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Dated: May 7, 2008.

Lyle Lavery,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8-10887 Filed 5-14-08; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****[FWS-R2-ES-2008-0037; 92220-1113-0000-C5]****Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Delist the Hualapai Mexican Vole (*Microtus mexicanus hualpaiensis*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), make a 90-day finding on a petition to remove the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*) from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Endangered Species Act (Act). We find that the petition presents substantial information indicating that delisting this mammal may be warranted. We are initiating a status review to determine if delisting this subspecies is warranted. We are requesting submission of any information on the Hualapai Mexican vole relevant to its listing status under the Act. Following this review, we will issue a 12-month finding on the petition.

DATES: This finding was made on May 15, 2008. To be considered in the 12-month finding on this petition, comments and information should be submitted to us by July 14, 2008.

ADDRESSES: You may submit written comments and materials to us 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: Docket FWS-R2-ES-2008-0037, 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 comments on <http://www.regulations.gov>. This generally

means that we will post any personal information you provide us (see the Public Comments Solicited section below for more information).

You may obtain copies of the petition, reports, and reviews of reports upon which this 90-day finding is based by visiting the Federal eRulemaking Portal at <http://www.regulations.gov> or our Web site at <http://www.fws.gov/southwest/es/arizona/>, or by contacting the Arizona Ecological Services Field Office at the address or contact numbers under **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT:

Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office; by telephone at 602/242-0210; or by facsimile at 602/242-2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

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 scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we must make this finding within 90 days of receipt of the petition, and publish the finding promptly in the **Federal Register**.

Our review of a 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) is limited to a determination of whether the information in the petition meets the "substantial information" threshold. "Substantial information" is defined in section 424.14(b) of our regulations 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.

We have to satisfy the Act's requirement that we use the best available science to make our decisions. However, we do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, at the 90-day finding stage, we

accept the petitioner's sources and characterizations of the information, to the extent that they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles, or studies done in accordance with valid methodologies), unless we have specific information to the contrary. Our finding considers whether the petition states a reasonable case on its face that delisting may be warranted. Thus, our 90-day finding expresses no view as to the ultimate issue of whether the species should no longer be classified as a threatened species. We make no determinations as to the value, accuracy, completeness, or veracity of the petition. The contents of this finding summarize that information that was available to us at the time of the petition review.

In making this finding, we relied on information provided by the petitioner and information available in our files at the time we reviewed the petition, and we evaluated that information in accordance with 50 CFR 424.14(b). Our process for making a 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 contained in the petition meets the "substantial information" threshold.

On August 23, 2004, we received a petition dated August 18, 2004, from the Arizona Game and Fish Department (AGFD 2004) to delist the Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*). The petition (AGFD 2004, pp. 4-6) states that: (1) The subspecies occurs over a much greater area and in higher numbers than previously thought; (2) it is likely that all populations referred to as *M. m. hualpaiensis*, along with other populations of the species in Arizona, should be referred to as *M. m. mogollonensis*; and (3) the threats faced by this more widespread taxon do not indicate that listing under the Act is warranted.

Species Information

The Mexican vole is a cinnamon-brown, mouse-sized rodent approximately 5.5 inches (14 cm) long with a short tail and small ears that are obscured by its fur (Hoffmeister 1986, p. 441; 52 FR 36776, October 1, 1987).

Goldman (1938, pp. 493-494) described and named the Hualapai Mexican vole (also known as the Hualapai vole) as *Microtus mexicanus hualpaiensis* in 1938. This was based on only four specimens, but Cockrum (1960, p. 210), Hall (1981, p. 481), and Hoffmeister (1986, pp. 444-445) all recognized the subspecies. *M. m.*

hualpaiensis has been considered one of three subspecies of *M. mexicanus* found in Arizona (Kime *et al.* 1995, p. 1). It was distinguished from *M. m. navaho* to the northeast by a slightly longer body, longer tail, and longer and broader skull (Hoffmeister 1986, p. 443). It was distinguished from *M. m. mogollonensis* by a longer body, shorter tail, and a longer and narrower skull (Hoffmeister 1986, p. 443).

