

and since the numbers of contractors found to have submitted defective cost or pricing data are a minute subset of contractors to whom TINA applies, the rule is not expected to apply to a substantial number of small entities. Furthermore, the differential in interest computing methods is not expected to amount to a significant economic impact. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2009-034), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: September 15, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 52.214-27 by—
a. Revising the date of the clause; and
b. Removing from paragraph (e)(1) “Simple interest” and adding “Interest compounded daily, as required by 26 U.S.C. 6622,” in its place.

The revised text reads as follows:

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Date)

* * * * *

3. Amend section 52.215-10 by—
a. Revising the date of the clause; and
b. Removing from paragraph (d)(1) “Simple interest” and adding “Interest

compounded daily, as required by 26 U.S.C. 6622,” in its place.

The revised text reads as follows:

52.215-10 Price Reduction for Defective Cost or Pricing Data.

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Price Reduction for Defective Cost or Pricing Data (Date)

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4. Amend section 52.215-11 by—
a. Revising the date of the clause; and
b. Removing from paragraph (e)(1) “Simple interest” and adding “Interest compounded daily, as required by 26 U.S.C. 6622,” in its place.

The revised text reads as follows:

52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.

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Price Reduction for Defective Cost or Pricing Data—Modifications (Date)

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[FR Doc. 2010-23589 Filed 9-21-10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket number FWS-R4-ES-2010-0051]

[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List *Agave eggersiana* (no common name) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plant *Agave eggersiana* (no common name) as endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing *A. eggersiana* is warranted. Currently, however, listing *A. eggersiana* is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add *A. eggersiana* to our candidate species list. We will develop a proposed rule to list *A. eggersiana* as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim

period the status of the candidate taxon will be addressed through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on September 22, 2010.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number [FWS-R4-ES-2010-0051]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquero'n, Puerto Rico 00622. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above internet address or the mailing address listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Assistant Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquero'n, Puerto Rico 00622; by telephone at (787) 851-7297; or by facsimile at (787) 851-7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

We identified *Agave eggersiana* as a category 2 candidate species in the Notice of Review published in the **Federal Register** on September 30, 1993 (58 FR 51144) and subsequent publication. A category 2 species was one for which the Service had information that proposing as endangered or threatened may be appropriate but for which sufficient information was not currently available to support a proposed rule. Designation of category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596). This notice redefined candidates to include only species for which we have information needed to propose them for listing, and as a result, *Agave eggersiana* was removed from the Candidate species list.

On November 21, 1996, we received a petition from the U.S. Virgin Islands Department of Planning and Natural Resources (DPNR) requesting that we list *Agave eggersiana* and *Solanum conocarpum* as endangered. On November 16, 1998, we published in the **Federal Register** (63 FR 63659) our finding that the petition to list *A. eggersiana* and *S. conocarpum* presented substantial information indicating that the requested action may be warranted and initiated a status review on these two plants. On September 1, 2004, the Center for Biological Diversity filed a lawsuit against the Department of the Interior and the U.S. Fish and Wildlife Service (Service) alleging that the Service failed to publish a 12-month finding for *A. eggersiana* and *S. conocarpum* (*Center for Biological Diversity v. Norton*, Civil Action No. 1:04-CV-2553 CAP). In a stipulated settlement agreement resolving that case, signed April 27, 2005, we agreed to submit our 12-month finding for *A. eggersiana* and *S. conocarpum* to the **Federal Register** by February 28, 2006. On March 7, 2006, we published our 12-month finding (71 FR 11367) that listing of *A. eggersiana* and *S. conocarpum* was not warranted. On September 9, 2008, the Center for Biological Diversity filed a complaint challenging our 12-month finding (*Center for Biological Diversity v. Hamilton*, Case No. 1:08-cv-02830 -CAP). In a settlement agreement approved by the Court on August 21, 2009, the Service agreed to submit to the **Federal Register** a new 12-month finding for *A. eggersiana* by September 17, 2010. This notice constitutes the 12-month finding on the 1996 petition to list *A. eggersiana* as endangered.

Species Information

Taxonomy and Species Description

Agave eggersiana is a flowering plant of the family Agavaceae (century plant family) endemic to the island of St. Croix in the U.S. Virgin Islands. *A. eggersiana* was originally described in 1913 by Trelease from material collected on St. Croix, and is distinguished from other members of the Agavaceae family by its acaulescent (without an evident leafy stem), non-suckering growth habit (vegetative reproduction that does not form offshoots around its base), and fleshy, nearly straight leaves with small marginal prickles (1.00 millimeter (mm); 0.04 inches (in) long) that are nearly straight (Britton and Wilson 1923, p. 156; Proctor and Acevedo-Rodriguez 2005, p. 118). Its flowers are deep yellow, 5 to 6 centimeters (cm) (1.95 to 2.34 in) long. After flowering, the panicles (inflorescence) produce numerous small vegetative bulbs (bulbils), from which the species can be propagated (Proctor and Acevedo-Rodriguez 2005, p. 118). *Avave eggersiana* is not known to produce fruit. Furthermore, based on observations of cultivated plants, *Agave eggersiana* requires at least 10 to 15 years to develop as a mature individual and to produce an inflorescence (David Hamada, St. George Botanical Garden, 2010, pers. comm.). *Avave eggersiana* like other *Agave* species are monocarpic, meaning the plant dies after producing the spike or inflorescence.

