

2. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS-1561-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201;

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

**FOR FURTHER INFORMATION CONTACT:** Martique Jones, 410-786-4674.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 5, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: February 5, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2008-0127; MO92210-50083-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Wyoming Pocket Gopher as Threatened or Endangered With Critical Habitat

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Wyoming pocket gopher (*Thomomys clusius*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Wyoming pocket gopher may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species. At the conclusion of this review, we will issue a 12-month finding to determine if the petitioned action is warranted. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

**DATES:** The finding announced in this document was made on February 10, 2009. To facilitate a timely 12-month finding for this petition, we request that we receive data, information, and comments on or before April 13, 2009.

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

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R6-ES-2008-0127; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

#### FOR FURTHER INFORMATION CONTACT:

Brian Kelly, Field Supervisor, Wyoming Ecological Services Field Office, 5353 Yellowstone Road, Cheyenne, WY 82009; telephone 307-772-2374. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Information Solicited

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the Wyoming pocket gopher. We request information, comments, and suggestions from the public, other governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the Wyoming pocket gopher. We are seeking information regarding: (1) The species' historical and current status and distribution; (2) its population size and trend; (3) its biology and ecology; (4) its taxonomy (especially genetics of the species); and (5) ongoing conservation measures for the species and its habitat.

We are also seeking information on the following five threat factors used to determine if a species, as defined under the Act, is threatened or endangered under section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*):

a. The present or threatened destruction, modification, or curtailment of the species' habitat or range;

b. Overutilization for commercial, recreational, scientific, or educational purposes;

c. Disease or predation;

d. The inadequacy of existing regulatory mechanisms; or

e. Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

If we determine that listing the Wyoming pocket gopher under the Act is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the species, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit information by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) regarding a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that the petition presented substantial information, we are required to promptly commence a review of the status of the species.

We base this 90-day finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process in making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

On August 9, 2007, we received a petition from the Biodiversity Conservation Alliance and Center for Native Ecosystems, dated August 7, 2007, requesting that we list the Wyoming pocket gopher (*Thomomys clusius*), within its known historic range, as threatened or endangered under the Act. Additionally, the petition requested that we designate critical habitat concurrent with listing. The petition clearly identified itself as a petition and included the requisite

identification information required at 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter dated September 6, 2007. In that letter we advised the petitioners that we could not address their petition at that time because responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded in our September 6, 2007, letter that emergency listing of the Wyoming pocket gopher was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements, until funding became available to respond to this petition.

### Previous Federal Actions

Region 2 of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) in Wyoming each added the Wyoming pocket gopher to their sensitive species lists in 2001, and it has remained on those lists. Species-specific management actions, however, have not been developed (Keinath and Beauvais 2006, pp. 6–8).

### Listable Entity Evaluation

Under section 3(16) of the Act, we may consider for listing any species or subspecies of fish, wildlife, or plants, or any distinct population segment of vertebrate fish or wildlife which interbreeds when mature. Such entities are considered eligible for listing under the Act (and are, therefore, referred to as "listable entities"), should they be determined to meet the definition of a threatened or endangered species. In this case, the petitioner has requested that we consider the Wyoming pocket gopher for listing. This entity may be considered for listing as a species under the Act (16 U.S.C. 1532(16)).

### Species Information

The Wyoming pocket gopher (*Thomomys clusius*) is a small, lighter-colored member of the Geomyidae family, with a length of 161–184 millimeters (mm) (6.44–7.36 inches (in)) and a weight of 44–72 grams (1.54–2.54 ounces (oz)) (Thaeler and Hinesley 1979, pp. 483–484). The species is characterized by very strong front limbs with long nails used for digging, small ears, small eyes, and fur-lined cheek pouches used to carry food. Pocket gophers are fossorial, living most of their lives in burrow systems and underground tunnels. Once pocket gophers establish territories and burrows, they may shift to other areas based on environmental conditions or interactions with other pocket gophers,

but they generally do not move to an entirely new area (Miller 1964, p. 262; Reichman *et al.* 1982, pp. 687–688).

Very little is known about the Wyoming pocket gopher, and assumptions about its distribution, ecology, and status are based on a few museum records and anecdotal reports from about 30 years ago. Distribution of the species is believed to be restricted to Sweetwater and Carbon Counties in Wyoming, with a possible occurrence in very northern Colorado (Keinath and Beauvais 2006, p. 11). Recent efforts to document gophers at several historic locations were inconclusive, leading to speculation about population declines and the rarity of the species (Keinath and Beauvais 2006, p. 12).

