environmental laws when project impacts are reviewed. Although, current State and Federal regulations regarding pollutants are generally assumed to be protective of freshwater mollusks, we do have information to indicate that some pollutant standards may not be protective for freshwater mussels (e.g., Augspurger *et al.* 2007, p. 2026). However, there is no information in our files to suggest specific pollution threats to the southern hickorynut in any specific area, and the petition provided no information to support the assertion therein that existing regulatory mechanisms are inadequate to protect the species. Furthermore, as noted under Factor B, above, the southern hickorynut is not considered a commercial species, has little value in commerce, and all States within the range of the southern hickorynut either regulate or restrict mussel harvest.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulations.

E. *Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petition asserts that fragmentation of freshwater mussel stream habitat makes mussel species more vulnerable to droughts and floods attributed to climate change (e.g., WildEarth Guardians 2008, p. 27, citing Hamlet and Lettenmaier 2007, p. 43).

Evaluation of Information in the Petition and Our Files

The petition provided no information on habitat fragmentation or changes in the frequency of droughts and floods within the range of the southern hickorynut, or on specific detrimental effects of habitat fragmentation, droughts, or floods to the hickorynut. Information in our files documents mollusk declines within small perennial streams that have lost flow as a direct result of drought (for example, Golladay *et al.* 2004, p. 494; Haag and Warren 2008, p. 1165). However, most recent site records of the southern hickorynut are from medium to large perennial stream channels (e.g., the Big Black, Buttahatchee, Amite, Pearl, Tickfaw, Neches, Arkansas, White, Ouachita, and Hatchie Rivers) that are less susceptible to total loss of flow by drought. In addition, the wide distribution of the species reduces its vulnerability to extinction due to local stochastic threats. Therefore, information provided by the petition and in Service files does not indicate or document a threat to southern hickorynut mussels due to drought or floods.

Finding

We have reviewed the petition and supporting information provided with the petition and evaluated that information in relation to other pertinent literature and information, and we have evaluated the information to determine whether the sources cited support the claims made in the petition. We recognize that many freshwater mussel species are experiencing declines in both range and population abundances due to the generalized threats identified by the petition. However, review of the information provided in the petition and in our files indicates that this species is not declining range-wide.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act. We found no information to suggest that threats are acting on the southern hickorynut such that the species may become extinct now or in the foreseeable future.

Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information to indicate that listing the southern hickorynut under the Act as threatened or endangered may be warranted at this time. Although we will not commence a status review at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the species, you may submit your information or materials to the Field Supervisor, Mississippi Ecological Services Field Office (see **ADDRESSES** section) at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is Paul Hartfield (see **ADDRESSES**).

Authority

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

Dated: March 9, 2010.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–6111 Filed 3–22–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0007] [MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Striped Newt as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the striped newt (*Notophthalmus perstriatus*) as threatened under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the striped newt may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding

this species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before May 24, 2010. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS-R4-ES-2010-0007 and then follow the instructions for submitting comments.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R4-ES-2010-0007; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601-965-4900); or by facsimile (601-965-4340). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the striped newt from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

1) The species' biology, range, and population trends, including:
   a) Habitat requirements for feeding, breeding, and sheltering;
   b) Genetics and taxonomy;
   c) Historical and current range, including distribution patterns;
   d) Historical and current population levels, and current and projected trends; and
   e) Past and ongoing conservation measures for the species, its habitat, or both.
2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:
   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.
3) The potential effects of climate change on this species and its habitat.

If we determine that listing the striped newt is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the striped newt, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection.

In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other supporting publications or data) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files at the time the petition is received. 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 within the Code of Federal Regulations (CFR) 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 scientific or commercial information was presented, we are required to promptly commence a review of the status of the species, which will be subsequently summarized in our 12–month finding.

Petition History

On July 14, 2008, we received a petition dated July 10, 2008, from Dr. D. Bruce Means, Ryan C. Means, and Rebecca P.M. Means of the Coastal Plains Institute and Land Conservancy requesting that we list the striped newt (*Notophthalmus perstriatus*) as threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required at 50 CFR 424.14(a). In an August 15, 2008, letter to the petitioners, we stated that we could not address their petition at that time because responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. These delays continued until earlier this fiscal year, when we were able to allocate funding to the petitioned action.