Habitat and Distribution

Britton and Wilson (1923, p. 156) reported the species from hillsides and plains in the eastern dry districts of St. Croix but did not provide population estimates. In addition, *Agave eggersiana* is cultivated on St. Croix and St. Thomas for ornament (Trelease 1913, p. 28; Britton and Wilson 1923, p. 156; Proctor and Acevedo-Rodriguez 2005, p. 118). Information provided in the petition (Kojis and Boulon, DPNR, 1996, pers. comm.) specified that the species was last observed growing in the wild around 1984 to 1986 on St. Croix. In 2003, DPNR stated that the species is believed to be extinct (Plaskett 2003, pers. comm.; Dalmida-Smith 2010, pers. comm.). Proctor and Acevedo-Rodriguez (2005, p. 118) provided a general description of the species and they state that the species "now appears to be extinct in the wild." However, no citations or survey information were provided to support this statement. Subsequently, in 2010, DPNR provided information based on field visits and reported the existence of several

populations in St. Croix (Dalmida-Smith 2010, pers. comm.).

Current Status

Historically, *Agave eggersiana* was reported from the north coast in Christiansted, St. Croix and along the south coast of the island. The current distribution and rarity of the species do not represent the historical range. Historically, sugar cane was the main crop on the island and dominated the economy for nearly 200 years (Shaw, 1933, p. 414). Apparently, the former land use of the areas used for sugar cane cultivation resulted in degradation of the species' habitat and nearly extirpated the species from the wild. Sugarcane is no longer cultivated on the island and the majority of the areas formerly used for sugarcane plantations are currently grasslands and early secondary forests dominated by the exotic tree *Leucaena leucocephala* (tantan).

In 2010, the Division of Fish and Wildlife of the DPNR (Dalmida-Smith 2010, pers. comm.) conducted a local status review to determine the extent of the populations of *Agave eggersiana* in St. Croix. They reported five sites where the species was found; however, it is uncertain if these populations are natural populations (individuals that come from wild populations) or if the populations consist of individuals that escaped from landscaping. The five reported sites are: (1) Manchineel/Ha'penny Beach (Southern St. Croix) with an estimated 30 individuals, which is approximately half the number of individuals that they encountered 2 years before; (2) West side of Vagthus point (Southern St. Croix) with a single individual; (3) Gallows Bay (Northern St. Croix) with several plants but no approximate number was mentioned; (4) Protestant Cay (Northern St. Croix) with an estimated 30 individuals, including a number of young plants; and (5) Ruth Island (Southern St. Croix) with a single individual that was introduced to the cay many years ago. However, the exact year of this introduction is unknown.

In February 2010, Service biologists conducted surveys of *Agave eggersiana* on St. Croix. In their 2010 surveys, Service biologists visited seven of the ten currently known populations (Table 1). They did not survey the two areas where a single individual has been reported (Ruth Island and West Vagthus point) or Buck Island Reef National Monument, where individuals have been planted and recent survey information exists. Based on their characteristics (growing mixed with native vegetation, evidence of natural recruitment and the presence of

different size classes), these surveys indicate that the species currently occurs in six areas that appear to be

remnants of wild populations. Four localities (Buck Island Reef National Monument, Salt River Bay, Ruth Island,

and Lagoon Picnic Area) contain individuals that were planted in recent years.

TABLE 1. CURRENTLY KNOWN POPULATIONS OF *Agave eggersiana* ON ST. CROIX.

Locality	Category	Estimated # of Adult Individuals	Source of Information
Manchineel / Ha'penny Beach	Wild	25–30	Dalmida-Smith 2010, pers. comm.; Monsegur and Vargas 2010, unpublished data
West Vagthus point	Wild	1	Dalmida-Smith 2010, pers. comm.
Gallows Bay	Wild	2–3	David Hamada. 2010, pers. comm.; Monsegur and Vargas 2010, unpublished data.
Protestant Cay	Wild	30–51 + 60 bulbils	Dalmida-Smith 2010, pers. comm.; Monsegur and Vargas 2010, unpublished data
Ruth Island	Introduced*	1	Dalmida-Smith 2010, pers. comm.
Great Pond	Wild	76 + 50 bulbils	Monsegur and Vargas 2010, unpublished data; Plaskett 2003, pers. comm.
South Shore	Wild	100 + 150 bulbils	Monsegur and Vargas 2010, unpublished data.
Salt River Bay	Introduced**	6	Monsegur and Vargas 2010, unpublished data.
Buck Island National Monument	Introduced*	5	Monsegur and Vargas 2010, unpublished data.
Lagoon Picnic Area	Landscape	177	Monsegur and Vargas 2010, unpublished data.
Total		450 +260 bulbils	

* Introduced by DPNR for conservation.

** Introduced by NPS for education and outreach.

The eight localities containing multiple *Agave eggersiana* plants are described as follows:

(1) Gallows Bay (private property) has several individuals that are considered by local experts as a remnant of a natural population (David Hamada 2010, pers. comm.). Historical documents and illustrations show that *Agave eggersiana* was common on the landscape of Gallows Bay (David Hamada 2010, pers. comm.).

(2) Protestant Cay (owned by the government but leased to a private party), has an estimated population of 51 adult individuals of different sizes and about 60 bulbils.

(3) Ha'penny Beach (private property), has an estimated population of 25 individuals of different size classes; one of the plants was found flowering during the site visit conducted by the Service in 2010.

(4) Great Pond (managed by the Department of Housing, Parks and Recreation) has a healthy population of *A. eggersiana* with different size plants and evidence of recent flowering events. This population is located near Great Pond, an area where it was suspected that descendants from wild plants may have existed (Plaskett 2003, pers. comm.).

(5) South Shore (private property), has a population of about 100 adult individuals and about 150 bulbils, all growing on small terraces at a rocky cliff. This population is actively flowering and it was noted that some of the bulbils are reaching the sea, suggesting a possible dispersal mechanism for the species.

