

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of the *Order* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 05-24210 Filed 12-16-05; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List *Cicurina cueva* (No Common Name) as an Endangered Species

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

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list a karst meshweaver (spider), *Cicurina cueva* (no common name), under the Endangered Species Act of 1973, as amended. Since receiving the petition, both a genetic assessment and a re-assessment of morphological characters have failed to support the distinctness of *C. cueva* from two other named *Cicurina*, *C. bandida* and *C. reyesi*. After reviewing all available scientific and commercial information, we find that current information available to us does not support the taxonomic standing of *C. cueva* as a species, and therefore it is not a listable entity and listing is therefore not warranted.

**DATES:** The finding announced in this document was made on December 19, 2005.

**ADDRESSES:** The complete file for this finding is available for inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, 10711 Burnet Rd., Suite 200, Austin, Texas 78758. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Pine, Supervisor (see **ADDRESSES** section); 512-490-0057 extension 248.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species containing substantial scientific and commercial information indicating listing may be warranted, we make a finding within 12 months of the date of receipt of the petition. The finding must be that the petitioned action is one of the following: (a) Not warranted, (b) warranted, or (c) warranted but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether a species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register**.

On July 8, 2003, we received a petition requesting that we list a karst meshweaver, *Cicurina cueva* (no common name), as an endangered species with critical habitat. On May 25, 2004, Save Our Springs Alliance (SOSA) filed a complaint against the Secretary of the Interior and the Service for failure to make a 90-day petition finding under section 4 of the Act for *C. cueva*. In our response to Plaintiff's motion for summary judgment on October 15, 2004, we informed the court that we believed that we could complete a 90-day finding by January 20, 2005, and if we determined that the 90-day finding provided substantial information that listing may be warranted, we could make a 12-month finding by December 8, 2005. On February 1, 2005 (70 FR 5123), we published a 90-day finding and initiation of status review on a petition to list *C. cueva* as an endangered species. On March 18, 2005, the District Court for the Western District of Texas, Austin Division, adopted our schedule and ordered the Service to issue a 12-month finding on or before December 8, 2005.

### Taxonomy

Gertsch (1992) described and named *C. cueva*, *C. bandida*, and *C. reyesi* from adult, female specimens collected from Cave X in 1962 by Bell and Woolsey, Bandit Cave in 1966 by Reddell and Fish, and Airman's Cave in 1989 by

Reddell and Reyes, respectively. The three *Cicurina* species are all unpigmented and range in length from 5 millimeters (mm) (0.19 inches (in)) to 5.6 mm (0.2 in). Gertsch (1992) distinguished these three species by differences he perceived in the female reproductive system.

*Cicurina cueva*, *C. bandida* and *C. reyesi* were described by Gertsch (1992) on the basis of female genitalia of a small number of specimens. Because there were some locations that only had records of immature *Cicurina* that could not be identified to the species level, we contracted Drs. Marshal Hedin and Pierre Paquin on September 24, 2004, to determine whether species-level identification of immature specimens of blind *Cicurina* spiders from southern Travis and northern Hays counties could be made using a genetic assessment technique they had previously applied to other species of *Cicurina* (see Paquin and Hedin 2004 for methods). Their report on the contracted study concludes that *C. cueva* and two other formally described species, *C. bandida* and *C. reyesi* (Gertsch 1992), likely represent variants of a single species that shows genetic structuring across its range. They explain that "This finding makes biological sense, as we would expect geographically-adjacent cave populations to share more genetic similarity than caves that are distant in space. The genetic structuring observed is a natural consequence of the fragmented nature of cave habitats, and the unique habitat limitations of these spiders \* \* \*" (Paquin and Hedin 2005). The report authors suggest that rather than three different species, the populations collected represent one species, which they informally refer to as the "*C. cueva* complex." They say "We suggest that conservation activities concerning cave populations in this confined geographic region be based on this single species hypothesis." Since a formal revision reflecting this change in taxonomy (the naming and classification of organisms) has not been published in a peer-reviewed scientific journal, the Service requested independent peer review of the report. We believe we should now make this 12-month finding based on the taxonomic treatment recommended in the contracted report (Paquin and Hedin 2005).

