

interested parties to continue to gather data that will assist with the conservation of the species. Information regarding the Hermes copper butterfly may be submitted to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section above) at any time.

#### References Cited

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

#### Author

The primary authors of this notice are staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** 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: August 1, 2006.

**H. Dale Hall,**

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

[FR Doc. E6-12744 Filed 8-7-06; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AU46**

#### Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Endangered Alabama Beach Mouse

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

**ACTION:** Revised proposed rule; reopening of comment period, notice of availability of draft economic analysis, acreage corrections, and notice of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period, a public hearing on the proposed revision of critical habitat for the Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), and the availability of the draft economic analysis of the proposed designation of critical habitat under the Endangered Species Act of 1973, as amended (Act). We are also using this comment period to correct minor acreage calculation errors in the February 1, 2006, proposed rule (71 FR 5516), announce the inclusion of an additional 6 acres (distributed among proposed critical habitat units 1, 2, and 3), and solicit

further comments on the proposed rule. The draft economic analysis forecasts that costs associated with conservation activities for the ABM would range from \$18.3 million to \$51.8 million in undiscounted dollars over the next 20 years. Adjusted for possible inflation, the costs would range from \$16.1 million to \$46.8 million over 20 years, or \$1.1 million to \$3.1 million annually using a 3 percent discount; or \$14.2 million to \$41.7 million over 20 years, or \$1.3 million to \$3.9 million annually using a 7 percent discount. We are reopening the public comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and fully considered in preparation of the final rule.

**DATES:** We will accept public comments until September 7, 2006. See Public Hearings, under **SUPPLEMENTARY INFORMATION**, for further details.

**ADDRESSES:** If you wish to comment, you may submit your comments and information concerning this proposal, identified by "Attn: Alabama Beach Mouse Critical Habitat," by any one of several methods:

(1) Mail or hand-deliver to: Field Supervisor, U.S. Fish and Wildlife Service, Daphne Fish and Wildlife Office, 1208-B Main Street, Daphne, Alabama 36526.

(2) Send by electronic mail (e-mail) to [abmcriticalhabitat@fws.gov](mailto:abmcriticalhabitat@fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(3) Provide oral or written comments at the public hearing.

(4) Fax your comments to: 251-441-6222.

(5) Submit comments on Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Public Hearings

We have scheduled a public hearing on the proposed critical habitat revision and the draft economic analysis. The hearing will take place from 7 to 9 p.m. on August 24, 2006, at the Adult Activity Center located at 260 Clubhouse Drive, Gulf Shores, Alabama 36542. This will be preceded by a public information session from 6 to 7 p.m. at the same location. Maps of the proposal and other materials will be available for public review.

Comments and materials received, as well as supporting documentation used

in the preparation of this proposed rule, will be available for public inspection by appointment during normal business hours at the Daphne Fish and Wildlife Field Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, U.S. Fish and Wildlife Service, Daphne, Alabama (telephone 251-441-5181; facsimile 251-441-6222).

#### SUPPLEMENTARY INFORMATION:

##### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any adverse impacts to the species due to designation;

(2) Specific information on the presence of Alabama beach mouse habitat, particularly what areas should be included in the designations that were occupied at the time of listing that contain features that are essential for the conservation of the species and why; and what areas that were not occupied at listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(6) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(8) Whether the draft economic analysis appropriately identifies all

costs and benefits that could result from the designation; and

(9) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) directs that determinations to be made "solely on the basis of the best scientific and commercial data available." Please submit comments electronically to [abmcriticalhabitat@fws.gov](mailto:abmcriticalhabitat@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Alabama Beach Mouse Critical Habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling the Daphne Fish and Wildlife Office at phone number 251-441-5181. Please note that the e-mail address [abmcriticalhabitat@fws.gov](mailto:abmcriticalhabitat@fws.gov) will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office at the above address.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://www.fws.gov/daphne> or from the Daphne Fish and Wildlife Office at the address and contact numbers above.

Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. Previous comments and information submitted during the initial comment period on the February 1, 2006, proposed rule (71 FR 5516) need not be resubmitted. On the basis of information received during the public

comment period, we may during the development of our final critical habitat determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

### Background

On February 1, 2006, we published a proposed rule to designate critical habitat for the ABM (71 FR 5516), revising the original designation for the subspecies (50 FR 23872; June 6, 1985). The proposed revision outlined five coastal dune areas (units), totaling approximately 1,298 total acres (ac) (525 hectares (ha)) in southern Baldwin County, Alabama, as critical habitat for the ABM. These five units consist of a mix of primary, secondary, and scrub sand dunes and interdunal swales and generally include an inland expansion of 1985 designated units to include more scrub dune habitat. Also in our February 2006 rule, we proposed exclusion of approximately 1,229 ac (497 ha) that, following our analysis under sections 4(b)(2) and 3(5)(A) of the Act, did not warrant designation of critical habitat because they are either protected by existing habitat conservation plans or do not require special management considerations or protection. The five proposed revised units, combined with these areas proposed for exclusion, constitute our best assessment of those areas essential to the conservation of the subspecies. As a result of revisions and corrections outlined in this revised proposed rule, these five units now total 1,326 ac (537 ha). We are also proposing inclusion of six residential lots to critical habitat (see Acreage Corrections). Other than the changes just described, the proposed rule of February 1, 2006, remains intact. We will submit for publication in the **Federal Register** a final revised critical habitat designation for ABM on or before January 15, 2007.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of

the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

### Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis based on the February 1, 2006, proposed rule (71 FR 5516) that revises the currently designated critical habitat for the ABM; subsequent corrections are included.

The draft economic analysis estimates the foreseeable economic impacts of ABM conservation measures within the proposed critical habitat designation on government agencies and private businesses and individuals. The analysis measures lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on transportation projects, the energy industry, and State and Federal lands. It is difficult to separate costs attributed to the listing of a species from costs associated solely with a critical habitat designation. Therefore, the draft economic analysis considers the potential economic effects of all actions relating to the conservation of the ABM, including costs associated with sections 4, 7, and 10 of the Act, and those attributable to designating critical habitat. This may result in an overestimate of the potential economic impacts of the designation.

The draft economic analysis forecasts that costs associated with conservation activities for the ABM would range from \$18.3 million to \$51.8 million in undiscounted dollars over the next 20 years. Adjusted for possible inflation, the costs would range from \$16.1 million to \$46.8 million over 20 years, or \$1.1 million to \$3.1 million annually using a 3 percent discount; or \$14.2 million to \$41.7 million over 20 years,

or \$1.3 million to \$3.9 million annually, using a 7 percent discount. Overall, the residential and commercial development industry is calculated to experience the highest estimated costs (99 percent).

The draft economic analysis considers the potential economic effects of all actions relating to the conservation of the ABM, including costs coextensive with listing. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the ABM in proposed critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on

small entities and the energy industry. This information can be used by decision makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date the subspecies was listed as endangered and considers those costs that may occur in the 20 years following revision of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period.

#### Acreeage Corrections

By this notice, we are also advising the public of two changes to the February 1, 2006, proposed rule (71 FR 5516). First, we regret that an error was inadvertently made in the proposed rule concerning the 49 single-family homes proposed for exclusion under section

4(b)(2) of the Act based upon habitat conservation plans (HCPs). Owners of six lots that were proposed for exclusion do not have approved HCPs. Undeveloped portions of these lots, totaling approximately 6 ac (2 ha) and distributed between Units 1 (3.3 ac), 2 (2.3 ac), and 3 (0.5 ac), contain both the habitat known to be occupied at the time of listing and the physical and biological characteristics essential to the conservation of the subspecies. Therefore, they are now proposed for inclusion in the revised designation.

Second, there were also slight acreage discrepancies in the proposed rule due to an inadvertent calculation error. An 18-acre discrepancy in Unit 1 was identified and accounted for in the draft economic analysis. Table 1 contains the corrected acreage values, including the six additional acres proposed for inclusion discussed above. These acreage differences do not change the legal description published in the February 1, 2006, proposed rule, which are a true representation of the updated acreage identified in Table 1 below.