(6) Salt River Bay National Historic Park and Ecological Preserve (SARI) (managed by the National Park Service (NPS)) has six individual plants. In 2007, personnel from the NPS planted these individuals at Salt River as part of the landscape with the idea of establishing a population at the site and for outreach purposes. At the time of the survey, five of these plants were producing spikes and were expected to produce bulbils within the following months (Monsegur and Vargas, USFWS, 2010, unpublished data). Based on information provided by personnel from NPS, additional propagation efforts with the species are planned in the near future (Lundgreen 2010, pers. comm.).

(7) Buck Island Reef National Monument (managed by the NPS) has an estimated population of five individuals. In 2007, personnel from NPS planted these five individuals on the island, but at present time there is no information regarding the breeding

condition of these plants (Lundgreen 2010, pers. comm.).

(8) Lagoon Picnic Area (a public beach area that seems to be under a reforestation effort funded by the Antilitter and Beautification Commission) harbors about 177 plants as part of the landscape. The size of the individuals in this area ranges from small planted bulbils to a few adult individuals ready to flower. Based on the information gathered and observations, about 450 adult individuals and 260 bulbils are currently known in 10 localities, including 6 populations that are considered wild, 3 introduced populations for conservation and public education, and 1 landscape population (Table 1). In addition to these localities, Monsegur and Vargas (2010, personal observation) documented the species presence in private gardens scattered throughout the island. We estimate about 90 adult individuals are present in these private gardens.

At the present time, information on ecology, phenology, and genetics for *Agave eggersiana* is lacking. Samples of *A. eggersiana* from individuals in the Gallows Bay area have been collected for genetics analysis, but results were not available prior to making this finding (Ray 2010, pers. comm.).

Current evidence suggests that the wild and cultivated populations have minimum genetic variation. Therefore, all *A. eggersiana* plants (cultivated and wild) are included as part of the listable entity in this finding; however, we have focused our assessment of threats to the wild populations. Although data suggest that cultivated individuals could be used as genetic stock to aid in the long-term survival of this species, most cultivated populations are groomed to prevent recruitment and thus offer minimal conservation contribution. We do not feel that cultivated individuals propagated for private or commercial uses aid in the conservation or the recovery of the species in the wild.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR 424), set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to *Agave eggersiana*, in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Of the currently known populations, only three areas are managed for conservation (Ruth Island, Salt River Bay, and Buck Island National

Monument), the remaining populations occur within privately owned lands currently threatened by development or areas already developed and managed as tourism and residential projects. Based on information reported by the University of the Virgin Islands' Conservation Data Center (<http://cdc.uvi.edu>), at least three of the populations (Protestant Cay, Gallows Bay, and Ha'penny Beach) lie within areas identified by the DPNR as high-density land use areas, which have a higher susceptibility to development in the near future. Furthermore, Weiss (2010, pers. comm.) identified two proposed development projects within suitable habitat for the species (C&R Robin, LLC and Seven Hills Beach Resort and Casino). Based on the field assessment conducted by Service biologists, the coastal areas that harbor suitable habitat for the species are currently subject to urban and tourist development (Monsegur and Vargas 2010, personal observation).

The population at Protestant Cay seems to be affected by the use of the area as a deposit for garden debris from a hotel that occupies the majority of this small island (Monsegur and Vargas 2010, personal observation). Since *Agave eggersiana* relies on asexual reproduction, the species depends on the bulbils becoming established. Covering the bulbils with debris may result in subsequent mortality of the bulbils and lack of natural recruitment, thus affecting the long-term survival of this population. Moreover, individuals located on the edges of the population are pruned as part of the gardens' maintenance. This practice may result in mortality or mutilation of individuals since the species is monopodial (single growth axis). The population at Protestant Cay is also threatened by competition with exotic plant species. Individuals seem to be stressed due to competition with exotics as what little undeveloped habitat is left is rapidly being colonized by nonnative species (see Factor E).

The individuals located at Gallows Bay are within an area currently developed as a residential complex with the potential for future expansion, which may affect these individuals (Monsegur and Vargas 2010, personal observation). In addition, this area does not contain additional habitat to allow the current population to expand. Remaining forested areas surrounding this location are characterized by the abundance of exotic species. Areas that could be used by bulbils to become established are occupied by the exotic plant *Sansevieria cylindrica*, a species

that tends to form a complete cover of the understory (see Factor E).

The areas adjacent to Ha'penny Bay on the south coast of St. Croix harbor two of the known natural populations of *Agave eggersiana* (Ha'penny Beach and South Shore). According to personnel from the DPNR (Valiulis 2010, pers. comm.) these areas are advertised by realtors as areas for tourism and residential development and, as previously mentioned, are planned for high-density development. Furthermore, the areas along the south coast that have not been developed are used for cattle or hay production, minimizing the recovery of native vegetation and, therefore, the habitat for *A. eggersiana* (Monsegur and Vargas 2010, personal observation). The development of tourist and residential projects in these coastal areas may result in the extirpation of some populations, or at the least, will reduce the chances of the populations to expand or to colonize other areas. This is exacerbated by the low potential for natural recruitment due to the small number of populations and individuals.

The population of Great Pond is located between the entrance road of the East End Marine Park office and a private property currently for sale. The population seems to be healthy based on the presence of different size plants and evidence of recent flowering events. It seems that there is suitable habitat for the species in the area; however, the area near the population is mowed and the access road limits the expansion of the population's range. Furthermore, the area adjacent to this population is a private property for sale. The possible use of the area for residential or tourist development may affect the population; owners will likely manage their properties as landscapes, which could lead to land clearing, additional mowing, and other maintenance of gardens. This could also lead to the introduction of exotics. Moreover, the abundance of grassland areas and the dominance of the exotic *Megathyrsus maximus* (guinea grass) in the area make the population *Agave eggersiana* susceptible to human-induced fires (addressed in Factor E). These exotic grasses are typically adapted to fire conditions.

