populations of mountain whitefish (Campbell and Kozfkay 2006, Figure 3, p. 8; Miller 2006, pp. 22, 29-30; Whiteley *et al.* 2006, p. 2781). We thus do not consider mountain whitefish in the Big Lost River to make a significant contribution to the representation of the species as a whole.

Finally, mountain whitefish in the Big Lost River group with the major genetic assemblage of the Upper Snake River and are most genetically similar to that group. We find it unlikely, however, that mountain whitefish in the Big Lost River would provide any meaningful redundancy to the species if other populations of mountain whitefish in the Upper Snake River basin were to be extirpated by a catastrophic event. The Big Lost River is geographically separated from the Snake River and other streams. It is therefore unlikely that fish in the Big Lost River would be a significant source of mountain whitefish to recolonize streams within the Upper Snake River.

We have determined the mountain whitefish in the Big Lost River do not provide a meaningful contribution to the species as a whole with regard to redundancy, resiliency, and representation of mountain whitefish throughout their range in western North America. Based upon this determination, we find the mountain whitefish in the Big Lost River do not represent a significant portion of the species' range. Having reached this conclusion, we will not further evaluate the status of mountain whitefish in the Big Lost River as a significant portion of the range of the species.

## Finding

After a thorough review of the best scientific and commercial information available, we find that listing the mountain whitefish in the Big Lost River of Idaho is not warranted. We have determined the mountain whitefish in the Big Lost River are not a species, subspecies, or DPS as defined by section 3(16) of the Act, and therefore are not eligible for listing. In addition, we have further determined the mountain whitefish in the Big Lost River do not represent a significant portion of the range of the species *Prosopium williamsoni*. We therefore find the mountain whitefish in the Big Lost River are not eligible for the protections of the Act. Consequently, we are not proceeding with an evaluation of the conservation status of mountain whitefish in the Big Lost River relative to the Act's standards for listing as endangered or threatened. This finding concludes our status review and constitutes our final response to the petition.

We strongly support ongoing conservation efforts to restore habitat for the mountain whitefish and other native species residing in the Big Lost River, and to monitor the status, trends, and threats to this native population of fish. We emphasize that our determination that mountain whitefish in the Big Lost River do not constitute a listable entity under the Act should in no way diminish the value of conserving this population as an important component of the natural community. We encourage all interested parties to assist with the management and conservation of mountain whitefish in the Big Lost River basin and to preserve all elements of native biodiversity in this ecosystem.

We request that you submit any new information concerning the status of, or threats to, the mountain whitefish in the Big Lost River basin to our Idaho Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the mountain whitefish in the Big Lost River basin and encourage their conservation.

## References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Idaho Fish and Wildlife Office (see **ADDRESSES** section).

## Authors

The primary authors of this document are staff members of the Idaho Fish and Wildlife Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended

(16 U.S.C. 1531 *et seq.*).

Dated: March 9, 2010.

**Daniel M. Ashe,**

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

[FR Doc. 2010–7674 Filed 4–5–10; 8:45 am]

**BILLING CODE 4310–55–S**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS-R2-ES-2010-0022]**
**[MO 92210-0-0008]**

# Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) and a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat

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

**ACTION:** Notice of 90–day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list a stonefly (*Isoperla jewetti*) and a mayfly (*Fallceon eatoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended. Based on our review, we find that the petition does not present substantial information indicating that listing either of the species may be warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the stonefly or the mayfly or their habitat at any time.

**DATES:** The finding announced in this document was made on April 6, 2010.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket No. FWS-R2-ES-2010-0022. 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, Southwest Regional Ecological Services Office, 500 Gold Avenue SW, Albuquerque, NM 87102. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Nancy Gloman, Assistant Regional Director, Southwest Regional Ecological Services Office; telephone 505/248-6920; facsimile 505/248-6788. If you use a telecommunications device for the deaf (TDD), please 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 indicating that a petitioned action may be warranted. We base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. The Act requires that, to the maximum extent practicable, we 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 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, the Act requires that we promptly review the status of the species (status review), which is subsequently summarized in our 12–month finding.

*Petition History*

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that we, the U.S. Fish and Wildlife Service (Service), do the following: (1) Consider all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, are proposed for listing, or are candidates for listing; and (2) list each species under the Act as either endangered or threatened with critical habitat. The petition stated that it was incorporating by reference all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/*. The petition clearly identified itself as a petition and included the appropriate identification information, as required in 50 CFR 424.14(a). In a July 11, 2007, letter to petitioner, we acknowledged receipt of the petition and stated that the petition was under review by staff in our Southwest Regional Office.