The range of the Wyoming pocket gopher occurs within the range of the northern pocket gopher (*Thomomys talpoides*), but the Wyoming pocket gopher is not likely sympatric with other pocket gophers (Keinath and Beauvais 2006, p. 8). The Wyoming pocket gopher is believed to occupy well-drained, gravelly ridges instead of the valley bottoms and riparian areas with deeper soils preferred by the northern pocket gopher (Thaeler and Hinesley 1979, p. 486). Based on the characterization of the species' size and habitat, it appears to fit the island model of isolation displayed by other species of pocket gophers specifically adapted to the soils of an area (Miller 1964, pp. 259–260). The Wyoming pocket gopher is limited in its distribution, which may be due to the species' habitat specialization (Keinath and Beauvais 2006, pp. 12–15).

Due to morphological similarities, the Wyoming pocket gopher and northern pocket gopher are difficult to distinguish. Positive identification requires karyotype analysis (i.e., a count of the number of diploid chromosomes). The Wyoming pocket gopher has a karyotype of 46 chromosomes, and the northern pocket gopher has a karyotype of 48 or 56, depending on the subspecies (Thaeler and Hinesley 1979, p. 483).

Based on the life histories of other pocket gophers, Wyoming pocket gophers likely do not live more than two breeding seasons, reproduce the calendar year following birth, and have one litter with 4 to 6 young per year (Keinath and Beauvais 2006, p. 18). The species' diet is likely primarily the roots, stems, and leaves of forbs, with some consumption of grasses and shrubs (Aldous 1951, pp. 85–86; Ward and Keith 1962, p. 747). Pocket gophers may cut their food into small pieces and carry it in their cheek pouches back to the burrow where it is consumed, stored

for winter, used for nest building, or taken into runways and later pushed to the surface (Aldous 1951, p. 84; Verts and Carraway 1999, p. 6).

In general, the extensive tunneling activity of pocket gophers can affect soil formation, hydrology, nutrient flows, and the competitive interactions of plants. These effects can be important to ecosystem function, but also create undesirable interactions with human activities that lead to extermination efforts.

#### Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) 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) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether information on threats to the Wyoming pocket gopher presented in the petition and available in our files at the time of the petition review constitute substantial scientific or commercial information such that listing the species may be warranted. Our evaluation of this information is discussed below. Unless clearly stated that the information is from our files, all threats described below and their effects on the Wyoming pocket gopher are as described in the petition.

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

###### Information Provided in the Petition

The petitioners state that alteration of the species' habitat for oil and gas development is the primary threat to the species. They note that the species is particularly vulnerable to habitat loss because of its limited range and distribution. Oil and gas exploration and development increases road densities, which may fragment the species' habitat, create barriers to movement of the species, and isolate individual populations. The petitioners describe the soil disturbances that accompany oil and gas development, noting direct impacts to habitat that may lead to introduction of noxious weeds.

They note that noxious weeds have been found to reduce population density of other fossorial mammals. The petitioners claim that herbicide use will accompany development and will affect the availability of forbs, which are a source of food and habitat for the species. They cite studies linking use of herbicides with negative impacts to other species of pocket gophers. The petitioners state that soil moisture may be altered during the course of development.

###### Analysis of Information Provided in the Petition and Information Readily Available

The majority of lands within the Wyoming pocket gopher's range have at least a moderate potential for energy development (BLM 2005, map). Additionally, most of the Federal lands within the species' range are already leased for oil and gas development (BLM 2008, map). This situation, and the high level of interest in increased extraction of energy resources described by the petitioners, indicate that the likelihood of oil and gas development throughout the species' range is high.

Energy exploration and development can cause various changes to a landscape that can impact Wyoming pocket gophers. Oil and gas geophysical exploration is conducted to generate a subsurface image of fluid minerals and usually involves either drilling holes and detonating explosives or using a vibrating pad that is driven across an area using heavy vehicles. The extent of impacts from either exploration method on pocket gophers is unknown, but the vibrations and potential soil impacts would, at a minimum, disturb habitat and pocket gophers in the immediate vicinity of operations. Oil and gas development involves staging a drilling rig and setting up additional equipment that is used during production. Generally, developers build roads to access each site and clear and level well pads. Expansion of road networks and placement of well pads may fragment the species' habitat as described by the petitioners and in their cited literature. Similarly, soil disturbance occurs in oil and gas fields and would impact the habitat that lies within the footprint of well pads and roads, and the habitat in areas disturbed during the development of that infrastructure. Any soil that is moved may have a direct impact on pocket gophers that are present. Once a rig is in place, the drilling process creates vibrations that may impact habitat and any pocket gophers in the area. Once a well has been drilled and is producing, energy companies make regular trips to well pads to monitor