Based on the above information, we consider the present or threatened destruction, modification, or curtailment of the species habitat or range as a moderate but imminent threat to wild populations of *Agave eggersiana*. The threats of possible construction developments and current management of habitat of the populations may further limit species

propagation and expansion in the foreseeable future.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Agave eggersiana has been reported as a cultivar since it was described as a species in 1913 (Trelease, 1913, p. 28); historically, the majority of *A. eggersiana* found in St. Croix and St. Thomas were from landscaped areas (Britton and Wilson 1923, p. 156; Plaskett 2003, pers. comm.; Kojis and Boulon 1996, pers. comm.; Proctor and Acevedo-Rodriguez 2005, p. 118; Acevedo-Rodriguez 2005, pers. comm.). The species is currently distributed by the St. George Botanical Garden for conservation and private landscaping purposes. *A. eggersiana* is a commonly used ornamental species on the island, and recent declines in the number of individuals at one population along the coast of Ha'penny Bay are thought to be due to collection for ornamental purposes (Dalmida-Smith 2010, pers. comm.; Valiulis 2010, pers. comm.).

Based on the above, we consider the overutilization for commercial and recreational purposes a moderate to low but imminent threat to wild populations of the species. Although captively propagated *Agave eggersiana* are available to residents for use in private gardens, collection of wild individuals is a threat to the species, and we expect it to continue to be a threat in the foreseeable future.

Factor C: Disease or Predation

The genus *Agave* is widely affected by the agave snout weevil (*Scyphophorus acupunctatus*). This weevil has a wide distribution that includes the Greater Antilles (Cuba, Jamaica and Hispaniola) (Vaurie 1971, p. 4). The larvae of this weevil feed on the starchy base of the plant, increasing the risk of infestation by pathogens, such as a virus or fungus, later resulting in the death of the plant (Vaurie 1971, p. 4). At this time, there is no information about the occurrence of the agave snout weevil within the Puerto Rican Platform or the Lesser Antilles where St. Croix is located. A small number of individuals of *A. eggersiana* were observed with scarring along the borders of some leaves (Monsegur and Vargas 2010, personal observation). It appears that an insect or an arthropod larva may feed on the leaves; however, the exact cause and the consequences of the scarring are unknown. Nevertheless, this is important and it should be monitored as it might be an indicator of a recently arrived pest to St. Croix.

On Mona Island (Puerto Rico), feral pigs are known to uproot juveniles and destroy the root system of *Agave sisalana*, to feed on the root system or to use them as a water source (Saliva 1983, 1996, personal observation). Since introduced pigs, donkeys, and goats have been reported in St. Croix we cannot discard the possible predation of *A. eggersiana* by these feral animals, particularly to young plants within the populations. The absence of evidence of predation by these species might be the result of the low number of populations of *A. eggersiana*, their isolation, and the proximity of some of these populations to human inhabited areas. However, at this time, there is no evidence that donkeys, pigs, or goats constitute a specific threat to any *A. eggersiana* populations.

Since the agave snout weevil has not been reported in St. Croix, we do not consider disease as a threat to the species. Although there is some evidence that insect or arthropod larvae may feed on the leaves of *Agave eggersiana*, there is no evidence that this is negatively impacting the species' ability to grow or reproduce. In addition, we have no evidence of grazing on *A. eggersiana* by introduced donkeys, pigs, or goats. Therefore, we do not find disease or predation to be a current threat to the species.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Territory of the U.S. Virgin Islands currently considers *Agave eggersiana* to be endangered under the Virgin Islands Indigenous and Endangered Species Act (V.I. Code, Title 12, Chapter 2), and has amended an existing regulation (Bill No. 18-0403) to provide for protection of endangered and threatened wildlife and plants by prohibiting the take, injury, or possession of indigenous plants. Based on the number of individuals currently used for private gardens and current landscape practices in private areas, such as pruning and mowing of populations, we believe that protection provisions under the local regulation are not being appropriately enforced. Rothenberger *et al.* (2008, p. 68) mentioned that the lack of management and enforcement capacity continues to be a significant challenge for the USVI since enforcement agencies are chronically understaffed and territorial resource management offices experience significant staff turnover, particularly during administration changes.

Based on the information above, we consider the inadequacy of existing regulatory mechanisms as a current threat to the species due to a lack of

enforcement. Because at least three populations exist in areas managed for conservation and public outreach, we consider this threat to be moderate to low in magnitude but imminent. We do not anticipate any regulatory or enforcement changes that would reduce this threat in the foreseeable future.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The islands of the Caribbean are frequently affected by hurricanes. It has been suggested that hurricanes are responsible for shaping and modifying the structure and composition of the vegetation in the Caribbean (Van Bloem *et al.* 2003, p. 137; Van Bloem *et al.* 2005, p. 572; Van Bloem *et al.* 2006, p. 517). As an endemic species to the island of St. Croix, *Agave eggersiana* would be expected to be well adapted to tropical storms. However, the low number of individuals found on the island and the reproductive biology of the species (dependence on asexual reproduction and the plant dying after flowering) increases the likelihood of stochastic events such as hurricanes extirpating a population. We believe that landslides and coastal erosion associated with hurricanes may affect the populations located along the coastal areas of St. Croix (Ha'penny Beach, South Shore, and Protestant Cay) due to their proximity to cliffs and the shoreline.

Agave eggersiana may be further threatened by climate change, which is predicted to increase the frequency and strength of tropical storms and can cause severe droughts (Hopkinson *et al.* 2008, p. 260). The cumulative effect of coastal erosion due to severe hurricanes plus the habitat modification for urban and tourist development can further diminish the availability of suitable habitat and, therefore, limit population expansion and colonization of new areas. In addition, the possibility of severe droughts may contribute to an increase in the quantity and frequency of fires on the island. These cumulative factors may reduce the number of individuals and further reduce populations.

