44. In this NPRM, we seek comment on a number of issues raised by the commenters that may not have been addressed as part of the ESL proceedings. Specifically, we seek comment on whether to include interconnected VoIP service, filtering software, dark fiber, and other services in future funding years. We tentatively conclude that interconnected VoIP service should be eligible for discounts under the E-rate program. We tentatively conclude that it is administratively and operationally appropriate for interconnected VoIP service requests to be processed as a Priority 1 service. We seek comment on this tentative conclusion. If interconnected VoIP service is deemed an eligible service, we also seek comment on how USAC would implement this tentative conclusion. We believe that the inclusion of interconnected VoIP service will not have an adverse impact on small entities. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

45. We also seek comment on whether several individual services—filtering software, an expanded classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications—should be eligible for E-rate program eligibility. We believe that, if eligible, the benefits conferred by making these services eligible will not have an adverse impact on small entities. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

46. We believe our proposals and tentative conclusions will have a similar impact on both small and large schools and libraries, because both small and large schools and libraries will benefit equally from the possible addition of eligible services available under the E-rate program. Because this NPRM does not propose additional regulation for service providers and equipment vendors, these small entities will also experience no additional burden. We believe that small schools and libraries, as well as small service providers and equipment vendors, will benefit if we add more services to the eligible services list because it will open up more opportunities for small businesses to participate in the E-rate program. Therefore, we do not discuss any alternatives to the proposals contained in this NPRM. We invite commenters, in responding to the questions posed and tentative conclusions in the NPRM, to discuss any economic impact that such changes may have on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

Ordering Clauses

48. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted*.

49. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–19178 Filed 8–18–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–IA–2008–0092; 96100–1671–0000–B6]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Northern Snakehead Fish (Channa argus) Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding on a petition to list the northern snakehead fish (*Channa argus*) as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing this species under the Act may be warranted. We will not initiate a status review in response to this petition and, consequently, will not consider the designation of critical habitat as petitioned.

DATES: The finding announced in this document was made on August 19, 2008. New information concerning this species may be submitted for our consideration at any time.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov*. 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, Division of Scientific Authority, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone, 703–358–1708; fax, 703–358–2276. Please submit any new information, materials, comments, or questions concerning this finding to the above address or via electronic mail (e-mail) at *Scientificauthority@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Marie T. Maltese, U.S. Fish and Wildlife Service, Division of Scientific Authority, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone, 703–358–1708; fax, 703–358–2276; or by e-mail, *Scientificauthority@fws.gov*. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 (b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq*.), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**. Our standard for substantial scientific or commercial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioners that we

determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process of making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold.

Petition History

On January 4, 2005, the Service received a petition dated December 30, 2004, from Alan D. Gardner, a member of the Washington County Commission in Utah, on behalf of 14 additional county officials representing 13 western States (petitioners), to list the northern snakehead fish (*Channa argus*) as an endangered species and to designate the entire Chesapeake Bay watershed as critical habitat. The petition clearly identified itself as a petition and included the requisite identification information as required in 50 CFR 424.14(a).

Previous Federal Actions

The Service published a final rule on October 4, 2002 (67 FR 62193) that added all snakehead fishes of the family Channidae, including the northern snakehead fish, to the list of injurious wildlife species under the Lacey Act (18 U.S.C. 42). In taking this action, the Service found that all snakehead fishes are injurious to the wildlife and wildlife resources of the United States. As an injurious species, the interstate transportation and importation of any live animal or viable egg of snakeheads into the United States without an injurious wildlife permit is prohibited.

Species Information

The native range of the northern snakehead includes the middle and lower Amur River basin of China; Songhua (Sungari) River, Manchuria; Tunguska River at Khabarovsk, Russia; Ussuri River basin, Russia; Lake Khanka, Korea, except the northeastern region; and rivers of China south and southwest to the upper tributaries of the Chang Jian (Yangtze) River basin in northeast Yunnan Province. The species has been reported in Guangdong Province, China, either as an introduction or perhaps because of misidentification of the species. Snakehead fishes are widely distributed in Chinese reservoirs (Courtenay and Williams 2004, p. 33). Northern snakehead fishes prefer stagnant shallow ponds or swamps with mud substrates and aquatic vegetation. This species also occupies slow-moving muddy streams, canals, reservoirs, lakes, and rivers (Courtenay and Williams 2004, p. 38). The northern snakehead tolerates a wide range of water temperatures, from 0 °C (32 °F) to more than 30 °C (86 °F) (Courtenay and Williams 2004, p. 38).

The northern snakehead reaches sexual maturity at about 3 years of age in the Amur region of China and the Syr Dar'ya region of Uzbekistan; however, there have been reports that snakehead fishes in Japanese waters have spawned at 2 years of age (Courtenay and Williams 2004, p. 38). Annual spawning rates vary by location and temperature, from two to three times per year in the Syr Dar'ya basin, to as many as five times per year in the Amur basin (Courtenay and Williams 2004, pp. 38–39).

