

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Findings for Petitions To Delist the Island Night Lizard**

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

**ACTION:** Notice of two 90-day petition findings and initiation of a status review for the 12-month finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings for two petitions to remove the island night lizard (*Xantusia riversiana*) from the Federal List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act (Act). We find that one of the petitions presents substantial scientific or commercial information indicating that delisting may be warranted, and we are therefore initiating a status review. We are requesting submission of any new information on the island night lizard since its original listing as a threatened species in 1977. Following this status review, we will issue a 12-month finding on the petition to delist.

**DATES:** The findings announced in this document were made on August 22, 2006. To be considered in the 12-month finding on the delisting petition, comments and information should be submitted to us by October 23, 2006.

**ADDRESSES:** Submit comments, information, and questions to the Field Supervisor, Attention: Island Night Lizard Comments, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009 (fax: 760-431-9618).

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the above address (telephone: 760-431-9440).

**SUPPLEMENTARY INFORMATION:****Background**

Section 4(b)(3)(A) of the 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 the petitioned action may be warranted. To the maximum extent practicable, we must make the finding within 90 days of receiving the petition, and must promptly publish the finding in the **Federal Register**. If we find substantial information exists to support the petitioned action, we are required to

promptly commence a status review of the species (50 CFR 424.14).

“Substantial information” is defined in 50 CFR 424.14(b) as “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.” Petitioners need not prove that the petitioned action is warranted to support a “substantial” finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

The factors for listing, delisting, or reclassifying a species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, and/or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

On July 7, 2005, we initiated a 5-year review of the island night lizard as required under section 4(c)(2)(A) of the Act. Pursuant to the terms of a settlement agreement in *California State Grange, et al. v. Norton*, No: 2:05-cv-00560-MCE-PAN (E.D. California), we will be completing that review by September 30, 2006. A status review is required for both the 5-year review and the 12-month finding. These reviews may utilize similar information and analyses. At the conclusion of these reviews, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act, and make the requisite recommendation under section 4(c)(2)(B) of the Act based on the results of the 5-year review.

**Threats Identified at the Time of Listing**

The island night lizard occurs on San Clemente, San Nicolas, and Santa Barbara Islands (Bezy *et al.* 1980) and one small islet (Sutil Island) immediately adjacent to Santa Barbara Island (Fellers and Drost 1991). We listed the island night lizard as threatened on August 11, 1977, along with six other species of animals and plants that occur on the Channel Islands off the coast of southern California (42 FR 40682). We determined that the habitat used by the island night lizard was being modified by the browsing effect of feral goats (*Capra hircus*) and the rooting of feral pigs (*Sus scrofa*) (June 1, 1976, 41 FR 22073; 42 FR 40682). We stated that the habitats on Santa Barbara and San Nicolas Islands were already reduced and any future

reduction would seriously imperil the island night lizard populations (41 FR 22073; 42 FR 40682). Island night lizard depredation by feral housecats (*Felis catus*) on San Clemente Island and by alligator lizards (*Elgaria multicarinata webbii*) on San Nicolas Island were also identified as possible threats to the continued existence of the island night lizard (41 FR 22073; 42 FR 40682). In 1984, we published the Recovery Plan for the Endangered and Threatened Species of the California Channel Islands (Recovery Plan), which included the island night lizard (USFWS 1984). Critical habitat has not been designated for the island night lizard.

**Summary of the Petitions**

In making these findings regarding the island night lizard delisting petitions, we rely on information provided by the petitioners and evaluate that information in accordance with 50 CFR 424.14(b). The content of these findings summarize information included in the petitions, as well as information available to us at the time we reviewed the petitions. Our review for the purposes of 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 petitions meets the “substantial scientific information” threshold. We do not conduct additional research at this point, nor do we subject the petitions to rigorous critical review. Rather, as the Act and regulations contemplate, at the 90-day finding, the key consideration in evaluating the petitions involves demonstration of the reliability and adequacy of the information supporting the action advanced by the petitions.

In determining whether a petition presents substantial information that the petitioned action may be warranted, in accordance with regulation (§ 424.14(b)(2)), we consider whether the petition:

- (1) Clearly indicates the petitioned action and gives the scientific and common name of the species involved;
- (2) Contains detailed narrative justification for the petitioned action based on available information, past and present numbers and distribution of the species involved, and any threats faced by the species;
- (3) Provides information regarding the status of the species over all or a significant portion of its range;
- (4) Includes appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

Additionally, section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

- A. The present or threatened destruction, modification, or curtailment of its habitat or range;
- B. Overutilization for commercial, recreational, scientific, or educational purposes;
- C. Disease or predation;
- D. The inadequacy of existing regulatory mechanisms; or
- E. Other natural or manmade factors affecting its continued existence.