Drs. Paquin and Hedin submitted a report in May 2005, titled, "Genetic and morphological analysis of species limits in *Cicurina* spiders (Araneae, Dictynidae) from southern Travis and northern Hays counties, with emphasis on *Cicurina cueva* Gertsch and relatives." When *Cicurina* specimens from Travis, Hays, and Williamson

counties, Texas, were compared to sampled populations of *C. cueva*, Paquin and Hedin (2005) found that the *C. cueva* complex (including all three named species) forms a monophyletic group (defined as a group descended from a single common ancestral form) or clade (a group of organisms that share features derived from a common ancestor) within a mitochondrial phylogeny (the evolutionary development and history of a species or higher taxonomic group based on mitochondrial DNA). Additionally, both *C. bandida* and *C. reyesi* are deeply embedded within the mitochondrial DNA clade corresponding to the *C. cueva* complex, indicating that they are part of the same group. In addition, they examined female genital morphology and found that "a similar genital morphology, with slight variations, is shared across the entire distribution of this species [the *C. cueva* complex]." Based on the Paquin and Hedin 2005 genetic and morphological results, they concluded that these three named taxa represent variants of a single species. Ultimately, when *C. cueva*, *C. bandida*, and *C. reyesi* are formally combined as a single species, the authors propose all populations within this expanded species be referred to as *C. bandida*, as this name has page priority in Gertsch (1992). Paquin and Hedin (2005) acknowledge that formal taxonomic decisions must involve publication in a scientific journal; therefore, the authors suggest using "*C. cueva* complex" to refer to the morphologically variable and genetically divergent populations within this single species until the formal change is published. In consideration of this information for use in our 12-month finding, we conducted a scientific peer review of Paquin and Hedin's 2005 report to determine if the proposed change in taxonomy was likely to be accepted.

On May 6, 2005, we sent the report to 20 scientists, 19 with Ph.Ds, with expertise in genetics, morphology, and/or conservation biology for peer review. We asked that they particularly review the completeness of the data in the report and identify any pertinent information that may be missing and the soundness of the methodology, data analysis, conclusions, and recommendations in the report. Each invited reviewer was assigned a number, which will be referred to here. We received eight responses (reviewers 2, 4, 5, 7, 8, 10, 13, 14). Dr. Mark Kirkpatrick (co-petitioner) also submitted two letters to the Service and personal email correspondence with Dr. Hedin (regarding the report). Because

Dr. Kirkpatrick is a co-petitioner he was not considered a peer reviewer. However, the Service acknowledges his considerable expertise in genetics. To allow peer reviewers the opportunity to comment on the issues presented by Dr. Kirkpatrick, we sent a second request for peer review to the same twenty scientists on June 20, 2005, and received ten peer reviews (from reviewers 5, 7, 8, 9, 10, 12, 13, 14, 19, 20). We asked the peer reviewers for their opinion on what degree of certainty they would assign to each of the following hypotheses/conclusions: (1) *C. cueva*, *C. bandida*, and *C. reyesi* are all one species (Paquin and Hedin conclusion), (2) they are all separate species, or (3) another hypothesis/conclusion is possible. We asked them to explain their views on appropriate criteria for delimiting species using the types of morphological and genetic data available in this case, and how those criteria apply to their review.

Of the 14 peer reviewers that responded to one or more requests for reviews, 10 reviewers (2, 4, 5, 8, 10, 12, 13, 19, 20, and 22) expressed general agreement with Paquin and Hedin's conclusion that *C. cueva*, *C. bandida*, and *C. reyesi* represent a single species, one reviewer (9) expressed support for continuing to recognize them as three separate species, and three reviewers (7, 14, and 21) concluded that more study was needed to distinguish between the one-species and three species alternatives. In addition to these overall conclusions, most reviewers provided additional comments on various aspects of the Paquin and Hedin report, and on pertinent issues related to the taxonomic interpretation of genetic and morphological data. These comments on specific issues are summarized below.

Six of the twelve peer reviewers (2, 4, 5, 9, 10, 19) who responded to at least one of these two requests for review indicated the study overall was well done and the methods used in the genetic aspects of this study were scientifically sound. However, we did receive a variety of comments. Below we discuss the comments from both of these sets of reviews in regard to the methods, analysis, and conclusions in the study.

Concerns were raised by five peer reviewers (4, 5, 7, 9, 14) regarding the authors' use of a single region of the mitochondrial DNA. Some believed the report would be strengthened by a larger sample size from each sampling locality, inclusion of data from other mitochondrial DNA regions, and an analysis of genetic markers from nuclear DNA. Three peer reviewers (4, 5, 14) speculated that the conclusion to group

the three taxa into a single species would probably still be the same even with further genetic analysis.

Two reviewers (13, 14) questioned the use of particular phylogenetic methods to analyze the genetic data and construct the tree diagrams of relationships. The authors' present two different trees, or phylogenies, based on a single data set; one generated by neighbor joining (NJ) analyses and the other by Bayesian phylogenetics. These methods differ in that NJ is a distance-based approach based on analysis of a matrix of genetic distances (Hedrick 2000), and Bayesian phylogenetics is a character-based approach (Avice 2004). Although they rely on different assumptions and may give somewhat different results, both are generally accepted methods for analyzing and presenting DNA sequence data (Avice 2004), and Avice (2004, page 142) recommends that studies include both a distance-based approach and a character-based approach for comparison. The authors stated that they also analyzed the data using maximum likelihood analysis, which is another character-based method (Avice 2004). They did not present a phylogenetic tree representing the results of the maximum likelihood analysis but stated that the results were similar to their Bayesian analysis (Dr. Paquin, San Diego State University, pers. comm., 2005; Hedin and Paquin 2005). Although we acknowledge that there are a number of additional methods of phylogenetic analysis (Hedrick 2000, Avice 2004), the authors presented trees representing the two major types of trees, as recommended by Avice (2004).