Several species of snakehead fishes are capable of overland migration by wriggling motions of their elongated, flattened bodies; indeed, observations indicate that *Channa* species which are ventrally flattened are the most capable of overland migrations (Courtenay and Williams 2004, p. 10). Those species with more rounded bodies, such as *C. argus*, are less likely to migrate because they have an extremely limited ability to move on land except during floods.

The northern snakehead does not naturally occur in the Chesapeake Bay or anywhere within the United States; it is considered an invasive, non-native species within United States waters. The species' occurrence within the United States is believed to be the result of accidental or intentional releases of live fish purchased at fish markets for human consumption, or pet fish which were previously available through the aquarium trade, and have since grown too large for their tanks, or are simply no longer wanted.

The petitioners did not make it clear whether they were petitioning to list the entire species or the specific non-native population of the northern snakehead that currently inhabits several areas within the Chesapeake Bay region. We determined that the petitioners intended to petition the Service to list the Chesapeake Bay population of the northern snakehead fish because information submitted with the petition focuses on the species in the Chesapeake Bay watershed. Therefore, we have evaluated the petition, and the supporting documentation that was included with the petition, to determine if substantial scientific or commercial information has been presented to indicate that listing the northern snakehead fish within the Chesapeake Bay watershed may be warranted.

To support the petition, the petitioners submitted a three-page report, ''Northern Snakehead *Channa argus*'' written by John Franklin Heppler, Professor of Biology associated with Dixie State College of Utah, and a double-sided fact sheet, ''Do You Know the Difference?''—published by the Virginia Department of Game and Inland Fisheries.

The petition stated that there are extremely low numbers of the species in the Potomac River and the Pohick Bay in Virginia, and that the few snakehead fish that have been located have been destroyed. It further states that because the number of fish is low, the species could easily go extinct in the United States, and therefore, it must be listed immediately before additional take can occur. The petitioners did not provide any supporting documentation to support these statements about snakehead population numbers. Furthermore, according to the petitioners, ''if the snakehead fish lived in the West, no expense, or no expanse of land, would be too great to protect a fish of this caliber if it were threatened by extinction.''

The report that was compiled by Dr. John Franklin Heppler, ''Northern Snakehead *Channa argus*'', is a three-page document that describes the natural history of the species. It did not address specific threats to the species that might warrant the petitioned action. The document begins with a brief description of the species' taxonomy, a physical description of the fish, and a discussion of the snakeheads' unique capability of breathing atmospheric oxygen, which allows it to move across land in some instances. Information regarding the species' trophic level (the level in the food chain defined by the method of obtaining food), habitat preferences, and reproductive requirements were also addressed within the report. The author suggested that the species was introduced into non-native habitats through: (1) Intentional releases by pet owners and, (2) released live fish from live fish markets. The petition states that snakehead fish have been found in seven States: California, Florida, Illinois, Maryland, North Carolina, Pennsylvania, and Virginia, and are assumed to be breeding in Florida, Maryland, and Virginia, although there was no documentation to support this assumption. The author also noted that several States are conducting investigations of people who are rearing the species or who have released snakehead fish. Confiscations of live

fish have occurred, according to Dr. Heppler; but again, documentation was not presented to support this statement. The author speculates that the northern snakehead may be able to transfer pathogens and that Epizootic Ulcerative Syndrome (EUS) has been ''fairly well documented'' as being a transmittable pathogen to native aquatic species. In spite of these statements, there is no discussion regarding the cause of EUS, or any other pathogens, in snakehead fishes, nor is there any data presented in this report regarding the suggested pathogenicity of EUS in fishes native to the United States.

Dr. Heppler mentions the Service's listing of all snakehead species as injurious wildlife in the report, and notes that about 20 States had banned possession of live specimens of snakehead fishes by 2004. He further suggests that it will be many years before we know the impact the species will have on our aquatic waterways, but that introduced species are not always unwelcome, citing the introduction of wolves into Yellowstone [National Park]. However, citing the re-introduction of a native species (wolves) to its former native habitat (Yellowstone National Park) is quite different than introducing a non-native predacious fish species to an aquatic waterway outside of its natural range. The report ends with a caution that impacts of the species' introductions should be monitored to see if these ''introduced species would actually assimilate in time and become part of a viable aquatic ecosystem.''

The other supporting documentation submitted with the petition is a two-page fact sheet published by the Virginia Department of Game and Inland Fisheries: ''Do you know the difference?''—which targets the sport-fishing community. Drawings of the northern snakehead fish, bowfin (*Amia calva*), and American eel (*Anguilla rostrata*) are exhibited, and specific morphological features that differentiate between the species, such as the absence or presence of specific fins, and fin length and size comparisons, are indicated. On the reverse side of the page is a map of the Potomac River in Maryland, the District of Columbia, and northern Virginia, indicating northern snakehead fish capture sites in 2004. This documentation is merely informational, and does not present any substantial information, scientific or commercial, that indicates that the petitioned action may be warranted.

