basin, totaling approximately 200 individual plants (BLM 2001). However, extensive surveys focusing on *C. deserticola* have not been performed within this basin.

Within the Superior Dry Lake basin, Silverman and Cione (BLM 2001) reported a previously unknown population of 40 individuals of *Cymopterus deserticola* in 2001. The U.S. Army's Ft. Irwin conducted surveys in 2004 and found that the species occurred in greater abundance and over a wider area than previously known (Mickey Quillman, Natural Resources Manager, Ft. Irwin, pers. comm. 2004). These surveys did not include lands within the China Lake Naval Weapons Center (CLNWC) or NASA's Goldstone facility that borders Ft. Irwin and the western expansion area of the Army's National Training Center. However, *C. deserticola* was observed at the boundary between Ft. Irwin and CLNWC, and Ft. Irwin and Goldstone, indicating that there is high probability that *C. deserticola* is also present on CLNWC and Goldstone.

The extent that a species is threatened depends on numerous factors, including the species' range and distribution. Currently, the known range of *Cymopterus deserticola* is primarily based on occurrence data submitted to the CNDDDB, but such data does not rule out the existence of additional occupied areas. *C. deserticola* is cryptic in nature, and often requires several years of surveying to identify occupied and unoccupied habitat due to this species' short period of above-ground foliage and inflorescence. Also, survey information for *C. deserticola* is more complete for some areas than others, and large areas

within the plant's range have not been surveyed. With the exception of EAFB and the recent April and May 2004 surveys performed on Ft. Irwin's western expansion area in the Superior Dry Lake basin, the range and distribution of *C. deserticola* has been poorly documented, especially for non-DOD lands. In addition, survey results are not always comparable because of the variation in how individual plants and populations (group of individuals of the same species living and interacting in the same geographic area) are tallied across the landscape. Moreover, surveys only count the individuals visible above ground; consequently, survey numbers may represent only a subset of the total number of individuals within a population. Because there are no survey data for many areas, the range and distribution of *C. deserticola* are not well established and may be more extensive than indicated by currently available information. For example, many new populations of *C. deserticola* were found during recent focused surveys in Superior Dry Lake basin. From discussions with biologists from DOD (M. Quillman, pers. comm. 2004), BLM (G. Harris, pers. comm. 2004), and the Desert Tortoise Preserve Committee (M. Conner, pers. comm. 2004), *C. deserticola* is thought to be more abundant and have a wider distribution than currently documented. Nevertheless, based on the currently known numerous extant populations and the status of these populations, discussed below, we have determined that listing is not warranted at this time.

Discussion of Listing Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal endangered and threatened species list. 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). These factors and their application to *Cymopterus deserticola* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range. According to the petition, *Cymopterus deserticola* is potentially vulnerable to habitat alteration and destruction due to military activities on EAFB, the expansion of Ft. Irwin, utility construction, OHV use, oil and gas development, and Land Tenure Adjustment (LTA) (a process whereby public and private lands are exchanged and consolidated). Of the 71 *C. deserticola* population occurrences reported in the CNDDDB (2004), 55

(roughly 77 percent) are on land managed by EAFB, 9 are on BLM lands, 3 are on private lands, and 4 are located on lands with unknown ownership. Additional occurrences not yet reported to the CNDDDB are located on land managed by the BLM and private land owners.

One of the threats to known *Cymopterus deserticola* habitat mentioned by the petitioners is from the cleanup of the Propulsion Directorate Plume of groundwater contamination in the Rogers Dry Lake basin area on EAFB (EAFB 1998). The petitioners claim that the associated effects from extracting contaminated groundwater would be surface disturbance and a massive change in hydrology, and that these effects may imperil the persistence of this large population. However, EAFB is not conducting, and is not planning to conduct, groundwater extraction (EAFB in litt. 2004). The only activity that may affect *C. deserticola* is groundwater monitoring, which includes installation of wells and access to wells via foot traffic to sample groundwater at the well sites. According to EAFB, from 1999 to 2003, cleanup activities associated with this plume, which underlies this large population, have disturbed less than 0.01 ac (0.004 ha) of the 86 ac (35 ha) associated with this known population. Therefore, the number of individual plants affected by this action is expected to be minimal due to the extremely small area of disturbance at this site.

Other military activities within the boundaries of EAFB include occasional foot traffic to conduct wildlife and plant inventories. These activities should have little or no impact on *Cymopterus deserticola*. Activities in the eastern portion of the base are generally limited to foot traffic and routine range operations that have a minimal impact on *C. deserticola*, and ground training using troops and vehicles in this area is rare, typically limited to existing roads and cleared areas (EAFB, in litt. 2004). No other activities are currently being conducted on EAFB that would affect the habitat of *C. deserticola* (Shannon Collis, pers. comm. 2004).