The final rule listing *M. m. hualpaiensis* (52 FR 36776) indicated that this subspecies occupied the Hualapai Mountains, but also acknowledged that Spicer *et al.* (1985, p. 10) noted similar voles from the Music Mountains and that Hoffmeister (1986, p. 445) had tentatively assigned specimens from Prospect Valley to *M. m. hualpaiensis*. The rule stated that if future taxonomic evaluation of voles from the Music Mountains and Prospect Valley should indicate that they are *M. m. hualpaiensis*, the voles from the Music Mountains and Prospect Valley would be covered by the listing of the subspecies.

At the time of Federal listing, little was known about the life history of the Hualapai Mexican vole, but it was assumed to be similar to the other two *M. mexicanus* subspecies (Service 1991, p. 1). Hualapai Mexican voles are probably active year-round, as are other *Microtus* species (Spicer *et al.* 1985, p. 22). It is assumed they have small litters, similar to the other two subspecies, as they have only two pairs of mammae (mammary glands), which limits the number of young that can be nursed (Hoffmeister 1986, p. 443). Mexican voles are typically found in xeric (dry) habitats, unlike most *Microtus* species, which are associated with mesic (intermediate moisture) habitats (Tamarin 1985, p. 99).

A recovery plan for the Hualapai Mexican vole was completed and signed in August 1991. It outlined recovery objectives and has directed management and research priorities for the ensuing years.

Recent Taxonomy

Following Federal listing of the Hualapai Mexican vole, several focused surveys of the subspecies' distribution, habitat requirements, and genetic relationship to other *M. mexicanus* subspecies were undertaken. The petition reviews the taxonomic history of the Hualapai Mexican vole and recent genetic studies that have a bearing on its taxonomic status and concludes that only one subspecies of *M. mexicanus* should be recognized in Arizona. We briefly describe the petition's interpretations of these genetic studies

below. Researchers did not collect or analyze samples from the exact same locations, so site names across studies do not necessarily match. We have presented site names and resulting population assignments as described in the petition and studies cited in the petition.

As a point of clarification, Frey and LaRue (1993, p. 176) asserted that Mexican voles from Mexico are distinct from populations in the United States based on genetic and morphologic data. They assigned voles in Arizona, New Mexico, and Texas that were formerly named *M. mexicanus* to *M. mogollonensis* (Frey and LaRue 1993, pp. 176–177). Because the Service did not formally change the scientific name of the Hualapai Mexican vole, we continue to use the name *M. mexicanus* in this finding.

The petition states that in 1993, Frey and Yates conducted a genetic analysis on tissue samples from 12 populations (AGFD 2004, p. 2); there was an additional population from Mexico (Frey and Yates 1995, p. 9) not mentioned in the petition. According to the petition (AGFD 2004, pp. 2–3), the results showed that three populations (Hualapai Mountains, Hualapai Indian Reservation, and Music Mountains) were genetically distinct from other populations in Arizona and indicated that all three populations might be placed in the subspecies *M. m. hualpaiensis*. The petition noted that Frey and Yates (1993) stipulated that additional analyses including larger sample sizes might substantiate their findings. The petition states that Frey and Yates (1995) continued their work on the three Arizona subspecies and found that six of the populations sampled (Hualapai Mountains, Hualapai Indian Reservation, Music Mountains, Aubrey Cliffs/Chino Wash, Santa Maria Mountains, and Bradshaw Mountains) could be placed in the subspecies *M. m. hualpaiensis* (AGFD 2004, p. 3). In fact, Frey and Yates (1995, p. 9) treated the Aubrey Cliffs and Chino Wash populations as two distinct populations, bringing the number of *M. m. hualpaiensis* populations to seven. They also believed that two other populations (Round Mountain and Sierra Prieta) could be placed in the subspecies *M. m. hualpaiensis*, based on geographic proximity (AGFD 2004, p. 3).