In determining whether a petition presents substantial information regarding threats faced by the species, we evaluate whether the petition provides any information relevant to those factors.

The first petition we received requesting that we remove the island night lizard from the List of Endangered and Threatened Wildlife and Plants (List) was from the National Wilderness Institute and was dated February 3, 1997. The petition maintains that the island night lizard has no significant identifiable threats, appears to have had a stable population since being listed, and should be delisted on the basis of data error. The petition restates information from the listing rule (42 FR 40682) and the Recovery Plan and does not provide any new information or documentation that would support delisting. The petition also notes that we identified the island night lizard in budget justifications as early as 1993 as a potential candidate for delisting. We acknowledged receipt of the petition in a letter to the National Wilderness Institute dated June 29, 1998, and indicated that due to low priority assigned to delisting activities in our Fiscal Year 1997 Listing Priority Guidance, we were not then able to act on the petition.

The first petition does not provide any information on or describe the past and present numbers and distribution, or status, of the species over all or a significant portion of its range. However, the petition does present claims regarding the first factor (the present or threatened destruction, modification, or curtailment of its habitat or range). The petition asserts that the island night lizard is not threatened by habitat modification by feral animals. To support this assertion, the first petition refers to the Recovery Plan (USFWS 1984). It states that the Recovery Plan presumed that the habitat modification resulting from feral species herbivory was the primary contributor to the decline of indigenous species

such as the island night lizard, and notes that the Recovery Plan did not provide any data demonstrating a decline.

To support its view that habitat on San Clemente Island was not altered by grazing animals, the petition cites from the Recovery Plan in reference to San Clemente Island habitat: “\* \* \* with habitat structure as the predominant influence on present distribution, it is possible to deduce the change from past habitat modification on the island. The optimum habitat, maritime desert scrub, *Lycium* phase, is largely the result of soil and climate conditions along the west coast of the island and probably has not been altered to the detriment of the lizards by grazing mammals.” However, the petition does not acknowledge the continuing text of this section of the Recovery Plan, which, for example, notes that there is no information on the status of island night lizards prior to ranching activities and the introduction of feral animals on San Clemente Island. The Recovery Plan also suggests that important changes to habitat structure occurred in upland areas on the southern half of San Clemente Island where grazing and soil erosion have replaced shrub and herbaceous vegetation with grassland, cholla cactus, and bare ground. The Recovery Plan further notes that rocky areas exposed by the loss of original vegetation are a deteriorated habitat for the island night lizard, and chaparral shrub vegetation is not sufficiently dense to provide full shelter for the island night lizard. The Recovery Plan concludes that the most extensive deterioration of island night lizard habitat occurred with the vegetation changes on rocky upland areas of the southern half of San Clemente Island.

The information presented in the first petition asserting that feral species herbivory did not alter island night lizard habitat does not accurately portray the discussion in the Recovery Plan and is out of context. We therefore conclude that the petition does not provide substantial information regarding the first factor (the present or threatened destruction, modification, or curtailment of its habitat or range). The petition did not provide any information concerning the second factor (overutilization for commercial, sporting, recreational, scientific, or educational purposes), the third factor (disease or predation); the fourth factor (inadequacy of existing regulatory mechanisms), or the fifth factor (other natural or manmade factors affecting their continued existence). We, therefore, conclude that the first petition does not provide substantial

information or appropriate supporting documentation supporting its claim that feral species herbivory on San Clemente Island did not contribute to the decline of the island night lizard, and that the island night lizard was listed in error. The first petition does not provide any information on island night lizard habitat on San Nicolas Island or on Santa Barbara Island, nor does it address any other factors considered in a 90-day petition finding.

We received a second petition dated March 22, 2004, from the U.S. Navy, requesting that we delist the island night lizard on San Clemente Island and San Nicolas Island, California, as distinct population segments pursuant to section 4(b)(3) of the Act. The second petition provides a comprehensive summary of the species' status and population abundance information that has been collected since the island night lizard was listed. The petition also provides information on threats to the species. The information on species status, population abundance, and threats provided in the petition is accompanied by supporting documentation in the form of bibliographic references, many of which are included as appendices.