Previous Federal Actions

We included the striped newt in the November 15, 1994, notice of plant and animal taxa regarded as candidates for possible listing under the Act as a Category 2 candidate species (59 FR 58982). In the February 28, 1996, notice (61 FR 7596), the Service discontinued the designation of Category 2 species as candidates and thus the striped newt was no longer considered a candidate species. However, the Service has monitored this species and has supported research addressing its distribution, status, life history, and taxonomy.

Species Information

The striped newt (*Notophthalmus perstriatus*) is a small salamander that reaches a total length of 2 to 4 inches (5 to 10 centimeters) (Conant and Collins 1991, p. 258). A continuous red stripe runs the length of the side of its trunk and extends onto the head and tail where it may become fragmented. The stripe is dark-bordered, but not so boldly and evenly as in the broken-striped newt (*N. viridescens dorsalis*) (Conant and Collins 1991, p. 258). There may be a row of red spots along the side of the body and a faint light stripe down the center of its back. The ground color of the sides and back is olive-green to dark brown. The belly is yellow, usually sparsely marked with black specks. The skin of newts tends to be rougher and less slimy than other salamanders. The costal grooves (grooves along the side body of salamanders used in species identification) are indistinct.

Striped newts occur only in Florida and Georgia. Their range extends along the Atlantic Coastal Plain of southeastern Georgia into peninsular north-central Florida and up through the Florida panhandle into portions of southwest Georgia. The historical range of striped newts was probably similar to the current range. However, due to extensive habitat modification, many populations have likely been lost (Dodd *et al.* 2005, p. 887).

Within their range, striped newts may occur in longleaf pine (*Pinus palustris*) - dominated savanna, scrub, or sandhills that have a rich groundcover of grasses and forbs maintained by frequent fire (Petranka 1998, pp. 448-449). Adults and juvenile newts live in underground retreats in these uplands. Adults move out of the uplands from late fall to early spring and into isolated, shallow, temporary ponds to breed. Immigration to ponds is correlated with heavy rains that result in pond filling; emigration occurs in response to pond drying and metamorphosis (Dodd *et al.* 2005, p. 888). Striped newts breed exclusively in small, ephemeral ponds that lack predaceous fish (Christman and Means 1992, p. 62; Dodd *et al.* 2005, p. 888). These breeding ponds are typically sinkhole ponds in sandhills and cypress and bay ponds in the wetter pine flatwoods communities (Christman and Means 1992, p. 62). Striped newts spend the majority of their lives in the pine uplands that surround their breeding ponds. Terrestrial adults may commonly move between 1,640 feet (ft) and 2,297 ft (500 meters (m) to 700 m) from ponds after breeding (Dodd 1996, p. 47; Johnson 2003, p. 16). Johnson (2003, p. 3) found that at least 16 percent of individuals breeding at a single pond migrated in excess of 1,640 ft (500 m) from the pond into the uplands.

Only two species of newt occur in the eastern United States, the striped newt (*N. perstriatus*) and the eastern newt *(N. viridescens*) (Conant and Collins 1991, p. 256). The striped newt has no subspecies. The eastern newt consists of four subspecies: the broken-striped newt (*N. v. dorsalis*), the central newt (*N. v. louisianensis*), the peninsula newt (*N. v. piaropicola*), and the red-spotted newt (*N. v. viridescens*). Superficially, the striped newt resembles these subspecies. However, allozyme (genetic markers used to compare genetic variation) data presented by Reilly (1990, p. 55) indicated that the closest relative of the striped newt is the black-spotted newt (*N. meridionalis*), which occurs in south Texas and adjacent Mexico.

The striped newt has one of the most complex life cycles of any amphibian (Johnson 2002, p. 384). Sexually mature adults migrate to breeding ponds where courtship, copulation, and egg-laying take place. Eggs hatch and develop into externally gilled larvae in the temporary pond environment. Once larvae reach a size suitable for metamorphosis, they may either undergo metamorphosis and exit the pond as immature terrestrial newts (efts), or remain in the pond and eventually mature into gilled aquatic adults (neotenes) (Petranka 1998, pp. 449-450; Johnson 2005, p. 384). An eft is orange-red with the red stripe of the adult and is adapted for life in dry longleaf pine-wiregrass forests (Means 2006, p. 162). The eft remains terrestrial for 1 to 3 years (presumably until sexually mature) and then returns to a breeding pond where its skin changes into the aquatic adult form. If a breeding pond retains water and does not dry up after the normal summer drying period, larvae may bypass the eft stage and become sexually mature as gilled larvae. This is termed neoteny (retention of larval characteristics when sexually mature) and occurs frequently in striped newts. After reproducing, these individuals initiate metamorphosis and migrate from the breeding pond into the surrounding uplands (Johnson 2002, p. 384). When ponds dry, both aquatic adult forms and larviform adults transform and assume the terrestrial adult form (Dodd *et al.* 2005, p. 888).