Additional genetic analyses were conducted by Busch *et al.* (2001). According to the petition (AGFD 2004, p. 3), they assessed the evolutionary relatedness of 11 of the 16 populations that Frey and Yates reported on in 1995. In addition, they analyzed samples taken from specimens in two other areas

(Watson Woods and Navajo Mountain). The petition states that their results did not support separation of *M. mexicanus* in Arizona into three distinct subspecies. Populations assigned to *M. m. navajo* from Navajo Mountain, Mingus Mountain, San Francisco Peaks, and the Grand Canyon South Rim, and populations assigned to *M. m. mogollonensis* from the Mogollon Rim, Chuska Mountains, and White Mountains were not differentiated from those from the Hualapai Mountains, Hualapai Indian Reservation, Aubrey Cliffs, Bradshaw Mountains, Watson Woods, and Sierra Prieta (AGFD 2004, p. 3; Busch *et al.* 2001, p. 2). The petition states that the authors believed the specimens from the White Mountains and Chuska Mountains could be considered a different subspecies, or they may simply show some genetic difference due to geographic separation (AGFD 2004, p. 3; Busch *et al.* 2001, p. 11–12). According to Busch *et al.* (2001, p. 12) and acknowledged by the petitioner, there is only one subspecies of *M. mexicanus* in Arizona.

The petition included reviews by five experts familiar with genetic research who analyzed the Busch *et al.* (2001) report. According to the petition (AGFD 2004, pp. 3–4), one reviewer believed the data collected from Hualapai Mountains, Hualapai Indian Reservation, Aubrey Cliffs/Chino Wash, Bradshaw Mountains/Watson Woods, and Sierra Prieta represented five populations of *M. m. hualpaiensis*. Conversely, the reviewer concluded that the data from three sites (Mingus Mountain, San Francisco Peaks, and Grand Canyon South Rim) represented a different subspecies (*M. m. navaho*). The reviewer also suggested that the populations found in the Music Mountains and the Santa Maria Mountains were likely *M. m. hualpaiensis* based on “less well-supported morphologic, genetic, and biogeographic data,” for a total of seven populations. This reviewer did not include a discussion of *M. m. mogollonensis* and the validity of that subspecies. The petition states that the other four reviewers concurred overall with the conclusions in Busch *et al.* (2001) that all populations sampled could be assigned to *M. m. hualpaiensis* (AGFD 2004, p. 4).

Additionally, AGFD sent Busch *et al.*'s 2001 report to two different experts on mammalian taxonomy. The petition states that one of the taxonomic reviewers agreed with the dissenting genetic review discussed in the preceding paragraph that there are sufficient data to support distinguishing

more than one subspecies (AGFD 2004, p. 4). The reviewer concurred with the geneticist's population assignments of the subspecies. The petition states that the other taxonomic reviewer concluded that there is no basis to consider the three subspecies separate, that the reviewer stated that data used by Hoffmeister (1986) were insufficient to recognize three subspecies, and the genetic analyses (DNA and isozyme) (Frey and Yates 1993; 1995; Busch *et al.* 2001) were subject to methodological problems (AGFD 2004, p. 4). The reviewer asserted that all three subspecies should be considered as one, *M. m. mogollonensis*.

In summary, the various analyses and reviews present multiple interpretations of the taxonomy and distribution of voles in Arizona, none of which match that of our original listing. Although we are unable to ascertain the correct interpretation at this time, we believe the petitioner has presented reliable and accurate information indicating (1) That the Hualapai Mexican vole, as currently listed, may not be a valid taxonomic entity; and (2) that if the Hualapai Mexican vole is a valid taxon, it likely occurs throughout a greater range than originally thought.