Threats Analysis

Under section 4(a) of the Act, we may list a species on the basis of five threat factors: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) Inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, either singly or in combination.

Under the Act, a threatened species is defined as a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is defined as a species which is in danger of extinction throughout all or a significant portion of its range. Therefore, we evaluate the petition to determine if it contains substantial scientific and commercial information indicating that the petitioned action may be warranted.

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

The petition did not include any information on threats to the northern snakehead by the present or threatened destruction, modification, or curtailment of its habitat or range in the Chesapeake Bay region or its native habitat and range. Therefore, the petition and its supporting documentation did not present substantial scientific or commercial information indicating that listing the northern snakehead as threatened or endangered may be warranted, under this threat factor.

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

The petition notes that snakehead fish are a favored food throughout Southeast Asia and that certain cultures believe the species may have curative properties. Accordingly, the petition asserts that they have been in great demand in the United States. As of 2004 when this report was written, the author notes that live snakehead fish were still being sold at fish markets and in some restaurants in Boston and New York. Previously, snakehead fish have been popular as a curiosity in the pet trade, and the author claims that in 2004, they could be purchased on eBay. An unconfirmed statement in the report also noted that some Asian religious practices may involve releasing live fish into waterways. Therefore, the petitioners maintain that snakehead fishes are used for commercial and recreational purposes; however, they did not indicate that overutilization for these or any other purposes is a threat to the species.

C. Disease or Predation

The author of the report indicates, in an unconfirmed statement, that the northern snakehead may be able to transmit pathogens to native fish species. However, the standard under section 4(a) of the Act is whether disease presents a threat to the petitioned species, not whether the petitioned species presents a disease threat to other species. The author further notes that Epizootic Ulcerative Syndrome (EUS) has been fairly well documented as being a transmittable pathogen to native species. Therefore, while the discussion of disease within the petition infers that the northern snakehead could be a threat to native species through the transmission of disease, it does not specifically present any information indicating that disease is a threat to the northern snakehead.

Likewise, the northern snakehead appears to have no natural predators in the United States. Predation by the northern snakehead is a threat to native species, but predation is not a threat to the northern snakehead (Heppler 2004, p.1). Once again, the petition indicates that the threat is actually reversed (the snakehead fish is the threat to the native species) and provides no information showing that predation is a threat to the northern snakehead fishes.

D. Inadequacy of Existing Regulatory Mechanisms

There are no existing regulatory mechanisms to protect the northern snakehead within the Chesapeake Bay region. We are not aware of any existing regulatory mechanisms within the species' native range. The report submitted with the petition mentioned that all members of the family Channidae were added to the Service's list of injurious fish, mollusks, and crustaceans on October 4, 2002 (67 FR 62193). As an injurious species, the Service has found that this non-native, invasive species is likely to compete with native species and may transmit parasites to native species. Live snakeheads currently in captivity have a high likelihood of escape into the wild in the United States, and once established, are expected to multiply rapidly. The injurious wildlife listing prohibits the interstate transportation and importation of any live snakehead fish or viable eggs into the United States without an injurious wildlife permit. The petition and its supporting documentation did not present

substantial scientific or commercial information indicating that listing the northern snakehead as threatened or endangered may be warranted under this threat factor.

E. Other Natural or Man-made Factors Affecting the Continued Existence of the Species

The petitioners did not present any further information describing any other natural or man-made factors that are considered to be threats which would affect the continued existence of the species. Therefore, the petition and its supporting documentation did not present substantial scientific or commercial information indicating that listing the northern snakehead as threatened or endangered may be warranted under this threat factor.

Finding

We have reviewed the petition and the literature cited in the petition. We find that substantial scientific or commercial information has not been presented by the petitioners to indicate that listing the northern snakehead fish as a threatened species or an endangered species under the Act may be warranted. We will not commence a status review in response to this petition and, consequently, will not consider the designation of critical habitat, as petitioned.

References Cited

Courtenay, Walter R. Jr. and J. D. Williams. 2002. Snakeheads (Pisces: Channidae): A biological synopsis and risk assessment. USGS Florida Integrated Science Centers, Gainesville, Florida. 162 pp.

Heppler, John Franklin. 2004. Northern Snakehead *Channa argus.* Report compiled for a petition to list the northern snakehead under the Endangered Species Act. 3pp.

Virginia Department of Game and Inland Fisheries. 2004. Do you know the difference? Fisheries fact sheet. 2pp.

Author

The primary author of this notice is Marie T. Maltese, Division of Scientific Authority, U.S. Fish and Wildlife Service.

Authority

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

Dated: *July 28, 2008.*

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–19155 Filed 8–18–08; 8:45 am]

BILLING CODE 4310–55–P