production, conduct maintenance, or collect extracted resources. These regular trips may disturb pocket gophers that are present at or near well pad and roads. Energy producers often try to maintain a clear work area by using herbicides on well pads and along roads. Herbicide use and the direct impacts of development would reduce the availability and quality of forbs, creating negative impacts to Wyoming pocket gopher habitat. Wyoming pocket gopher habitat requirements are not fully understood, but the species is likely susceptible to habitat disturbance due to its restricted distribution and potentially limited dispersal capabilities (Keinath and Beauvais 2006, pp. 21–23).

Introduction and spread of noxious weeds may result from energy development activities and negatively impact Wyoming pocket gophers, and have been shown to limit populations of other burrowing herbivores (Keinath and Beauvais 2006, p. 23). However, noxious weeds are not currently thought to be a threat to Wyoming pocket gophers (Keinath and Beauvais 2006, p. 23). Assertions made in the petition regarding negative habitat impacts resulting from alterations to soil moisture are also not supported by information in the petition or our files.

Based on our evaluation of the information presented in the petition and readily available in our files regarding the expanding energy development within the range of the Wyoming pocket gopher, combined with the limited range of the species and its unknown population status, distribution, and trends, we find that, although information about the species and its habitat is limited, the petition presents substantial information indicating that listing the species may be warranted due to oil and gas exploration and development. Oil and gas developments could fragment habitat, directly impact soil and vegetation in the footprint of development sites, and cause negative impacts that are not understood at this time, such as creation of ground vibrations and increased noxious weeds. We will assess these factors more thoroughly during a status assessment in order to quantify and verify, if possible, potential effects from energy development on the Wyoming pocket gopher.

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

##### Information Provided in the Petition

The petitioners state that Wyoming pocket gopher overutilization occurs

due to commercial and residential development, agriculture, and recreation. The petitioners provide general information about lethal control of other species of pocket gopher that often accompanies development. They claim that the planned development within the range of the species is likely to lead to similar targeted efforts.

The petitioners describe several options for lethal control of pocket gophers that could be used on farmlands and ranchlands where Wyoming pocket gophers occur. They indicate that the difficulty in distinguishing between species of pocket gophers could result in accidental poisoning of Wyoming pocket gophers. The petitioners cite literature describing the high mortality rates that occur in pocket gopher populations targeted by lethal control measures. The petitioners describe recreational facilities in Colorado that may have resulted in the death of individual pocket gophers.

##### Analysis of Information Provided in the Petition and Information Readily Available

The petitioners provide general information about lethal control of pocket gophers associated with development, farmlands, and ranchlands, but do not provide any specific information correlated with current overutilization rates. Additionally, the petitioners do not describe any plans for lethal control of any pocket gophers within the Wyoming pocket gopher's range, or what amount of lethal control would constitute overutilization. The petitioners do not detail impacts to the Wyoming pocket gopher resulting from recreational activities, and present no clear connection between recreational facilities and overutilization of the species. No information available in our files or the cited literature supports the petitioners' concerns regarding overuse of this species that limits its ability to persist.

On the basis of our evaluation of the information presented in the petition, and in our files, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to overutilization for commercial, recreation, scientific, or educational purposes.

#### *C. Disease or Predation*

##### Information Provided in the Petition

The petitioners cite information from Keinath and Beauvais (2006, pp. 20–21) that parasites and disease have not been shown to limit pocket gopher

populations, but the petitioners raise the possibility of disease and predation creating a significant threat to the Wyoming pocket gopher. The petitioners recommend erring on the side of caution in conserving the Wyoming pocket gopher since the role of disease and predation is uncertain. The petitioners describe situations of physiological stress caused by habitat alteration that lead to vulnerability to parasites and disease. The petitioners cite literature describing several parasites associated with pocket gophers and suggest parasites could significantly limit distribution and abundance of the Wyoming pocket gopher. The petitioners also describe the increased opportunities for predators to target pocket gophers as development occurs.