Based on satellite images, there is evidence of human-induced fires along the south coast of the island. The vegetation of the Caribbean is not adapted to fires since this disturbance does not naturally occur on these islands (Brandeis and Woodall 2008, p. 557; Santiago-García *et al.* 2008, p. 608); juvenile plants are especially vulnerable to fire damage. This regime of human-induced fires could modify the landscape by promoting exotic trees and

grasses, and by diminishing the seed bank of native species. For example the exotic *Megathyrsus maximus* is well adapted to fires and typically colonizes areas that were previously covered by native vegetation. Furthermore, the presence of this species increases the amount of fuel and, therefore, the intensity of the fire events. Due to the abundance of grasses at Great Pond, this *Agave eggersiana* population is particularly threatened by human-induced fires.

Moreover, the individuals of the populations of Protestant Cay, Gallows Bay and Great Pond are surrounded by dense stands of different species of *Sansevieria*, an herb native to Africa. This invasive species seems to be occupying the ecological niche adjacent to the known populations of *Agave eggersiana*. Plant invasion can affect the environment at three levels; at the genetic level the number of individuals of native species can be reduced below the minimum necessary for persistence, at the species diversity level the number of species present and their distribution can be reduced, and at the ecosystem level the functioning of the ecosystem can be changed (Rippey *et al.* 2002, p. 170). In this case, invasive species may constrain the number of *A. eggersiana* reducing variability in the population. Consequently, the loss of diversity of the species may eliminate *A. eggersiana* in the area affecting other organisms (e.g., insects and birds feeding on the flowers).

Based on the above information and due to the reduced number of populations and individuals, we believe that the species is currently threatened by natural or manmade factors such as hurricanes, fires, and competition from exotic species. Climate change may exacerbate these habitat threats by increasing the frequency of fires, droughts, and hurricanes. We consider these threats to be moderate and imminent. We do not anticipate any changes that would appreciably reduce this threat in the foreseeable future.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether *Agave eggersiana* is threatened or endangered throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed the petition, information available in our files, other available published and unpublished information, consulted with species and

habitat experts and other Federal and State agencies, and conducted field work on the island of St. Croix.

This status review identified threats to the species attributable to Factors A, B, D, and E. Of the currently known populations, only three populations are located in areas managed for conservation and public outreach (Ruth Island, Salt River Bay, and Buck Island National Monument). The remaining populations, containing about 97 percent of the currently known adult individuals, are located in areas either threatened by development pressure, or are currently affected by landscape practices and competition with exotic species, resulting in detrimental effects to reproduction and recruitment (see Factors A and E). Furthermore, the use of the *Agave eggersiana* as an ornamental species is common on the island, and evidence suggests that wild specimens are being collected due to the commercial interest in this species (Factor B). Although the species is currently listed under local regulations, lack of enforcement of local law does not provide adequate protection to ameliorate threats to the species.

On the basis of the best scientific and commercial information available and our analysis of the current and foreseeable threats to the species and its habitat, we find that listing *Agave eggersiana* (including wild and cultivated populations), is warranted. We will make a determination on the status of the species as threatened or endangered when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time since approximately 450 individuals are known to occur in 10 localities (Table 1). However, if at any time we determine that issuing an emergency regulation temporarily listing the species is necessary, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates).

We assigned *Agave eggersiana* an LPN of 8, based on our finding that the species faces moderate to low magnitude threats from the present or threatened destruction, modification, or curtailment of its habitat; overutilization for commercial, recreational, scientific, or educational purposes; the inadequacy of existing regulatory mechanisms; and other natural or manmade Factors. One or more of the threats discussed above are occurring, and we anticipate they will still occur in the near future in each known population in St. Croix. These threats are ongoing and in some cases considered irreversible.

Although the species faces threats, as described above, we believe these threats to be of moderate to low magnitude; at least 450 adults and 260 bulbils are known to occur in 10 populations with half showing evidence of recruitment in the wild and 3 located in areas managed for conservation and public outreach. Under the 1983 Guidelines, a "species" facing imminent moderate to low magnitude threats is assigned an LPN of 7, 8, or 9 depending on its taxonomic status. Because *A. eggersiana* is a species, but not a monotypic genus, we assigned it an LPN of 8. While we conclude that listing the species is warranted, an immediate proposal to list this species is precluded by other higher priority listing actions, which we address below.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately \$11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to \$305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. § 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House

Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107 - 103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations, so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already-listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12-month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were "not intended to allow the Secretary to

delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with \$10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using \$1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing action in FY 2010 to \$11,585,417. Starting in FY 2010, we are also using our funds to work on listing actions for foreign species since that work was transferred from the Division of Scientific Authority, International Affairs Program to the Endangered Species Program. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The \$11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part

of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources are also a factor in determining which high-priority species are provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection

of the Act and implementing regulations.

Given the above-mentioned funding constraints, the Service's priority is to work on: (1) listing determinations for listing actions with absolute statutory, court-ordered, or court-approved deadlines, and final listing determinations for those species that have been proposed for listing; and (2) candidate species and reclassifications of other higher priority threatened species (i.e., species with LPN of 1). This work includes all the actions listed in the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss

it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we made progress in FY 2009 in the Listing Program and will continue to make progress in FY 2010. This progress included preparing and publishing the following determinations:

FY 2010 COMPLETED LISTING ACTIONS

Publication Date	Title	Actions	FR Pages
10/08/2009	Listing <i>Lepidium papilliferum</i> (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing Threatened	74 FR 52013-52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90-day Petition Finding, Not substantial	74 FR 55177-55180
10/28/2009	Status Review of Arctic Grayling (<i>Thymallus arcticus</i>) in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524-55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act	Proposed Listing Threatened	74 FR 56757-56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule	Proposed Listing Threatened	74 FR 56770-56791
11/23/2009	Status Review of Gunnison sage-grouse (<i>Centrocercus minimus</i>)	Notice of Intent to Conduct Status Review	74 FR 61100-61102
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 12-month petition finding, Not warranted	74 FR 63343-63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered	Notice of 90-day Petition Finding, Substantial	74 FR 63337-63343
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat	Notice of 90-day Petition Finding, Substantial	74 FR 66260-66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat	Notice of 90-day Petition Finding, Not substantial and Substantial	74 FR 66865-66905
12/17/2009	12-month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico	Notice of 12-month petition finding, Warranted but precluded	74 FR 66937-66950
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 605-649

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 286-310
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310-316
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges	Final Listing Threatened	75 FR 235-250
1/20/2010	Initiation of Status Review for <i>Agave eggersiana</i> and <i>Solanum conocarpum</i>	Notice of Intent to Conduct Status Review	75 FR 3190-3191
2/09/2010	12-month Finding on a Petition to List the American Pika as Threatened or Endangered	Notice of 12-month petition finding, Not warranted	75 FR 6437-6471
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment	Notice of 12-month petition finding, Not warranted	75 FR 8601-8621
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (<i>Oncorhynchus clarki clarki</i>) as Threatened	Withdrawal of Proposed Rule to .. List	75 FR 8621-8644
3/18/2010	90-Day Finding on a Petition to List the Berry Cave Salamander as Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 13068-13071
3/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel (<i>Obovaria jacksoniana</i>) as Endangered or Threatened	Notice of 90-day Petition Finding, Not substantial	75 FR 13717-13720
3/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened	Notice of 90-day Petition Finding, Substantial	75 FR 13720-13726
3/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse (<i>Centrocercus urophasianus</i>) as Threatened or Endangered	Notice of 12-month petition finding, Warranted but precluded	75 FR 13910-14014
3/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake (<i>Chionactis occipitalis klauberi</i>) as Threatened or Endangered with Critical Habitat	Notice of 12-month petition finding, Warranted but precluded	75 FR 16050-16065
4/5/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as Threatened or Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 17062-17070
4/6/2010	12-month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened	Notice of 12-month petition finding, Not warranted	75 FR 17352-17363
4/6/2010	90-Day Finding on a Petition to List a Stonefly (<i>Isoperla jewetti</i>) and a Mayfly (<i>Fallceon eatoni</i>) as Threatened or Endangered with Critical Habitat	Notice of 90-day Petition Finding, Not substantial	75 FR 17363-17367
4/7/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range	Notice of 12-month petition finding, Warranted but precluded	75 FR 17667-17680
4/13/2010	Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat	Final Listing Endangered	75 FR 18959-19165
4/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States	Notice of Initiation of Status Review	75 FR 19591-19592

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
4/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat	Notice of 12-month petition finding, Not warranted	75 FR 19592-19607
4/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat	Notice of 90-day Petition Finding, Substantial	75 FR 19925-19935
4/20/2010	Initiation of Status Review for Sacramento splittail (<i>Pogonichthys macrolepidotus</i>)	Notice of Initiation of Status Review	75 FR 20547-20548
4/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 21568-21571
4/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (<i>Ochrotrichia susanae</i>) as Threatened or Endangered	Notice of 12-month petition finding, Not warranted	75 FR 22012-22025
4/27/2010	90-day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat	Notice of 90-day Petition Finding, Substantial	75 FR 22063-22070
5/4/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 23654-23663
6/1/2010	90-Day Finding on a Petition To List <i>Castanea pumila</i> var. <i>ozarkensis</i>	Notice of 90-day Petition Finding, Substantial	75 FR 30313-30318
6/1/2010	12-month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened	Notice of 12-month petition finding, Not warranted	75 FR 30338-30363
6/9/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	75 FR 32728-32734
6/16/2010	90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 34077-34088
6/22/2010	12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered	Notice of 12-month petition finding, Warranted but precluded	75 FR 35398-35424
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 35746-35751
6/23/2010	Listing <i>Ipomopsis polyantha</i> (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing <i>Penstemon debilis</i> (Parachute Beardtongue) and <i>Phacelia submutica</i> (DeBeque Phacelia) as Threatened Throughout Their Range	Proposed Listing Endangered Proposed Listing Threatened	75 FR 35721-35746
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges	Final Listing Endangered	75 FR 35990-36012
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges	Proposed Listing Endangered	75 FR 36035-36057
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed Listing Threatened	75 FR 37353-37358
7/20/2010	90-Day Finding on a Petition to List <i>Pinus albicaulis</i> (Whitebark Pine) as Endangered or Threatened with Critical Habitat	Notice of 90-day Petition Finding, Substantial	75 FR 42033-42040