Status Assessment

Pursuant to section 4 of the Act, we may list or delist a species, subspecies, or Distinct Population Segment of vertebrate taxa on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of 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. If it is determined that the Hualapai Mexican vole is a valid taxon occurring throughout a larger range, a new status review, based on a review of the five listing factors, would be required in order to determine if the Hualapai Mexican vole still meets the definition of threatened or endangered under the Act. This 90-day finding is not a status assessment and does not constitute a status review under the Act. Therefore, what follows below is a preliminary review of the factors affecting this subspecies, as presented by the petitioner. Please note that the petitioner addressed the subspecies as though it occurs in a larger range than what is currently recognized. Because we only monitor populations of Hualapai Mexican vole that occur within the Hualapai Mountains, as described in the listing rule, we have

very limited information in our files with which to draw conclusions regarding potential populations outside the Hualapai Mountains.

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

The final rule listing the subspecies considered the Hualapai Mexican vole to be extremely rare, with one of the most limited habitats of any North American mammal (52 FR 36776). The habitat was considered in danger of further degradation by cattle grazing and increased human recreational activities. The petition asserts that the subspecies occurs over a much greater area and in higher numbers than previously thought (AGFD 2004, pp. 2–6; see Recent Taxonomy discussion above). Therefore, loss of limited habitat should no longer be considered a threat to the subspecies. In addition, the petitioner asserts that the Hualapai Mexican vole is found in more xeric habitats than most *Microtus* species (AGFD 2004, p. 5); therefore, trampling of spring areas by cattle will not negatively affect the subspecies as intensely as it was thought when the subspecies was listed.

The Service only tracks the status of the Hualapai Mexican vole populations within the Hualapai Mountains, where it was listed. There is not enough information in our files to assess the reliability of information in the petition; therefore, we assume it is reliable.

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

While the Hualapai Mexican vole is not sought for commercial, recreational, or educational purposes, persecuted as a pest, or collected for the pet trade, the final rule listing the species indicated that an intensive trapping effort could eliminate a population (52 FR 36773). The petition notes that collecting of the Hualapai Mexican vole has historically been done for genetic analyses and comparison of morphological measurements and that, historically, the number of individuals taken was small relative to the number captured (AGFD 2004, p. 6). Genetic analyses may continue, but will be monitored through scientific collection permits authorized by the petitioner, AGFD. The petitioner does not believe that this factor rises to the level of a threat.

Overutilization for commercial, recreational, scientific, or education purposes was not presented as a threat in the final listing rule, and we have not received any reports of overutilization of Hualapai Mexican voles in the Hualapai Mountains since the listing of

the subspecies. We have no information in our files to indicate that the petitioner's information is unreliable or inaccurate.

C. Disease or Predation

The final rule listing the Hualapai Mexican vole states that little is known about disease or predation in Hualapai Mexican vole populations (52 FR 36778). However, species of *Microtus* are usually a fundamental part of the base of the food pyramid, and many potential predators occur in the Hualapai Mountains. Additionally, domestic cats may pose a threat from the expanding residential area near Hualapai Mountain Park. The petitioner notes that predation is not known to be a problem, especially if the range of the subspecies is not limited to the Hualapai Mountains (AGFD 2004, p. 6). Additionally, the petitioner notes that domestic cats have rarely been observed in Hualapai Mountain Park and, therefore, believes the threat of predation on Hualapai Mexican voles is overstated in the listing rule. However, the petitioner provides no information to support these assertions.

Although domestic cats have been mentioned as a threat (Spicer 1985, p. 28), we have no information to suggest these cats represent a significant predation threat to the Hualapai Mexican vole. Therefore, we assume that the petitioner's information is reliable.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition states that the removal of Federal protections afforded by the Act will not negatively affect Hualapai Mexican vole populations, since the species' range and habitat requirements are not as restricted as previously thought (AGFD 2004, p. 6). The petition also recognizes that Arizona Game and Fish Commission Order 14 prohibits hunting or trapping of Hualapai Mexican voles. Arizona Revised Statute (i.e., State Law) allows for the Commission to issue orders regarding the hunting and trapping of wildlife in Arizona. Also, since the petitioner, AGFD, has authority over scientific collection permits, it can approve or deny permits based on submitted research proposals (AGFD 2004, pp. 6–7).