Very little is known about the terrestrial life of the striped newt. A striped newt has survived in captivity as an aquatic adult for more than 17 years (LaClaire 2008), although such a long aquatic life probably rarely occurs in nature because of the ephemeral nature of the species' breeding ponds. Whether this potential longevity extends to the terrestrial stage of adult striped newts is unknown. The upland microhabitat preferences of striped newts and the prey items they use there are also unknown. It is assumed they occur under grass clumps, under leaf litter, or in burrows, and consume any small invertebrates they can catch, as do other salamanders in similar below-ground habitats (Bishop 1941, pp. 70, 128, 151).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(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 90–day finding, we evaluated whether information regarding the striped newt, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is discussed below.

A. *The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Information Provided in the Petition

The petitioners state that striped newts appear sensitive to habitat loss from disturbance of upland soils and replacement of native longleaf pine vegetation surrounding breeding ponds. Habitat loss includes conversion of native pines to pine plantations, agriculture, or urban development. In a study comparing national forest lands with nearby pine plantations on the Woodville Karst plain in the panhandle of Florida, striped newts were present on the national forest lands but absent from pine plantations (Means and Means 2005, p. 58). Urban development can result in disruptions of dispersal between breeding sites and upland adult habitat due to paved and dirt roads, towns, power line and gas pipeline rights-of-way, and open fields. Presence of roads can be barriers to movement or can result in direct mortality during migration or both.

In a study conducted at or near historical striped newt localities in Georgia, Dodd and LaClaire (1995, p. 37) encountered the striped newt at only five widely separated locations. In Florida, Franz and Smith (1999, pp. 8-9) identified 100 historic records for the striped newt. Johnson and Owen (2005, p. 7) resurveyed the habitat surrounding these records and ranked only 26 ponds and their surrounding uplands (26 percent) as having excellent potential to support striped newt populations. A 12–year study (1995-2007) of vertebrates dependent on small, isolated wetlands was conducted in the Munson Sandhills of Apalachicola National Forest, Florida. This area has one of the largest known historical clusters of breeding ponds (18 ponds) within the species' range (Means 2007, p. 19). After the severe drought of 1999-2000, no more than five adult striped newts and no larvae were observed in the following 7 years of the study (Means 2007, p. 19). This decline was caused, at least in part, by degradation and loss of longleaf pine habitats due to various causes, especially lack of fire and hardwood invasion.

Habitat degradation and destruction of temporary pond breeding sites within forested habitat represent more specific threats. Cumulative effects of breeding pond destruction include:

(1) Increasing the dispersal distance between ponds and negatively impacting striped newt metapopulations (neighboring local populations close enough to one another that dispersing individuals could be exchanged (gene flow) at least once per generation); and

(2) Reducing the number of young individuals recruited into populations (Semlitsch and Bodie 1998, p. 1129). The number of breeding ponds known for the striped newt throughout its naturally small geographic range has undergone a drastic decline in the 67 years since the species was discovered and named.

Littoral zones (the shallow areas of pond where light penetrates and rooted plants occur) of breeding sites have been destroyed by off-road vehicles (ORVs). This area of a pond is where striped newt adults and larvae generally occur. It is also where most primary productivity occurs and is the location where the pond invertebrates and tadpoles, which are food sources for striped newts, occur. When this area is destroyed, the striped newt's food source is lost, as well as the cover that protects the salamanders from predators. The petitioners provided documentation of ORV destruction of the littoral zone in five striped newt breeding ponds.

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

Data in our files supports the petitioners' assertions that habitat destruction and degradation is a substantial threat to the striped newt in Florida. In addition, in a survey of 25 historical striped newt localities in Georgia, only 2 sites (8 percent) were judged to be currently suitable for the striped newt (Stevenson 2000, p. 3).