Three peer reviewers (8, 13, 14) suggested different conclusions could be drawn, even if the phylogenies are accepted. These alternative interpretations reflect differing views on the appropriate amount of genetic difference for delineating species boundaries, which is an active area of debate in taxonomy (Sites and Marshall 2004).

One peer reviewer (14) suggested that the study of additional morphological characters, rather than genitalia, such as somatic (non-sexual) characters, might find diagnosable differences within the "*C. cueva* complex." However this peer reviewer doubted that the outcome of such studies would likely affect the authors' conclusion that *C. cueva* is not a species. Additionally, one reviewer (14) stated the assessment of genital variation was subjective and would have been better if the different genital parameters could have been quantified somehow with the variation analyzed

statistically. Reviewers 7 and 12 stated that morphology clearly plays a critical role in deciphering the systematics of this group, and reviewer 7 wondered if some statistical quantification of patterns in morphological characters is possible. Gertsch's (1992) original diagnoses for these three species included only collection locality and characters of the female reproductive system; no other characters were identified in the diagnosis. The diagnosis that accompanies the original description of a new species is important because it provides the characters or character states that allow that species to be distinguished from other species. Gertsch (1992) expressed doubts that other characters were useful; for example, "*Cicurella* [the subgenus to which the species in question belong] \* \* \* offer few coloration or somatic features to allow easy identification." Gertsch (1992) was also dismissive of the value of different reproductive features in males and notes that males are much less available for study, as they represent only a fifth the number of mature females.

One reviewer (22) noted variation in female genitalia observed among the specimens presented in the report was considered "well within" the range of intraspecific (within-species) variation typically observed in female genitalia of other species and adequately demonstrates that there is no morphological reason to consider *C. cueva*, *C. bandida*, and *C. reyesi* as three separate species. We recognize that study of additional morphological characters and more quantitative analysis of current characters could increase our understanding of morphological variation within this group of spiders, but we find little support for rejecting the authors' recommended taxonomy, considering their findings and the peer reviewers' comments on the morphological data.

Dr. Kirkpatrick thought the Paquin and Hedin (2005) report did not statistically disprove the "established taxonomy" previously described by Gertsch (1992). However, two peer reviewers (8 and 22) expressed concern that Gertsch (1992) did not sufficiently account for the possibility of intraspecific variation in genitalic characters and improperly recognized minor morphological variants as different species and that his species descriptions were based on small sample sizes. While such a lack of statistical analysis is common in the field of systematic biology, we believe that since two experts (19 and 22) in this field have expressed strong doubts about the basis of the species-level

taxonomy presented by Gertsch, the alternative taxonomic delineation presented by Paquin and Hedin (2005) deserves serious consideration. We also note that Paquin and Hedin's (2005) morphological studies were based on more than double the number of specimens available to Gertsch (1992) when he originally described the species.

We received a variety of responses to the specific question in the second peer review regarding the degree of certainty that the reviewer would assign to the various hypotheses or possible conclusions about species limits. Two reviewers (8 and 19) clearly supported the Paquin and Hedin conclusion that *C. cueva*, *C. bandida*, and *C. reyesi* are all one species. However, reviewer 8 did disagree about the assignment of three or four of the populations to this group and did differ with Paquin and Hedin about the level of differences accepted to represent a species. One of the reviewers (13) was "unconvinced that the report's conclusions are correct", and suggested an alternate hypothesis and classification. Reviewers 7 and 9 believe the Paquin and Hedin conclusions should be considered preliminary and premature, respectively. Reviewers 5, 10, 12, and 20 tended to accept the Paquin and Hedin hypothesis based on the information presented; however, they each expressed some uncertainty or suggested that additional data collection and analysis would be advisable. Reviewer 14 felt that both Hedin and Kirkpatrick provided "solid, convincing arguments for their points of view"; this reviewer doubted that further investigation would lead to improved resolution on the question of how many species there are and believes this is ultimately a matter of interpretation.