TABLE 1.—AREAS PROPOSED AS CRITICAL HABITAT FOR THE ALABAMA BEACH MOUSE

[Totals may not sum due to rounding]

Critical Habitat Units—Alabama beach mouse	Federal acres (hectares)	State acres (hectares)	Local and private acres (hectares)	Total acres (hectares)
1. Fort Morgan .....	44 (18)	337 (136)	66 (27)	446 (180)
2. Little Point Clear .....	16 (6)	82 (33)	170 (69)	268 (108)
3. Gulf Highlands .....	11 (4)	48 (19)	331 (134)	390 (158)
4. Pine Beach .....	11 (4)	0	20 (8)	31 (13)
5. Gulf State Park .....	0	190 (77)	0	190 (77)
Total .....	82 (32)	657 (265)	587 (238)	1326 (537)

#### Required Determinations—Amended

##### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative

regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweighs the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation

of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

##### Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact

on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed ABM critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

In our draft economic analysis, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of ABM and proposed designation of their critical habitat. This analysis estimated prospective economic impacts due to the

implementation of beach mouse conservation efforts in five categories: Private development activities; recreation; tropical storms and hurricanes; species management and habitat protection activities; and road construction. We determined from our analysis that in four of these five categories, impacts of ABM conservation efforts are not anticipated to impact small business. The only category of small business entities that may be affected is private development firms. Costs associated with residential-commercial development comprise 99 percent of the total quantified future impacts. Total costs of conservation efforts related to development activities are estimated to be \$18.1 million to \$51.2 million in undiscounted dollars over the next 20 years, on approximately 587 acres of developable private lands. Adjusted for possible inflation, the costs would range from \$16.1 million to \$46.8 million over 20 years, or \$1.1 million to \$3.1 million annually using a 3 percent discount; or \$14.2 million to \$41.7 million over 20 years, or \$1.3 million to \$3.9 million annually, using a 7 percent discount. Conservation effort costs include land preservation (set asides), monitoring, and predator control that may be required of new development activity on private land. Assuming each parcel of land is owned by a unique landowner, approximately 137 landowners could be impacted by the ABM conservation efforts. This analysis assumes that, in general, landowners are private citizens and not developers. Thus, although 137 landowners may be affected by this designation, few are anticipated to be small entities. Therefore, we do not believe that the designation of critical habitat for the ABM will result in a disproportionate effect to small business entities.

Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this

action is not a significant action, and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical

habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the ABM, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the ABM within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for this subspecies will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

### Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the ABM. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for this subspecies does not pose significant takings implications.

### Author

The primary author of this notice is Rob Tawes of the Daphne Fish and Wildlife Office (see **ADDRESSES** section).

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

Dated: July 17, 2006.

**Matt Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E6-12317 Filed 8-7-06; 8:45 am]

**BILLING CODE 4310-55-P**

## 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 Thorne's Hairstreak Butterfly as Threatened or Endangered

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Thorne's hairstreak butterfly (*Callophrys [Mitoura] grynea thornei* or *Callophrys [Mitoura] thornei*) as an endangered species under the Endangered Species Act of 1973, as amended. We find the petition does not provide substantial scientific or commercial information indicating the requested action is warranted. Therefore, we will not initiate 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 Thorne's hairstreak butterfly or threats to it.

**DATES:** The finding announced in this document was made on August 8, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section above), by telephone at 760-431-9440, or by facsimile to 760-431-9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this

finding is to be made within 90 days of receipt of the petition, and the finding is to be published in the **Federal Register**.

This finding summarizes information included in the petition and information available to us at the time of the petition review. A 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold. Substantial information 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)).

#### Previous Federal Action

The Thorne's hairstreak butterfly was included as a Category 2 candidate species in our November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), Candidate Notices of Review (CNOR). Category 2 included taxa for which information in the Service's possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In the CNOR published on February 28, 1996, the Service announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the List of Threatened and Endangered Species (61 FR 7595). The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species, and to clarify that the Service no longer regarded these species as candidates for listing. Since the Thorne's hairstreak butterfly was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR.

On June 4, 1991, the Service received a petition dated May 27, 1991, from David Hogan of the San Diego Biodiversity Project to list the Thorne's hairstreak butterfly, Hermes copper butterfly (*Hermelycaena [Lycaena] hermes*), Laguna Mountains skipper (*Pyrgus ruralis lagunae*), and Harbison's dun skipper (*Euphyes vestries harbinsoni*) as endangered under the Act. In a **Federal Register** notice dated July 19, 1993 (58 FR 38549), the Service announced its finding on the petition. We found that the petition presented substantial information for the Laguna Mountains skipper, but not for the other three butterflies. However, the finding also concluded that other substantial information existed to support a