At the time the petitioners submitted their petition, only a single population of approximately 40 individual plants was known from the Superior Dry Lake basin. The petitioners claimed that this population would be threatened with extirpation from large-scale tank maneuvers that would result from the expansion of Ft. Irwin. Although this may have been the eventual outcome for the single known population, three additional populations have been found in this basin since the petition was submitted. These four populations vary

by area and number of individuals. One population is located on 33 acres and contained 12 individuals, a second population located on 61 acres contained 60 individuals, a third population located on 298 acres contained 366 individuals, and a fourth population located on 371 acres contained 484 individuals (Ft. Irwin 2004). Although military training exercises are likely to adversely affect three of the four populations, Ft. Irwin has installed a permanent fence around the 298 acres containing the 366-plant population, thereby protecting this population from all military operations as well as from OHV use and grazing (M. Quillman, pers. comm. 2004). Permanent fencing has been effectively used by Ft. Irwin to protect the threatened plant, *Astragalus jaegerianus* (Lane Mountain milk-vetch) from military operations (M. Quillman, pers. comm. 2004). Fencing for *Cymopterus deserticola* and *A. jaegerianus* is maintained by Ft. Irwin on a monthly basis, and Ft. Irwin strictly enforces area closures. Electronic monitoring devices warn tracked vehicles on approach of closed areas, and breaches are rare (M. Quillman, pers. comm. 2004).

Although focused surveys for *Cymopterus deserticola* have not been conducted on CLNWC, which is located adjacent and to the north and west of Ft. Irwin, plants are known to occur there (M. Quillman, pers. comm. 2004). Ground-based military training operations do not occur on CLNWC, and threats to the plants on CLNWC are minimal. Focused surveys have also not been conducted on BLM lands adjacent to Ft. Irwin in the Superior Dry Lake basin. However, based on the presence of suitable habitat for *C. deserticola* on BLM land, it is highly likely that plants also occur there. As mentioned above, Ft. Irwin has conducted focused surveys of the base. To locate new populations and further delineate the range of the plant in the Superior Dry Lake basin, Ft. Irwin will expand their surveys for *C. deserticola* to include areas outside of Ft. Irwin's boundaries next year contingent upon adequate rains. CLNWC will also conduct surveys for *C. deserticola* next year, contingent upon adequate rains (Steve Penix, CLNWC, pers. comm. 2004). Therefore, because of the large number of plants (366) and their habitat (298 acres) that Ft. Irwin is protecting and the presence of plants on CLNWC where threats are minimal, we believe that *C. deserticola* is not likely to be in danger of extirpation in this area within the foreseeable future.

The petitioners claim that utility construction has impacted *Cymopterus deserticola* and its habitat in the

southern portion of Harper Dry Lake basin and the northern portion of Rogers Dry Lake basin. According to the petitioners, the known locations of *C. deserticola* within this utility corridor are the result of surveys performed for a linear energy project. Less than 1 percent of known *C. deserticola* individuals are located within designated utility corridors, and no new utility corridors are proposed in the West Mojave Plan (WMP) (BLM 2003). Utility corridors are used for both electrical transmission lines and oil and gas pipelines. Although past utility construction has likely resulted in the loss of some habitat and individual plants, we do not consider utility construction to be a major current threat to this species because very few plants are known to occur within existing corridors.

Heavy recreational OHV activity has been cited as seriously impacting potential *Cymopterus deserticola* habitat and may have been at least partly responsible for the extirpation of the population in Apple Valley (Moe 1988). The petitioners claim that OHV activity has impacted *C. deserticola* habitat in the Superior Valley, and BLM has assessed the habitat at the single previously known Superior Valley population as being in "poor condition" due to adverse effects from OHV recreation. However, with the expansion of Ft. Irwin, recreational OHV activity is now precluded from much of the area, and Ft. Irwin has now permanently fenced a large, 366-plant Superior Dry Lake population, thereby protecting it from OHV activity.