Longleaf pine forests in the Southeast were extensively clear cut around the turn of the 19th century, and pine forest acreage has continued to decline. For example, the area of natural pine (from Virginia southeast through Texas) declined by 54 percent between 1953 and 1999 (Ware and Greis 2002, p. 46). Data from the 1980s and 1990s indicated that 28 percent of new pine plantations came from forest that was previously natural pine (Ware and Greis 2002, p. 46). Forecast models predict that southern forests will continue to be lost to urbanization (Ware and Greis 2002, p. 92). The result of this habitat loss is that longleaf pine ecosystems now occupy only 2 percent of their original range (Ware and Greis 2002, p. 66).

Effects of adjacent land-use conversions on wetland water quality can extend over comparatively large distances (Houlahan and Findlay 2004, p. 677). Therefore, conversion of forest to urban and agricultural uses, in the vicinity of striped newt breeding ponds, can have negative impacts on the quality of breeding sites.

Protection of their longleaf pine ecosystem breeding habitat, dispersal habitat, and upland adult habitat is essential for the survival of the striped newt. Population models of an amphibian (California tiger salamander) with a life cycle similar to the striped newt were more sensitive to reductions in sub-adult and adult survivorship than reproductive parameters (Trenham and Shaffer 2005, p. 1158). Striped newts may move greater than 1,640 ft (500 m) between breeding and upland sites. This data emphasizes the importance of habitat connectivity in sub-adult and adult survivorship. Habitat destruction, degradation, and fragmentation of upland habitats can severely impact the survival of a striped newt population (Marsh and Trenham 2001, p. 40; Green 2003, p. 331).

Habitat degradation, fragmentation, and destruction have all been documented within the range of the striped newt. Effects of adjacent land use to striped newt habitat are also a concern. Since striped newts require wetland breeding habitat, dispersal habitat, and adult upland habitat, all of these areas are needed to support a population. The loss of any one of these three habitat types would disrupt the life cycle of the species and ultimately cause the extinction of the striped newt population. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

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

Information Provided in the Petition

The petitioners state that in the 1970s and 1980s, some striped newt adults from the Munson Sandhills populations were collected and sold in the pet trade. However, they believe there is no evidence to suggest over-exploitation is a cause for the decline of striped newt populations. This is supported by a review conducted in Florida on the commercial harvest of amphibians and reptiles for the pet trade in which no data were found to indicate striped newts had been collected (Enge 2005, p. 200).

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

There is no evidence provided by the petitioner, or within our files, to support threats under this factor. Therefore, we concur with the petitioner that collection is not a threat to the striped newt. In summary, we find that the information provided in the petition, as well as other information in our files, does not indicate or document that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to this species. However, we will evaluate all factors, including threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

C. *Disease or Predation*

Information Provided in the Petition

The petitioners state that although many amphibians are declining worldwide due to habitat loss, other unidentified processes are causative agents in about 50 percent of declining species. They also assert that disease pathogens represent one of the potential causes of declines. Mortality and population declines due to viruses, bacteria, and fungi have been widely reported in amphibians.

The petitioners also indicate that chytridiomycosis (a disease caused by a fungus) is implicated or documented as a causative agent in many New World amphibian declines. Although no disease has been reported in the populations studied by the petitioners, they believe that the total lack of reproduction in 18 of their striped newt study ponds over a period of 8 years indicates a serious problem exists, and disease is a potential cause that needs to be considered.

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

Disease is difficult to document in amphibians, and in pond-breeding amphibians that live most of their lives underground in particular. Mortality events in breeding ponds are difficult to observe because in an aquatic environment, amphibians decompose within days after dying. Mortality below ground would be even more difficult to document. In addition, the rarity of the striped newt is also a factor in documenting mortality in the species. However, there are reasons to believe that disease may be a possible factor in the decline of striped newts. Mitchell (2002, p. 3) documented the chytrid fungus (*Batrachochytrium dendrobatidis*) which causes disease in amphibians at Fort Stewart Military Installation where striped newts have been in decline over the past 10 to 15 years. Chytrid fungal infections have been reported in a newt of the same genus as the striped newt, the eastern red-spotted newt (*Notophthalmus v. viridescens)* (Ouellet *et al.* 2005, p. 1434).

Chytridiomycosis (a disease caused by a fungus) is implicated or documented as a causative agent in many New World amphibian declines (Blaustein and Johnson 2003, p. 91). The effect of the disease on striped newts is unknown; however, California newts (*Taricha torosa*) have tested positive for the pathogen in ponds where a die-off of the species was previously reported (Padgett-Flohr and Longcore 2007, p. 177). We agree that disease pathogens represent one of the potential causes of declines (Blaustein and Johnson 2003, pp. 87-92).