##### Analysis of Information Provided in the Petition and Information Readily Available

The petitioners' rationale describing threats to the Wyoming pocket gopher from disease and predation are not supported by literature or data. Keinath and Beauvais (2006, pp. 20–21) conclude that disease and predation are not likely to play a significant role in pocket gopher persistence, and their report, which was heavily relied on by the petitioners, is an updated synthesis of Wyoming pocket gopher information. The Wyoming pocket gopher and any associated parasites and predators have presumably coexisted for long periods of time. Although additional physiological stress caused by habitat alteration may lead to increased vulnerability to parasites and disease, the petitioners provided no information to verify or quantify this premise. Habitat alteration that increases opportunities for predation may have occurred, but no data were provided to describe this situation for the Wyoming pocket gopher. The scenarios described in the petition, regarding increased vulnerability to disease and predation, are presented as indirect effects resulting from habitat alteration, which is addressed in Factor A above.

On the basis of our evaluation of the information presented in the petition, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to disease or predation.

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

##### Information Provided in the Petition

The petition describes actions taken by the Service, USFS, BLM, Wyoming Game and Fish Department (WGFD),

and Wyoming Natural Diversity Database (WYNDD) to classify the Wyoming pocket gopher's status and to identify and pursue conservation needs. The Service provides no special status to the Wyoming pocket gopher. The USFS and BLM both include the Wyoming pocket gopher on their sensitive species lists, and provide general management approaches for conservation. The WGFD includes the Wyoming pocket gopher on its list of Species of Greatest Conservation Need. WYNDD identifies the Wyoming pocket gopher as a G2/S2 species, meaning the species has a relatively high probability of global and Statewide extinction. Neither of the WYNDD designations provides regulatory authority for species conservation.

The petitioners indicate that management practices outlined by the USFS, BLM, and WGFD are sufficient to achieve conservation of the Wyoming pocket gopher if they are followed, and if additional information is collected and applied. However, the petitioners state that the agencies have made no efforts to collect basic information about the biology and ecology of the Wyoming pocket gopher, even though a significant conservation need exists. The petitioners indicate that the BLM included no reference to the Wyoming pocket gopher in its 2006 Final Environmental Impact Statement (FEIS) for the Atlantic Rim coalbed natural gas project.

#### Analysis of Information Provided in the Petition and Information Readily Available

The USFS, BLM, and WGFD have created general requirements for species conservation that can apply to the Wyoming pocket gopher. We agree that additional information could bolster conservation of the species, but lack of information does not necessarily indicate that regulatory mechanisms are inadequate. We agree that conservation approaches are only effective if they are implemented. The petitioners cite the absence of the Wyoming pocket gopher in the analysis in the 2006 Atlantic Rim FEIS as an example of the BLM's failure to follow its requirements for sensitive species management. However, based on our review of the FEIS, the BLM included a short analysis of the Wyoming pocket gopher (BLM 2006, p. 4–89). The petition did not present other information indicating that the conservation approaches described in the FEIS and other documents produced by the BLM and USFS are not being implemented.

We found no documentation to support the petitioners' suggestion that

agencies are ignoring sensitive species management to the degree that regulatory mechanisms are inadequate for the Wyoming pocket gopher. On the basis of our evaluation of the information presented in the petition and readily available, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to inadequacy of existing regulatory mechanisms. However, we will assess this factor more thoroughly during our status review of the species.

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

##### Information Provided in the Petition

The petitioners state that other natural and manmade threats to the species include: (1) Vulnerability of small populations; (2) climate change; (3) stress; and (4) continued oil and gas development.

##### Vulnerability of Small Populations

The petitioners describe the threats to the Wyoming pocket gopher that result from it being a narrow endemic species. They describe stochastic events that could harm populations to a degree that recovery may not be possible. Demographic events that result in an unbalanced sex ratio can lead to reduced population sizes. Weather, disease, or increases in predation can cause significant portions of a population to be negatively affected. Genetic stochasticity, the variable recombination of genes of the species, and inbreeding from a population that is too small can lead to loss of fitness. The petitioners note that these events work in combination with each other, and pose a particular risk to small populations.

##### Analysis of Information Provided in the Petition and Information Readily Available

We recognize the risks that stochastic events may present to small populations. Available data indicate the Wyoming pocket gopher has a limited distribution, which may exacerbate the species' vulnerability to these events. A definitive population size is not available, but information about the Wyoming pocket gopher indicates that the population size may be small enough that stochastic events could negatively affect the long-term conservation of the species. However, the Wyoming pocket gopher has evidently persisted for some period of time and may never have had a large population size. Although the small

population size of the species may make it vulnerable, insufficient support for this conclusion is available, and very little information was provided in the petition about how the Wyoming pocket gopher or other pocket gopher species are impacted by stochastic events. Based on the information presented in the petition, we find that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to vulnerability resulting from its small population size.