The following assertions of the second petition, along with the associated documentation, constitute substantial information warranting further analysis in a 12-month finding: (1) The primary threat, habitat destruction by feral ungulates on San Clemente Island, has been removed; (2) increases in the numbers of island night lizards on San Clemente Island are likely attributable to the removal of the feral ungulates and minimization of the potential impacts of military training operations; (3) there are minimal impacts from military activities on island night lizard on San Nicolas Island; (4) the effect of feral cat predation on island night lizard is either reduced (San Clemente Island) or minimal (San Nicolas Island); (5) the establishment of a sympatric relationship between island night lizard and alligator lizard suggests that the latter does not threaten the continued existence of the island night lizard; (6) continued monitoring has demonstrated that island night lizard populations on San Clemente Island and San Nicolas Island are stable and viable; (7) the island night lizard monitoring data for both San Clemente and San Nicolas Islands do not demonstrate that non-native vegetation adversely impacts the island night lizard populations; (8) since 1977, the only substantial change in plant communities on San Clemente Island has been habitat recovery as a result of the eradication of feral grazing

animals; (9) the military administrative nature of the islands, the sensitivity towards natural resources, and the conservation goals outlined in San Clemente Island Integrated Natural Resources Management Plan (US Navy 2002) provide assurances that new introductions of non-native animals are unlikely to occur; and (10) investigations suggest that fires do not have detrimental effects to the species unless they result in long term modification of vegetation.

The second petition has thus presented information regarding the first factor (the present or threatened destruction, modification, or curtailment of its habitat or range), third factor (disease or predation), and the fifth factor (other natural or manmade factors affecting their continued existence) under section 4(a)(1) of the Act that we evaluate in determining whether substantial information indicates the petitioned action may be warranted. Regarding the first factor, the first petition claims that habitat was not altered by feral species herbivory but does not provide substantial information or appropriate supporting documentation. In contrast, the second petition provides documentation in the form of bibliographic references that cite biological studies on the species and Department of the Navy management plans for San Clemente and San Nicolas islands, some of which are included as appendices to the petition.

The second petition does not suggest the delisting of the island night lizard population on Santa Barbara Island. The second petition states that even though rabbits (*Oryctolagus cuniculus*) were eradicated on the island in 1981, the National Park Service informed the U.S. Navy that the lizard habitat has not improved as expected, and recent survey data from Santa Barbara Island have not been adequately analyzed.

#### Distinct Population Segments

Under the Act, a species is defined as including any subspecies and any distinct population segment (DPS) of a vertebrate species [16 U.S.C. 1532(16)]. To implement the measures prescribed by the Act and its Congressional guidance, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), developed a joint policy that addresses the recognition of DPSs of vertebrate species for potential listing and delisting actions (February 7, 1996, 61 FR 4722). The DPS policy specifies that we are to use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population

segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment meets the discreteness and significance standards and therefore qualifies as a DPS, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing or delisting the DPS is warranted.

The island night lizard is currently listed as a threatened species throughout its range, and we have not conducted an analysis to determine if the DPS policy is applicable to this species. The second petition asserts that the San Nicolas, San Clemente, and Santa Barbara Islands all qualify as DPSs. The second petition asserts that the three island night lizard populations are discrete from each other because (1) they are separated physically as islands of the Pacific Ocean, between which the lizards are not able to travel, and (2) they are separated administratively by ownership. The U.S. Navy administers San Clemente and San Nicolas Islands, and the National Park Service administers Santa Barbara Island.

The second petition also states that the three populations on the islands meet the significance element of the DPS policy based on two points. First, because the island night lizard is found on only three of the six California Channel Islands, the loss of one population segment may be considered a gap in the range of the species. Secondly, the second petition asserts that phenotypic differences, such as variation in scalation, body size, and clutch size, occur between the different island night lizard populations.

The Service has not analyzed the island night lizard to determine whether the separate populations constitute DPSs under our policy. The second petition has raised this issue and it is relevant to the status review and subsequent determination on the petition. Our 12-month finding will consider whether any of the island night lizard populations constitute a DPS.

#### Findings

We have reviewed both of the delisting petitions and their supporting documents as well as other information in our files. The first petition presents no information on the past and present numbers and distribution, or status of the species over all or a significant portion of its range, and limited information relevant to threats to the species. The limited information it presents in support of its view that

island night lizard habitat on San Clemente Island was not altered by grazing animals misrepresents discussions in the Recovery Plan and is out of context, and was not accompanied by any other supporting documentation. Accordingly, we find that the first petition does not present substantial information indicating that delisting the island night lizard may be warranted.