Another disease caused by a fungus-like protist, *Amphibiocystidium viridescens,* has been recently described and has been reported in an eastern red-spotted newt population (Raffel *et al.* 2008, p. 204). Evidence of mortality and morbidity due to infection with this disease, and the potential importance of secondary infections as a source of mortality, have been reported for this population (Raffel *et al.* 2008, p. 204). Another important issue is that lethal outbreaks of a disease appear to have complex causes and may result when other stressors, such as habitat degradation, are affecting a population (Ouellet *et al.* 2005, p. 1431).

Diseases have been documented in declining salamander populations and have caused mortality in a population of the eastern newt, which is in the same genus as the striped newt. It is likely that diseases are or have been present in striped newt populations, but due to the rarity of this species, the diseases have not been detected. Widespread habitat degradation and loss is a stressor on many existing striped newt populations and may make them more susceptible to disease outbreaks and potential population extinction. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to disease, especially given other stressors on striped newt populations such as habitat loss and habitat degradation.

D. *Inadequacy of Existing Regulatory Mechanisms*

Information Provided in the Petition

The petitioners state that the striped newt is not formally recognized at any government level in either of the States in which the species naturally occurs (Florida and Georgia).

Ephemeral ponds used for breeding by striped newts are provided little Federal regulatory protection. The U.S. Supreme Court ruled that isolated wetlands were not necessarily protected under the Clean Water Act (CWA) (33 U.S.C. 1251 et. seq.) by nature of their use as habitat for migratory birds, which are under Federal jurisdiction. Legislation to clarify this issue has been proposed since 2003, but has not been acted upon by Congress.

Ephemeral ponds are provided some protection under Florida State regulations. In Florida, wetland protection is regulated by the five Water Management Districts (WMDs) and the Florida Department of Environmental Protection. All WMDs include isolated wetlands in the Environmental Resource Permit process, which means that a permit is required for activities in, on, or over wetlands, including isolated wetlands. Below a minimum permitting threshold size of 0.5 acres (ac) (0.2 hectare (ha)), impacts to fish and wildlife and their habitat are not addressed for mitigation unless a wetland

a) Supports endangered or threatened species;
b) Is located in an area of critical state concern;
c) Is connected by standing or flowing surface water at seasonal high water level to one or more wetlands that total greater than 0.5 ac (0.2 ha); or
d) The wetland is of more than minimal value to fish and wildlife.

This may offer some protection for striped newt breeding sites. However, under Chapter 373.406 of Florida

Statutes, agriculture (which includes silviculture) has broad exemptions to alter topography provided it is not for the sole or predominant purpose of impounding or obstructing surface waters (Northwest Florida Water Management District 2008, p. 1).

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

Although the striped newt has not been given protected status by Florida (Florida Fish and Wildlife Conservation Commission 2007, p. 2), it is listed as threatened in Georgia. Georgia law prohibits harassment, capture, killing, or otherwise directly causing the death of any protected animal species, and it prohibits selling, purchasing, or possessing the protected species unless authorized by permit, and prohibits destroying habitat of any protected animal species on public lands (Georgia Department of Natural Resources 2006, p. 1). However, these regulations do not protect the striped newt from destruction of its habitat on private land.

The U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (ACOE) have provided guidance memoranda for implementing recent court cases addressing jurisdiction over waters of the United States under the CWA (EPA and ACOE 2001, pp. 1-7; EPA and ACOE 2008, pp. 1-13). It is clear from this guidance that isolated wetlands are not considered waters of the United States under the "navigable waters" definition and thus are not provided protection under this mechanism adopted by Congress to implement the CWA.

Wetland regulation in the United States is primarily based on wetland size (Snodgrass *et al.* 2000, p. 415). However, for amphibians, there is no relationship between wetland size and species richness. In fact, small, short hydroperiod wetlands support a unique group of species, including the striped newt (Snodgrass *et al.* 2000, p. 414). For these wetlands, size is not a good predictor for production of juvenile recruits, adults, or number of amphibian captures (Greenberg and Tanner 2005, p. 87). Most wetland regulations do not protect small, short hydroperiod wetlands and thus do not protect the unique species that breed in them, many of which are in decline.