##### Climate Change

##### Information Provided in the Petition

The petitioners describe the potential impacts of climate change on the Wyoming pocket gopher, noting that other species of pocket gopher are more abundant during wetter years. The petitioners also note that, in addition to lack of precipitation, other types of climate variability, such as harsh winters, atypical duration of seasons, and excessively wet periods, can affect distribution and mortality of pocket gophers.

##### Analysis of Information Provided in the Petition and Information Readily Available

The petitioners describe general population responses of pocket gophers to natural climate variability, but the Wyoming pocket gopher is adapted to the natural climate variability that occurs within its range. For example, drought has been documented periodically within the range of the Wyoming pocket gopher, and may negatively affect the species; however, the species has continued to exist despite periods of natural drought.

The petitioners did not present specific information about how global climate change has affected or is likely to affect the Wyoming pocket gopher in a way that differs from past climate variability. Although warming of the climate globally is considered unequivocal (USGS 2008, p. 1), predicting local climate trends and determining how those trends will affect certain species is uncertain. Without additional information, the effect of long-term climate change on the Wyoming pocket gopher is unclear and could result in either a net positive or negative effect on the species. Based on our evaluation of information in the petition and in our files, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to climate change.

## Stress

### Information Provided in the Petition

The petitioners provide information linking various habitat changes with increased stress levels for the Wyoming pocket gopher. They briefly describe the types of effects that stress from various sources may have on a species.

### Analysis of Information Provided in the Petition and Information Readily Available

Stress may increase due to habitat changes that are addressed in Factor A above. Other sources of stress are not described in the petition to an extent that allows us to discern whether the conservation status of the Wyoming pocket gopher is affected by stress levels. Based on the information provided in the petition, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to stress.

### Continued Oil and Gas Development Information Provided in the Petition

The petitioners describe the level of energy development that has occurred in various parts of Wyoming and some of the ecological consequences of that development. They note that the entire range of the Wyoming pocket gopher is leased for oil and gas development.

### Analysis of Information Provided in the Petition and Information Readily Available

We addressed the impacts of oil and gas development in Factor A above, and did not find a description of any additional impacts in the petition under Factor E.

### Summary of Factor E

We found no documentation to support the petitioners' suggestion that effects from small populations, climate change, increased stress, or oil and gas leasing (in itself) are significant to the degree that other natural or manmade factors are affecting the continued existence of the Wyoming pocket gopher. On the basis of our evaluation of the information presented in the petition and readily available, we determined that the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted due to other natural or manmade factors. However, we will assess the issues raised by the petitioners more thoroughly during our status review of the species.

## Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files, and evaluated that information to determine whether the sources cited support the claims made in the petition. We find the petitioners presented substantial information under Factor A indicating that listing the Wyoming pocket gopher as threatened or endangered under the Act may be warranted due to habitat threats resulting from oil and gas exploration and development, particularly given the limited range and uncertain status of the species. Based on the amount of Federal land leased for energy development and general interest in energy extraction, the likelihood for energy development throughout the species' range is high. Although not supported with sufficient information, the petitioners also presented information about the susceptibility of the species to stochastic events due to its small population size and limited distribution (see Factor E). In our 12-month finding, we will further investigate and analyze this potential vulnerability. The petitioners' claim that regulatory mechanisms are inadequate for the Wyoming pocket gopher is not supported with sufficient information, but we will also assess this factor more thoroughly during our status review of the species.

Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information indicating that listing the Wyoming pocket gopher may be warranted. Therefore, we are initiating a status review to determine whether listing the Wyoming pocket gopher under the Act is warranted. As part of our status review of the Wyoming pocket gopher, we will examine available information on the threats to the species and make a final determination on whether the species is warranted for listing as threatened or endangered under the Act. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the Wyoming pocket gopher (as described above under the Information Solicited section).

The "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a

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

The petitioners requested that critical habitat be designated for this species. If we determine in our 12-month finding that listing the Wyoming pocket gopher is warranted, we will address the designation of critical habitat to the maximum extent prudent and determinable at the time of the proposed rulemaking.

## References Cited

A complete list of all references cited in this document is available upon request from the Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Author

The primary authors of this document are staff members of the Wyoming Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

**Authority:** The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 2, 2009.

**Kenneth Stansell,**

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[FWS-R7-MB-2008-0099; 91200-1231-9BPP L2]

RIN 1018-AW29

#### Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are reopening the public comment period on our proposed rule to establish migratory bird subsistence harvest regulations in Alaska for the 2009 season. This action