FY 2010 COMPLETED LISTING ACTIONS—Continued

Publication Date	Title	Actions	FR Pages
7/20/2010	12-Month Finding on a Petition to List the Amargosa Toad as Threatened or Endangered	Notice of 12-month petition finding, Not warranted	75 FR 42040-42054
7/20/2010	90-Day Finding on a Petition to List the Giant Palouse Earthworm (<i>Driloleirus americanus</i>) as Threatened or Endangered	Notice of 90-day Petition Finding, Substantial	75 FR 42059-42066
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule	Final Listing Endangered	75 FR 43844-43853
7/27/2010	Final Rule to List the Medium Tree-Finch (<i>Camarhynchus pauper</i>) as Endangered Throughout Its Range	Final Listing Endangered	75 FR 43853-43864
8/3/2010	Determination of Threatened Status for Five Penguin Species	Final Listing Threatened	75 FR 45497- 45527
8/4/2010	90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat	Notice of 90-day Petition Finding, Substantial	75 FR 46894- 46898
8/10/2010	90-Day Finding on a Petition to List <i>Arctostaphylos franciscana</i> as Endangered with Critical Habitat	Notice of 90-day Petition Finding, Substantial	75 FR 48294-48298
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range	Final Listing Endangered	75 FR 50813-50842
8/17/2010	90-Day Finding on a Petition to List Brian Head Mountainsnail as Endangered or Threatened with Critical Habitat	Notice of 90-day Petition Finding, Not substantial	75 FR 50739-50742
8/24/2010	90-Day Finding on a Petition to List the Oklahoma Grass Pink Orchid as Endangered or Threatened	Notice of 90-day Petition Finding, Substantial	75 FR 51969-51974
9/01/2010	12-Month Finding on a Petition to List the White-Sided Jackrabbit as Threatened or Endangered	Notice of 90-day Notice of 12-month petition finding, Not warranted	75 FR 53615-53629
9/08/2010	Proposed Rule To List the Ozark Hellbender Salamander as Endangered	Proposed Listing Endangered	75 FR 54561-54579
9/08/2010	Revised 12-Month Finding to List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened	Notice of 12-month petition finding, Warranted but precluded	75 FR 54707-54753
9/09/2010	12-Month Finding on a Petition to List the Jemez Mountains Salamander (<i>Plethodon neomexicanus</i>) as Endangered or Threatened with Critical Habitat	Notice of 12-month petition finding, Warranted but precluded	75 FR 54822-54845

Our expeditious progress also includes work on listing actions that we funded in FY 2010 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory

timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if

they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

Actions funded in FY 2010 but not yet completed	
Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination
African penguin	Final listing determination
Flat-tailed horned lizard	Final listing determination
Mountain plover	Final listing determination
6 Birds from Peru	Proposed listing determination
Sacramento splittail	Proposed listing determination
Pacific walrus	12-month petition finding
Gunnison sage-grouse	12-month petition finding
Wolverine	12-month petition finding
<i>Solanum conocarpum</i>	12-month petition finding
Sprague's pipit	12-month petition finding
Desert tortoise – Sonoran population	12-month petition finding
Pygmy rabbit (rangewide) ¹	12-month petition finding
Thorne's Hairstreak Butterfly	12-month petition finding
Hermes copper butterfly	12-month petition finding
Actions with Statutory Deadlines	
Casey's june beetle	Final listing determination
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination
7 Bird species from Brazil	Final listing determination
Southern rockhopper penguin – Campbell Plateau population	Final listing determination
5 Bird species from Colombia and Ecuador	Final listing determination
Queen Charlotte goshawk	Final listing determination
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace)	Final listing determination
Salmon crested cockatoo	Proposed listing determination
CA golden trout	12-month petition finding
Black-footed albatross	12-month petition finding
Mount Charleston blue butterfly	12-month petition finding
Mojave fringe-toed lizard ¹	12-month petition finding
Kokanee – Lake Sammamish population ¹	12-month petition finding
Cactus ferruginous pygmy-owl ¹	12-month petition finding
Northern leopard frog	12-month petition finding
Tehachapi slender salamander	12-month petition finding
Coqui Llanero	12-month petition finding
Dusky tree vole	12-month petition finding
3 MT invertebrates (mist forestfly(<i>Lednia tumana</i>), <i>Oreohelix</i> sp.3, <i>Oreohelix</i> sp. 31) from 206 species petition	12-month petition finding

Actions funded in FY 2010 but not yet completed	
Species	Action
5 UT plants (<i>Astragalus hamiltonii</i> , <i>Eriogonum soredium</i> , <i>Lepidium ostleri</i> , <i>Penstemon flowersii</i> , <i>Trifolium friscanum</i>) from 206 species petition	12-month petition finding
2 CO plants (<i>Astragalus microcymbus</i> , <i>Astragalus schmolliae</i>) from 206 species petition	12-month petition finding
5 WY plants (<i>Abronia ammophila</i> , <i>Agrostis rossiae</i> , <i>Astragalus proimanthus</i> , <i>Boechea (Arabis) pusilla</i> , <i>Penstemon gibbensii</i>) from 206 species petition	12-month petition finding
Leatherside chub (from 206 species petition)	12-month petition finding
Frigid ambersnail (from 206 species petition)	12-month petition finding
Gopher tortoise – eastern population	12-month petition finding
Wrights marsh thistle	12-month petition finding
67 of 475 southwest species	12-month petition finding
Grand Canyon scorpion (from 475 species petition)	12-month petition finding
<i>Anacroneuria wipukupa</i> (a stonefly from 475 species petition)	12-month petition finding
Rattlesnake-master borer moth (from 475 species petition)	12-month petition finding
3 Texas moths (<i>Ursia furtiva</i> , <i>Sphingicampa blanchardi</i> , <i>Agapema galbina</i>) (from 475 species petition)	12-month petition finding
2 Texas shiners (<i>Cyprinella sp.</i> , <i>Cyprinella lepida</i>) (from 475 species petition)	12-month petition finding
3 South Arizona plants (<i>Erigeron piscaticus</i> , <i>Astragalus hypoxylus</i> , <i>Amoreuxia gonzalezii</i>) (from 475 species petition)	12-month petition finding
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding
14 parrots (foreign species)	12-month petition finding
Berry Cave salamander ¹	12-month petition finding
Striped Newt ¹	12-month petition finding
Fisher – Northern Rocky Mountain Range ¹	12-month petition finding
Mohave Ground Squirrel ¹	12-month petition finding
Puerto Rico Harlequin Butterfly	12-month petition finding
Western gull-billed tern	12-month petition finding
Ozark chinquapin (<i>Castanea pumila</i> var. <i>ozarkensis</i>)	12-month petition finding
HI yellow-faced bees	12-month petition finding
Giant Palouse earthworm	12-month petition finding
Whitebark pine	12-month petition finding
OK grass pink (<i>Calopogon oklahomensis</i>) ¹	12-month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover ¹	90-day petition finding
Eagle Lake trout ¹	90-day petition finding
Smooth-billed ani ¹	90-day petition finding
Bay Springs salamander ¹	90-day petition finding
32 species of snails and slugs ¹	90-day petition finding
42 snail species (Nevada & Utah)	90-day petition finding
Red knot <i>roselaari</i> subspecies	90-day petition finding
Peary caribou	90-day petition finding