At the time the petition was submitted to the Service, the U.S. Forest Service was drafting revisions to its regulations on the Apalachicola National Forest (ANF) to prohibit riding ORVs in or around ponds or wetlands. These revisions are now incorporated into their regulations. In addition, the Service had been advised previously that the striped newt ponds would be specifically designated off-limits to ORVs (Petrick 2006). Unfortunately, many striped newt ponds on the ANF have already been degraded by ORV use and it will take years for them to recover from past damage.

There are no existing regulatory mechanisms that protect the striped newt from destruction of its upland forested habitat on private land. There are no existing regulatory mechanisms that adequately protect the wetland breeding habitat of the striped newt. Habitat degradation, fragmentation, and destruction are the primary threats to the species. The lack of regulatory mechanisms to protect against habitat loss increases the extinction probability of the striped newt. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms, especially the lack of regulations protecting most breeding and upland habitat of the striped newt.

E. *Other Natural or Manmade Factors Affecting the Species' Continued Existence*

Information Provided in the Petition

The petitioners state that ecological succession is a possible cause of decline in the striped newt. They presented data demonstrating loss of striped newt breeding habitat and adult upland longleaf pine habitat due to succession resulting from inadequate habitat management (insufficient prescribed burning to control hardwood encroachment into breeding ponds and upland forest; see Factor A).

Long-term regional drought has contributed to the decline or disappearance of striped newts from almost all of their breeding ponds in the Munson Sandhills of the Apalachicola National Forest in Florida during the petitioners' 12–year study. Droughts, seasonal and long-term, have been normal phenomena in the ecology of the striped newt and other ephemeral pond breeders. However, while drought might explain why so few ponds have been found with either breeding adults or larvae in the past decade, drought may mask or exacerbate other causes of population declines such as habitat degradation and loss. While the other species that breed in temporary ponds in the Munson Sandhills appear to have recovered somewhat from the drought, the striped newt has not.

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

Summary data from southern forests indicate that natural succession, in conjunction with pine harvesting, is resulting in conversion of forests with pine species to those with species such as oaks and hickories (Ware and Greis 2002, p. 47). In addition, the Service has other supporting data that indicate prolonged drought has played a factor in reducing the hydroperiod of striped newt breeding sites. In southeastern Georgia, striped newt breeding ponds monitored from 1992 to 2004 remained dry for 7 of the 13 years of the study (Stevenson and Cash 2008, p. 253). In Florida, a known breeding pond in Putnam County where thousands of striped newts had previously been collected was dry for a little over 9 years before re-filling (Dodd and Johnson 2007, p. 150). Monitoring of the pond post-filling resulted in the capture of only four larval newts (Dodd and Johnson 2007, p. 150).

The threats of natural succession, as a result of inadequate management, and prolonged drought worsen the effects of high population fluctuations and local extinctions that occur under normal conditions in striped newts. The addition of these threats to the already substantial degradation, fragmentation, and destruction of striped newt habitat increases the probability of extinction of this species. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to other natural or manmade factors, especially ecological succession due to fire suppression and long-term regional drought.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the striped newt throughout its entire range may be warranted. This finding is based on information provided under Factors A, C, D, and E. Habitat degradation, fragmentation, and destruction have all been documented within the range of the striped newt and represent the primary threats to the species (Factor A). Since striped newts require wetland breeding habitat, dispersal habitat, and adult upland habitat, the loss of any one of these

three habitat types would disrupt the life cycle of the species and ultimately cause the extinction of a striped newt population. Diseases have been documented in declining salamander populations and have caused mortality in a population of the eastern newt, which is in the same genus as the striped newt (Factor C). It is likely that diseases are, or have been, present in striped newt populations, but due to the rarity of this species the diseases have not been detected. Habitat loss may make striped newts more susceptible to disease outbreaks and potential population extinction. There are no existing regulatory mechanisms that protect the striped newt from destruction of its upland forested habitat on private land or that adequately protect their wetland breeding habitat (Factor D). The lack of regulatory mechanisms to protect against the primary threat of habitat loss increases the extinction probability of the striped newt. Other natural or manmade factors, such as the threats of natural succession, prolonged drought, extreme population fluctuations, and local extinctions, increase the probability of extinction of this species (Factor E). Because we have found that the petition presents substantial information indicating that listing the striped newt may be warranted, we are initiating a status review to determine whether listing the striped newt under the Act is warranted.

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

References Cited

A complete list of references cited in this document is available on the Internet at *http://www.regulatons.gov* and upon request from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are staff members of the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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

Dated: March 4, 2010.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

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