The Service only tracks the status of the Hualapai Mexican vole populations within the Hualapai Mountains, where it is listed. We do not have any information in our files to indicate that a lack of regulatory mechanisms could be a problem. Therefore, we assume that the petitioner's information is reliable.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The final rule listing the Hualapai Mexican vole notes that the areas of habitat supporting the subspecies are small and isolated (52 FR 36778). This mammal is thus fragmented into small populations that may be subject to inbreeding and reduced genetic variability. Drought, which can reduce water flow, vegetation growth, and ground cover, is an additional threat to these populations (52 FR 36778). The petition asserts that because the Hualapai Mexican vole's range is not as restricted as once thought, manmade factors should not negatively influence the continued existence of the species (AGFD 2004, p. 7). Additionally, the petitioner states that drought is not a serious threat to Hualapai Mexican vole populations, because the normal and regular occurrence of drought probably allowed this vole to adapt to drier habitat conditions (AGFD 2004, p. 7). The petitioner also suggested that prescribed fire might improve or expand the habitat of the species (AGFD 2004, p. 7).

The Service only tracks the status of the Hualapai Mexican vole populations within the Hualapai Mountains, where it is listed. The apparent continued presence of the vole in those mountains (Kime *et al.* 1995, p. 6) suggests that drought may not be as great a threat as was thought at the time of listing. We did not address prescribed fire as a manmade factor in our listing rule. There is not enough information in our files to draw conclusions regarding the effects of drought or prescribed burns on additional populations; however, we have no information to indicate that the petitioner's information is unreliable or inaccurate. Therefore, we assumed the petitioner's information is reliable.

Finding

We have reviewed the petition and the supporting documents, as well as other information in our files. We find that the petition presents substantial information indicating that delisting the Hualapai Mexican vole may be warranted. The petitioner has provided information suggesting the taxon may occur over a greater range of the State than known at the time of listing, and may not even warrant taxonomic standing as a subspecies. As discussed above, given the limited information in our files regarding these issues, we assume that the information presented in the petition is reliable. If reliable, that

information is adequate to demonstrate that delisting may be warranted. While significant questions remain about the taxonomy of the species and threats facing the additional populations of voles, we consider these questions to be issues relevant to the listing determination that warrant further investigation. Accordingly, we believe it is appropriate to consider this information and any other new information available about this species, and the threats it may face, in a status review.

Public Information Solicited

When we make a finding that a petition presents substantial information to indicate that delisting a species may be warranted, we are required to promptly commence a review of the status of the species. Based on results of the status review, we make a 12-month finding as required by section 4(b)(3)(B) of the Act. To ensure that the status review is complete and based on the best available scientific information, we are soliciting information on *M. mexicanus* in Arizona. This includes information regarding historical and current distribution, taxonomic status, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat. This information is particularly needed for any populations of the taxon that were not among the three potential populations considered to be *M. m. hualapaiensis* in the 1987 final listing. We also request information regarding the adequacy of existing regulatory mechanisms. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of *M. mexicanus* in Arizona.

We are particularly interested in the views of scientists with expertise in mammalian taxonomy and the use of genetic data when making taxonomic determinations of species and subspecies. In particular, we are interested in review and comment on whether the information such as the original morphological evidence and new genetic reports support or refute the taxonomic validity of *M. m. hualapaiensis*.

If you wish to comment, you may submit your comments and materials concerning this finding. You may

submit your comments and materials concerning the taxonomic and listing status of *M. m. hualapaiensis* by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comments must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section. Comments submitted via <http://www.regulations.gov> must be submitted before midnight (Eastern Standard Time) on the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified on the previous paragraph, such as your street address, phone number, or e-mail address, 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.

Comments 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, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021 (602/242-0210).

References Cited

A complete list of all references cited in this finding is available, upon request, from the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021 (602/242-0210).

Authority

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

Dated: May 2, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8-10906 Filed 5-14-08; 8:45 am]

BILLING CODE 4310-55-P