We have been unable to find any documentation indicating OHV activity as a threat to *Cymopterus deserticola* and its habitat within the Harper, Rogers, and Cuddeback Dry Lake basins. According to the WMP (BLM 2003), the Harper Dry Lake basin area is used for environmental education, nature study, and wildlife viewing, and OHV use is restricted to the open routes of travel. Within the Rogers Dry Lake basin located on EAFB, OHV activity is not allowed. Within the Cuddeback Dry Lake basin area, where there may be as many as a few thousand plants (G. Harris, pers. comm. 2004), OHV activity is designated by the BLM as a "limited" use area; in limited use areas, "motorized-vehicle access is allowed only on certain existing routes of travel, which include roads, ways, trails, and washes" (BLM 1980). In designated "open" use areas, "vehicle travel is permitted anywhere in the area if the vehicle is operated responsibly in accordance with regulations and subject to permission of private land owners if

applicable" (BLM 1980). Open use areas are the preferred destination for OHV enthusiasts, and receive much more activity than limited or moderate use areas. This does not mean, however, that OHV activity is nonexistent in limited or moderate use areas, but rather the threat of OHV activity in these areas is minimal due to the majority of OHV activity taking place in open areas. Because OHV activity is either not permitted, or only permitted to the limited passage of vehicles across the area and allowed only on designated existing roads, and that the areas described above do not receive the level of OHV activity as open areas, we do not consider OHV use as a major threat to *C. deserticola* populations within the Harper, Rogers, and Cuddeback Dry Lake basin areas.

Presently, and in the foreseeable future, the existence of *Cymopterus deserticola* does not appear to be threatened by oil and gas development. We are not aware of any oil and gas development projects within the area occupied by *C. deserticola*, nor is BLM aware of any such projects (Larry Lapre, BLM, pers. comm. 2004).

The petitioners expressed concern regarding one population located north of EAFB in the Peerless Valley that is available for LTA. They state that this action would potentially remove another site from public domain. However, according to the Record of Decision for the Western Mojave Land Tenure Adjustment Project, "Should a listed or sensitive species, other than those previously covered by consultation and conference, be found on a parcel proposed for disposal during site specific analysis, consultation will be initiated with Federal and State fish and wildlife agencies to determine if mitigation should be applied prior to or after disposal or if the disposal should not occur" (BLM 1991). Since *Cymopterus deserticola* is considered by BLM to be a sensitive species, either the loss of this site would not occur or would be mitigated.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes. The listing petition acknowledges, and we agree, that current data do not indicate that this factor constitutes a threat to *Cymopterus deserticola*.

C. Disease or Predation. The listing petition acknowledges, and we agree, that current data do not indicate that disease constitutes a threat to *Cymopterus deserticola*. The listing petition also acknowledges that there is currently nothing in the scientific literature about the effects of livestock grazing on this species. However,

grazing has been documented as a threat on EAFB in the Rogers Dry Lake basin area (EAFB, in litt. 2004), and as noted by the petitioners, grazing continues to occur in several areas within the range of *C. deserticola*.

Even though livestock grazing on EAFB is prohibited, a research study site for *Cymopterus deserticola* on EAFB was directly affected when the aboveground portion of all plants were eaten by trespass sheep in 1994. By 2001, EAFB installed a fence along the boundary of the base preventing access by livestock and eliminating the threat of grazing on *C. deserticola* in the Rogers Dry Lake basin area of EAFB (EAFB, in litt. 2004).

Cymopterus deserticola occurs within the 26,314-ac (10,649-ha) Harper Lake cattle grazing allotment, which is within the Harper Dry Lake basin and is managed by BLM. In the past, trespass grazing (cattle and sheep) from this allotment has been chronic on adjacent lands where a population of *C. deserticola* is located (BLM 1998). BLM has installed a fence to reduce the possibility of trespass grazing on the adjacent land and to confine the grazing to the allotment itself where, for the time being, grazing still occurs (Charles Sullivan, BLM, pers. comm. 2004). Therefore, currently, grazing by livestock on *C. deserticola* and potential impacts (e.g., trampling, soil compaction) to the habitat have been minimized in the Harper Dry Lake basin, and we believe that *C. deserticola* is not likely to be in danger of extirpation in this area within the foreseeable future. In addition to the fencing installed by BLM, as mitigation for the Ft. Irwin expansion area, the Army has purchased lands within the Harper Lake cattle grazing allotment (Anthony Chavez, BLM, pers. comm. 2004). As a condition for this purchase, the owner has relinquished all grazing privileges to the allotment. Therefore, cattle grazing will no longer occur in this allotment, and the potential threat to *C. deserticola* from grazing will be eliminated from this large area.