Actions funded in FY 2010 but not yet completed	
Species	Action
Plains bison	90-day petition finding
Spring Mountains checkerspot butterfly	90-day petition finding
Spring pygmy sunfish	90-day petition finding
Bay skipper	90-day petition finding
Unsilvered fritillary	90-day petition finding
Texas kangaroo rat	90-day petition finding
Spot-tailed earless lizard	90-day petition finding
Eastern small-footed bat	90-day petition finding
Northern long-eared bat	90-day petition finding
Prairie chub	90-day petition finding
10 species of Great Basin butterfly	90-day petition finding
6 sand dune (scarab) beetles	90-day petition finding
Golden-winged warbler	90-day petition finding
Sand-verbena moth	90-day petition finding
Aztec (beautiful) gilia	90-day petition finding
Arapahoe snowfly	90-day petition finding
404 Southeast species	90-day petition finding
High Priority Listing Actions ³	
19 Oahu candidate species ³ (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9)	Proposed listing
19 Maui-Nui candidate species ³ (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard ³ (LPN = 2)	Proposed listing
2 Arizona springsnails ³ (<i>Pyrgulopsis bernadina</i> (LPN = 2), <i>Pyrgulopsis trivialis</i> (LPN = 2))	Proposed listing
2 New Mexico springsnails ³ (<i>Pyrgulopsis chupaderae</i> (LPN = 2), <i>Pyrgulopsis thermalis</i> (LPN = 11))	Proposed listing
2 mussels ³ (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels ³ (sheepnose (LPN = 2), spectaclecase (LPN = 4).)	Proposed listing
Altamaha spiny mussel ³ (LPN = 2)	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing

¹ Funds for listing actions for these species were provided in previous FYs.

² We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.

³ Funds for these high-priority listing actions were provided in FY 2008 or 2009

We endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline

processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

We intend that any proposed reclassification of *Agave eggersiana* will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any

other interested party concerning this finding.

Agave eggersiana will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Caribbean Ecological Services Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office.

Authority

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

Dated: September 2, 2010.

Paul R. Schmidt,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010-23571 Filed 9-21-10; 8:45 am]

BILLING CODE 4310-55-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-AY11

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 17B

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

ACTION: Notice of Availability of Amendment 17B to South Atlantic Snapper-Grouper Fishery Management Plan; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 17B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. The amendment proposes actions to specify annual catch limits (ACLs), and accountability measures

(AMs) for nine snapper-grouper species, eight of which are undergoing overfishing; specify recreational and commercial allocations for golden tilefish; modify management measures to limit total mortality of each species to their respective ACLs; and add ACLs, ACTs, and AMs to the management measures that may be amended via the framework procedure. The actions contained in Amendment 17B are intended to address overfishing of eight snapper-grouper species while maintaining catch levels consistent with achieving optimum yield for all nine species included in the amendment.

DATES: Comments must be received no later than 5 p.m., eastern time, on November 22, 2010.

ADDRESSES: You may submit comments, identified by "0648-AY11", by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>
- Fax: 727-824-5308, Attn: Kate Michie
- Mail: Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701

Instructions: No comments will be posted for public viewing until after the comment period is over. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2010-0091" in the keyword search, then check the box labeled (Select to find documents accepting comments or submissions), then select (Send a Comment or Submission). (NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 17B may be obtained from the South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405; phone: 843-571-4366 or 866-SAFMC-10 (toll free); fax: 843-769-4520; e-mail: safmc@safmc.net. Amendment 17B includes an Environmental Assessment,

an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305; fax: 727-824-5308; e-mail: Kate.Michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The South Atlantic snapper-grouper fishery is managed under the FMP. The FMP was prepared by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Revisions to the Magnuson-Stevens Act in 2006 require that if a stock or stock complex in an FMP is undergoing overfishing, the FMP must establish by 2010 a mechanism for specifying ACLs at a level that prevents overfishing and does not exceed the fishing level recommendations of the respective Council(s) Scientific and Statistical Committee or other established peer review processes. The Magnuson-Stevens Act also requires that NMFS implement measures to ensure accountability to prevent an ACL from being exceeded or correcting for an ACL overage if one should occur. The National Standard 1 Guidelines, published on January 16, 2009 (74 FR 3178), provide guidance for establishing ACLs and AMs in our nation's fisheries.

In the South Atlantic snapper-grouper fishery there are nine species currently undergoing overfishing including: speckled hind, warsaw grouper, snowy grouper, golden tilefish, black sea bass, red grouper, gag, vermilion snapper, and red snapper. Amendment 17B includes actions to establish ACLs and AMs for eight of these species as well as black grouper. Actions to address red snapper overfishing are contained in a separate amendment (Amendment 17A).

An ACL is the level of annual catch of a stock or stock complex that if met or exceeded serves as the basis for triggering an AM. The Magnuson-Stevens Act requires ACLs be set at levels that prevent overfishing from occurring. ACLs may incorporate management and scientific uncertainty, and take into account the amount of data available and level of vulnerability to overfishing for each species. Separate ACLs may be established for each sector of a fishery, i.e., commercial and recreational. However, the combined total of all sector ACLs may not exceed the total ACL for a species or species complex.