In response to divergent opinions regarding how to define species limits and how much data are needed to confidently make a species determination, and because some but not all peer reviewers were familiar with spider taxonomy in particular, we conducted a third peer review. We sent four arachnologists the Paquin and Hedin 2004 publication (that described the methods used in this study) and 2005 report, the first peer review request and responses, Dr. Kirkpatrick's letters and emails, and the second peer review request and responses. We received two responses (reviewers 21 and 22). One of these reviewers (22) stated that "Based on the evidence presented by Hedin & Paquin, the only well supported scientific conclusion at this time, is that only one species is present." The other reviewer (21) stated Paquin and Hedin

clearly explained their methods and that they are adequate for their questions. The reviewer also stated that "Paquin and Hedin have given a conservative conclusion based on their data, and have noted alternative explanations and the need for more specimens". The reviewer stated that "without more of this work I do not see a way to resolve the concerns about data interpretation raised by Dr. Mark Kirkpatrick."

There is ongoing debate among many scientists regarding methods for species differentiation (Sites and Marshall 2004). Some believe defining species boundaries requires a "total evidence" approach that includes data from multiple genes and morphology, as well as ecology and behavior. Although it is reasonable to believe this debate will continue, the Service's "Interagency Cooperative Policy on Information Standards under the Endangered Species Act" (59 FR 34271) requires we use the "best available comprehensive technical information" in making Federal listing determinations. The Paquin and Hedin (2005) report provides genetic data for the first time and morphological data based on an increased number of specimens; both approaches fail to distinguish *C. cueva* from *C. bandida* and *C. reyesi*. In addition, the claim by the petitioners that the genetic analysis employed is not informative about taxonomic standing within the *C. cueva* complex is not supported by the clear correspondence between geography and branching patterns of both phylogenetic trees. The correspondence between geography and phylogeny indicates that the phylogenetic patterns have a biological basis and do not simply present "noise" that is obscuring biologically important patterns. We believe, based on our review and the results of the peer reviews, the Paquin and Hedin (2005) report provides the best available information on the current taxonomic status of the *Cicurina* complex. Although it is always possible that future analyses on other morphological characters or genetic markers may convince spider taxonomists that another taxonomic interpretation is appropriate, we cannot base our findings on the speculative outcomes of studies not yet performed. We find, however, that the Paquin and Hedin (2005) report is based on procedures and methods of analysis that are generally accepted in the application of molecular methods to taxonomy. Although additional study could affect the taxonomic conclusions of the report, according to the requirements of the Act the best available genetic and

morphological data at this time support the recommendation of Paquin and Hedin (2005) to treat these three species as one species.

#### Previous Federal Actions

Previous Federal actions can be found in our 90-day finding that published on February 1, 2005 (70 FR 5123), and in our notice reopening the comment period on August 16, 2005 (70 FR 48093). That information is incorporated by reference into this 12-month finding.

In addition to information incorporated by reference we note that the first comment period for providing information for our status review closed May 15, 2005. Pursuant to 50 CFR 424.16(c)(2), we may extend or reopen a comment period upon finding that there is good cause to do so. We reopened the comment period from May 23 to June 22, 2005 (70 FR 29471; May 23, 2005), since additional information from the genetic analysis of *Cicurina* species in southern Travis County was completed. Several parties requested another extension of the comment period. We reopened the public comment period from August 16 to 30, 2005 (70 FR 48093; August 16, 2005). During this final comment period, we made available the results of our peer review on the Paquin and Hedin (2005) report.

#### Finding

We have carefully assessed the best scientific and commercial information available regarding the taxonomic status of *Cicurina cueva*. We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment periods on our status review following our 90-day finding. This finding reflects and incorporates information we received during the public comment periods. We also consulted with recognized spider and karst invertebrate experts. On the basis of this review, we find that listing *C. cueva* is not warranted because *C. cueva* does not meet the definition of a "species" under the Act.

#### References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor at the Austin Ecological Services Office (see ADDRESSES section).

#### Author

The primary author of this document is the Austin Ecological Services Office (see ADDRESSES section).

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

Dated: December 8, 2005.

**Marshall P. Jones Jr.,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 05-24119 Filed 12-16-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 041110317-4364-02; I.D. 121205C]

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the 2005 summer flounder commercial quota available to New York has been harvested and is announcing the closure of summer flounder in Federal waters. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 2005, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise New York of the closure and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

**DATES:** Effective 0001 hours, December 14, 2005, through 2400 hours, December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mike Ruccio, Fishery Management Specialist, (978) 281-9104.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2005 calendar

year was set equal to 18,180,002 lb (8,246,395 kg) (70 FR 303, January 4, 2005). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, resulting in a commercial quota of 1,390,223 lb (630,601 kg). However, the 2005 allocation to New York was reduced to 1,374,164 lb (623,317 kg) due to research set-aside. The states of North Carolina, New Jersey, and Rhode Island and the Commonwealth of Virginia have transferred a total of 50,530 lb (22,920 kg) to New York in accordance with the Atlantic States Marine Fisheries Commission Addendum XV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, bringing the total quota to 1,424,694 lb (646,241 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New York has harvested its quota for 2005.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 14, 2005, further landings of summer flounder in New York by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2005 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, December 14, 2005, federally permitted dealers may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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