Cymopterus deserticola occurs within the 49,000-ac (19,830-ha) Pilot Knob cattle grazing allotment, which is located within the Cuddeback Dry Lake basin. To benefit the desert tortoise, the Desert Tortoise Preserve Committee (Preserve Committee) and the Wildlands Conservancy purchased 1,360 ac (550 ha) of desert tortoise critical habitat within the allotment and thereby gained control of all grazing privileges, water rights, structures, and range improvements for the entire allotment (Desert Tortoise Preserve Committee 1996). The Preserve Committee does not

allow any livestock grazing to occur within the Pilot Knob allotment. Although the elimination of grazing in this 49,000-ac area is to protect the desert tortoise, the potential threat of grazing to *C. deserticola* has also been eliminated.

Grazing has occurred within the Superior Dry Lake basin in the past. However, with the expansion of Ft. Irwin, grazing is now precluded from much of the area, and Ft. Irwin has now permanently fenced a large, 366-plant Superior Dry Lake population, thereby protecting it from grazing.

At the Rogers Dry Lake basin, high levels of "leaf predation" on *Cymopterus deserticola* were observed in two studies on EAFB in areas not grazed by livestock (Mitchell *et al.* 1995; Charleton 1993). Such grazing was likely due to a variety of native animals such as black-tailed jackrabbits (*Lepus californicus*), brush rabbits (Family Leporidae), ground squirrels (Family Sciuridae), kangaroo rats (Family Heteromyidae), mice (Families Cricetidae), desert tortoise, caterpillars (Order Lepidoptera), and beetles (Order Coleoptera) (Bagley 1998). Although the effects of grazing on *C. deserticola* by native wildlife are unknown, this type of grazing is a natural component of the Mojave Desert ecosystem, and we do not believe that native wildlife is a threat to *C. deserticola*.

D. The Inadequacy of Existing Regulatory Mechanisms. We have not used the WMP in our finding regarding *Cymopterus deserticola* because it is presently still in draft form, and is therefore, not an existing regulatory mechanism. However, the petitioners expressed concern about the draft WMP, which will function as a multiple species habitat management plan for the desert tortoise and other listed and sensitive species within the planning area. They claim that *Cymopterus deserticola* has been dropped from the planning process because the species cannot have a viable conservation strategy without military participation (BLM 2002). However, according to the draft Environmental Impact Report and Statement (EIR/EIS) for the WMP (BLM 2003), *C. deserticola* has not been dropped from the plan. The EIR/EIS states that *C. deserticola* that occurs in the northern Rogers, Cuddeback, and Harper Dry Lake basin areas is a species targeted for conservation measures. Conservation of this species is addressed on the portion of its known range that is outside of EAFB. The draft WMP (BLM 2003) requires botanical surveys for projects proposed within suitable habitat for *C. deserticola* (the North Edwards Conservation Area, and

the Fremont-Kramer and Superior-Cronese Desert Wildlife Management Areas (DWMAs)). If the plant is located, prescriptions call for avoiding all individuals to the maximum extent practicable and reporting the loss of any plants. In Kern County, the draft WMP proposes the following measures: establishing the North Edwards Conservation Area (NECA) to protect *C. deserticola* populations that extend off of EAFB, requiring botanical surveys, limiting new ground disturbance to 1 percent of a DWMA, applying a 5:1 mitigation ratio within the Conservation Area, and adjusting the boundary of the NECA over time to reflect survey results. BLM intends to issue a final WMP within the next few months, and to begin implementing these conservation measures shortly thereafter.

The petitioners state that the lack of management or conservation strategies by EAFB and the ongoing projects on EAFB that adversely affect this species leave the future survival of *Cymopterus deserticola* populations in most of the Rogers Dry Lake basin uncertain. They also state that, since the core populations of this species are located on EAFB, without assured conservation measures in place, the long-term survival of *C. deserticola* remains in question.

As discussed above under Factor A, threats to *Cymopterus deserticola* on EAFB are minimal. In April 2004, EAFB revised the October 2001 Integrated Natural Resources Management Plan (INRMP) to include *C. deserticola*, thereby providing further assurance that the threats will remain minimal. The 2004 INRMP contains conservation measures (*e.g.*, develop and implement an education awareness program, project review, project alternatives designed to minimize impacts, construction monitoring, habitat modeling) to manage for *C. deserticola* and funding for research (*e.g.*, population status, additional habitat modeling, reproductive biology, growth experiments) on this species. In addition, one of the objectives of EAFB is to use existing inventory, monitoring, and research data to develop a management and long term monitoring plan. Thus, the 2004 INRMP for EAFB has a management strategy for the conservation of *C. deserticola*.

Based on the overall status of *Cymopterus deserticola* and the inclusion of *C. deserticola* in the INRMP for EAFB where the vast majority of the plants occur, the existing regulatory mechanisms are adequate. In the future, the inclusion of *C. deserticola* in the WMP will provide further protective

measures to other populations outside of EAFB.