For the reasons discussed above, we find that the second petition does present substantial information indicating that delisting the San Clemente and San Nicolas Islands populations may be warranted. Questions remain as to whether the island night lizard populations would qualify as distinct population segments. We believe it is appropriate to consider the information provided in the second petition, any other new information about this species, and the threats it may face in a status review, including information presented as to whether the island night lizard populations qualify as distinct population segments. We will issue a 12-month finding in accordance with section 4(b)(3)(B) of the Act as to whether delisting is warranted.

#### Public Information Solicited

We are requesting information on the island night lizard throughout its range for the 12-month finding. We also will use that information for the ongoing 5-year review (70 FR 39327, July 7, 2005). When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the island night lizard throughout its range. This includes information regarding historical and current distribution, biology, ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

Additionally, we request any information regarding application of our policy regarding the recognition of distinct vertebrate population segments under the Act (61 FR 4722) to this particular situation. As stated in the policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors

(quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. The Service also considers available scientific evidence of a discrete population segment's significance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We request any additional information, comments, and suggestions from the public, State and Federal agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of the island night lizard, and whether the island night lizard populations constitute distinct population segments.

If you wish to provide information or comments relevant to the 12-month finding or 5-year review, you may submit your information, comments, and materials to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their identity, as allowable by law. If you wish to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, 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 above address.

A complete list of all references cited in this finding is available, upon

request, from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

#### Author

The primary author of this document is Sandy Vissman (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: July 11, 2006.

**Benito A. Perez,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060808213-6213-01; I.D. 073106C]

**RIN 0648-AU56**

#### **Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2006 Georges Bank Fixed Gear Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP propose creation of the Georges Bank (GB) Cod Fixed Gear Sector (Fixed Gear Sector). If approved in FW 42/FW 3, the Fixed Gear Sector would be eligible for an annual allocation of up to 20 percent of the annual GB cod total allowable catch (TAC). Therefore, in accordance with the FMP, and pursuant to the anticipated approval of FW 42/FW 3, a representative of the Fixed Gear Sector submitted an Operations Plan, Sector Agreement (Contract), and Environmental Assessment (EA), and requested an allocation of GB cod to the Fixed Gear Sector for fishing year 2006 (FY 2006).

The Administrator, Northeast Region, NMFS (Regional Administrator), has determined that documents submitted by the Fixed Gear Sector comply with the procedural regulations regarding an

annual Operations Plan and Sector Contract. This noticedocument provides interested parties an opportunity to comment on the proposed Sector Operations Plan and EA (prior to approval or disapproval of FW 42, which would authorize the formation of the Fixed Gear Sector), and prior to final approval or disapproval of the Sector Operations Plan and allocation of GB cod TAC to the Fixed Gear Sector for FY 2006. Comments regarding the formation of the Fixed Gear Sector (as opposed to the FY 2006 Operations Plan and Sector Contract, which are the subject of this proposed rule) should be submitted as described in the proposed rule for FW 42.

**DATES:** Written comments must be received on or before September 21, 2006.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on GB Fixed Gear Sector Operations Plan." Comments may also be sent via fax to (978) 281-9135, or submitted via e-mail to: [fixedgearsector@NOAA.gov](mailto:fixedgearsector@NOAA.gov), or the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Copies of the Sector Agreement and the EA are available from the NE Regional Office at the mailing address specified above.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren, Fishery Policy Analyst, phone (978) 281-9347, fax (978) 281-9135, e-mail [Thomas.Warren@NOAA.gov](mailto:Thomas.Warren@NOAA.gov).

**SUPPLEMENTARY INFORMATION:** The Regional Administrator has made a preliminary determination that the Fixed Gear Sector Contract and Operations Plan is consistent with the goals of the FMP and other applicable law and is in compliance with the regulations governing the development and operation of a sector as specified under 50 CFR 648.87. The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for the formation of sectors within the NE multispecies fishery and the allocation of TAC for specific groundfish species (or days-at-sea (DAS)), implemented restrictions that apply to all sectors, and authorized the first sector of the FMP (GB Cod Hook Sector).

If FW 42/FW 3 are approved as proposed, the Fixed Gear Sector would be an approved sector, and the regulations that would apply to the Fixed Gear Sector specify that: (1) Aall