

time and could adversely affect the species' viability (Allee 1931, pp. 12-37; Stephens *et al.* 1999, pp. 185-190; Dennis 2002, pp. 389-401). Surveys conducted in 2009 (Lucas 2009, unpublished data) conclude that Thorne's hairstreak butterflies are still present in the *H. forbesii* stands on Otay Mountain. We have no quantitative survey information on population numbers, but historical larval habitat has been reduced from 7,500 ac (3,035 ha) to approximately 454 ac (see "Habitat" section above for more information). Since Thorne's hairstreak butterfly is dependent on *H. forbesii* to complete its lifecycle, available larval habitat is a proxy for population size. With this large reduction in available larval habitat we believe that the species' population distribution have been significantly reduced relative to historical levels resulting in an increased risk of extinction due to stochastic events such as wildfire. Therefore, we find that the petition and information in our files do provide substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to restricted geographic range.

Global Climate Change

Information Provided in the Petition

The petitioners assert that butterflies (in general) are threatened by global climate change and are sensitive to small changes in microclimates, such as fluctuations in moisture, temperature, or sunlight. According to the petition, studies of Edith's checkerspot butterfly (*Euphydryas editha*) have verified speculation that whole ecosystems may move northward or shift in elevation as the Earth's climate warms (Parmesan and Galbraith 2004, p. 9).

Evaluation of Information Provided in the Petition and Available in Service Files

We recognize recent evaluations by Parmesan and Galbraith (2004, pp. 1-2, 29-33) that indicate whole ecosystems may be shifting northward and upward in elevation, or are otherwise being altered by differing climate tolerance among species within a community. Parmesan's review (2006, pp. 637, 648-649, 653) indicates range-restricted mountaintop species (such as Thorne's hairstreak butterfly) typically experience range retractions. Additionally, we recognize that climate change is likely to cause changes in the arrangement of occupied habitat patches. Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer

air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1-3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11). However, predictions of climatic conditions for smaller subregions such as California remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other effects. Because the information currently available on the effects of global climate change and microhabitat changes, such as increasing temperatures or moisture, does not make sufficiently precise estimates of the magnitude of the effects, we are unable to determine what impacts to Thorne's hairstreak butterfly may occur. Given this uncertainty, we find that the petition and information in our files do not provide substantial information to indicate that listing Thorne's hairstreak butterfly may be warranted due to global climate change. We will further investigate this potential threat to Thorne's hairstreak butterfly in our status review of the species.

In summary, we find that the petition and information in our files do provide substantial information indicating that listing Thorne's hairstreak butterfly may be warranted due to other natural or manmade factors affecting the species' continued existence. Specifically, we find that the effects of wildfire on individuals, population fragmentation, and restricted geographic range may pose significant threats to the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing Thorne's hairstreak butterfly may be warranted. This finding is based on information provided under Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor D (the inadequacy of existing regulatory mechanisms) and Factor E (other natural or manmade factors affecting the species' continued existence). Because we have found that the petition presents substantial information indicating that listing Thorne's hairstreak butterfly may be warranted, we are initiating a status review to determine whether listing Thorne's hairstreak butterfly under the Act is warranted.

The "substantial information" standard for a 90-day finding differs from the Act's "best scientific and

commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

The petitioners request that we designate critical habitat for this species. If we determine in our 12-month finding that listing Thorne's hairstreak butterfly is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking. The proposed rulemaking may be published concurrently with the 12-month finding or at a later date.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

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

Dated: March 26, 2010.

Jeffrey L. Underwood,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010-7547 Filed 4-2-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648-XU60

Fisheries in the Western Pacific; Hawaii Bottomfish and Seamount Groundfish Fisheries; Fishery Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the commercial and non-commercial fisheries in the Main Hawaiian Islands fishery for seven deepwater bottomfish species ("Deep 7" bottomfish) as a result of reaching the total allowable catch (TAC) for the 2009–10 fishing year.

DATES: Effective April 20, 2010, through August 31, 2010.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries Division, NMFS Pacific Islands Region, 808–944–2108.

SUPPLEMENTARY INFORMATION: Bottomfish fishing in Hawaii is managed under the Fishery Ecosystem Plan for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the Hawaii FEP appear at 50 CFR part 665 and at subpart H of 50 CFR part 600.

The regulations at § 665.211 authorize NMFS and the Council to set a TAC limit for Deep 7 bottomfish for the fishing year, based on the best available scientific, commercial, and other

information, and taking into account the associated risk of overfishing. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

When the TAC limit for the year is projected to be reached, the NMFS Regional Administrator is required to publish notification that the fishery will be closed beginning on a specified date, not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register**, until the end of the fishing year in which the TAC is reached. During the closure, no person may fish for, possess, or sell any Deep 7 bottomfish in the Main Hawaiian Islands, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally permitted to fish in the Mau and Ho omalu Zones or Pacific Remote Island Areas, and conducted in compliance with all other laws and regulations, are not affected by this closure. There is no prohibition on fishing for or selling non-Deep 7 bottomfish species throughout the year.

The TAC limit for the 2009–10 fishing year was recommended by the Council,

and specified by NMFS, as 254,050 lb (115,235 kg) of Deep 7 bottomfish (74 FR 48422; September 23, 2009). Progress toward the 2009–10 TAC was monitored using information reported by holders of State of Hawaii commercial marine licenses through monthly catch reports submitted to the State. Based on this information, the TAC for the 2009–10 fishing year is projected to be reached on or before April 20, 2010.

In accordance with § 665.211(c), this document serves as advance notification to fishermen, the fishing industry, and the general public that the Main Hawaiian Islands Deep 7 bottomfish fishery will be closed from April 20, 2010, through the remainder of the fishing year. The 2010–11 fishing year is scheduled to open on September 1, 2010. The proposed TAC for the 2010–11 fishing year will be published in the **Federal Register** by August 31, 2010.

This action is required by § 665.211(c) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2010.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–7619 Filed 3–31–10; 8:45 am]

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