E. Other Natural or Manmade Factors Affecting Its Continued Existence. The petitioners claim that the extremely limited distribution and relatively small numbers of individuals of *Cymopterus deserticola* make populations vulnerable to stochastic extinction. Although it is possible that a few populations with very small numbers of individuals could be lost, we believe that the species is not at risk of extinction from stochastic events. The number of populations and individuals is now known to be greater than reported in the petition, and the species is distributed over a relatively broad area (approximately 50 mi (80 km) from east to west and 35 mi (56 km) from north to south). Because most of the one-hundred plus populations are secure, or have very minimal threats, we believe that listing is not needed at this time. Also, we are not aware of any other factors that may be considered a threat to *C. deserticola* at this time.

Petition Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. We reviewed the petition, information available in our files, other published and unpublished information, and comments submitted to us during the public comment period following our 90-day petition finding, and we consulted with recognized botanists and experts from other resource agencies. On the basis of the best scientific and commercial information available, we find that the proposal to list *Cymopterus deserticola* as threatened or endangered throughout all or a significant portion of its range is not warranted at this time. A summary of threats to the 105 total known populations of *C. deserticola* is provided in Table 1; we have evaluated the threat level using a scale of none, minimal, low, moderate, and high. Some of the threats described by the petitioners have now been minimized or reduced (*e.g.*, grazing) in some areas. Some potential threats described by the petitioners are not expected to occur (*e.g.*, change in hydrology on EAFB as a result of groundwater extraction or oil and gas development). Although some *C. deserticola* habitat will be lost to military training in the Ft. Irwin expansion area, Ft. Irwin has protected a large population in this basin, which in fact contains a larger number of individuals (366 rather than 40 individuals) within the expansion area than was mentioned in the petition. Overall, we believe the remaining

threats to the species are minimal to low. Public agencies and organizations have also implemented actions that have eliminated or reduced the threats to various populations of *C. deserticola* (e.g., elimination of grazing from the

Pilot Knob grazing allotment and the Harper Lake grazing allotment). Of particular importance, EAFB, where the vast majority of populations (approximately 87 percent) are known to occur, has included and implemented

conservation measures for *C. deserticola* in the most recent revision to its INRMP. Overall, threats to *C. deserticola* on EAFB are minimal (Table 1).

TABLE 1.—GENERAL SUMMARY OF THE STATUS OF THE 105 TOTAL KNOWN POPULATIONS OF DESERT CYMPTERUS (*Cymopterus deserticola*)

Basin	General land ownership	Number of known populations	Identified threats	Status of threats	Threat level
Rogers Dry Lake	Edwards Air Force Base (EAFB).	91	Cleanup	Not occurring	None.
			Military activities	Limited activities	Minimal.
			Grazing	Fencing installed on EAFB.	Minimal.
			Utilities	No new corridors	Minimal.
			Inadequacy of management.	INRMP modified	Minimal.
Cuddeback Dry Lake	BLM	4	Grazing	None in 49,000 acre Pilot Knob allotment.	None to Minimal.
			Off Highway Vehicle (OHV) use.	Limited use	Minimal to low.
Harper Dry Lake	BLM/private	6	Energy	Not expected	None.
			Grazing	Eliminated as mitigation for Ft. Irwin expansion.	None to Minimal.
			OHV use	Moderate use	Low.
			Energy	Not expected	None.
Superior Dry Lake	Ft. Irwin	4	Utilities	No new corridors	Minimal.
			Military activities	Protection of large population.	¹ None to high.

¹Ft. Irwin has eliminated the threats to one large, 366-plant population. Threats from military training to the other three populations are moderate to high.

We will continue to monitor the status of this species and will accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. This information will help us monitor and encourage beneficial measures for this species.

References Cited

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

Author

The primary author of this document is Robert McMorrان, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

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

Dated: October 29, 2004.

Marshall P. Jones Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 04-24700 Filed 11-8-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the White-Tailed Prairie Dog as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding on a petition to list the white-tailed prairie dog (*Cynomys leucurus*) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition and other information available do not provide substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of the species or threats to it. This will help us

monitor and encourage the conservation of the species.

DATES: The finding announced in this document was made on November 2, 2004. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for inspection during normal business hours at the Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. Submit new information, materials, comments or questions concerning this taxon to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Henry Maddux, Field Supervisor, at the address given in the **ADDRESSES** section or telephone 801-975-3330 or facsimile 801-975-3331.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that