We received a second petition, dated June 12, 2008, from WildEarth Guardians on June 18, 2008, requesting emergency listing of 32 species under the Act, including this stonefly and mayfly. We provided a response to this petition on July 22, 2008, indicating that we had reviewed the information presented in the petition and the immediacy of possible threats, and had determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also noted that we would continue to review these species through the petition process.

On March 19, 2008, WildEarth Guardians filed a complaint alleging that the Service failed to comply with its mandatory duty to make a preliminary 90–day finding on the June 18, 2007, petition to list 475 southwestern species. We subsequently published an initial 90–day finding for 270 of the 475 petitioned species on January 6, 2009, concluding that the petition did not present substantial information that listing of those species may be warranted (74 FR 419). The stonefly and mayfly were included in the January 6, 2009, finding with the conclusion that the petition did not present substantial information indicating that listing may be warranted.

On May 26, 2009, and May 12, 2009, WildEarth Guardians filed complaints challenging the negative 90–day findings for the stonefly and mayfly, respectively. We agreed pursuant to a stipulated settlement agreement to reassess the petition with respect to the stonefly and mayfly and issue new 90–day findings. This finding fulfills our obligations under the petition.

**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. We determine whether a species is 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 threats to the stonefly and the mayfly, as presented in the June 18, 2007, and June 12, 2008, petitions and other information in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. For each species, we fully evaluated all information available to us through the NatureServe website, information cited in NatureServe, and other information readily available in our files.

We followed regulations at 50 CFR 424.14(b) in evaluating the information presented in the petitions. Paragraph (b)(1) of that section provides that the Service must consider whether the petition has presented substantial information indicating to a reasonable person that the petitioned action may be warranted. To determine that the species may warrant listing as Threatened or Endangered under the Act, as requested by the petitioners, the petition must present substantial information indicating that the species may be at risk of extinction now or in the foreseeable future.

Stonefly (no common name) (*Isoperla jewetti*)

This stonefly is reported from three sites in Texas, Colorado, and New Mexico (NatureServe 2007). The species was originally described from specimens collected in 1939 in El Paso County, Texas (NatureServe 2007). A single specimen was collected in 1938 in Huerfano County, Colorado (NatureServe 2007). NatureServe (2007) notes that no other specimens have been documented from either of these sites, despite repeated survey efforts, although the information cited in NatureServe (2007) only discussed additional survey efforts at the Texas site. Immature specimens were collected at a third site in 1978 and 1980 from the Rio Grande, upstream from Radium Springs, Dona Ana County, New Mexico (Jacobi *et al.* 2005).

The petitioners claim that agriculture is a threat to the stonefly; however, the mechanism of agricultural impact is unclear from the petition and information presented by the petitioner. The petitioners state that the stonefly is threatened by "habitat conversion to agriculture," but provide no citation nor support for this statement. NatureServe (2007) indicates that the El Paso site "has been completely destroyed by agriculture," but again provides no citations nor support for this statement. Szczythoko and Stewart (1979), referenced in NatureServe (2007), indicate that pesticides, often associated with agriculture, were used heavily in irrigation ditches and canals in the area and may have led to extirpation of this population. However, Jacobi *et al.* (2005) indicate more survey work is needed to verify that the El Paso population has in fact been extirpated. Concerning the population near Radium Springs, New Mexico, Jacobi *et al.* (2005) note that the site is in a highly regulated river downstream from concentrated agriculture. Jacobi *et al.*

(2005) provide no additional discussion as to whether they interpret occurrence in a regulated river or proximity to agriculture to be a threat to this species. No information regarding any threats to the site in Colorado was presented.

The petitioners cite the New Mexico Department of Game and Fish's (NMDGF) Comprehensive Wildlife Conservation Strategy for New Mexico. The conservation strategy identifies Species of Greatest Conservation Need (SGCN) and identifies conservation actions intended to conserve the species and their habitats. The conservation strategy states that, "New Mexico's SGCN are species that are indicative of the diversity and health of the State's wildlife that are associated with key habitats, including low and declining populations and species of high recreational, economic, or charismatic value (NMDGF 2005)." The petitioners claim that the stonefly's inclusion in this list of SGCN is evidence that the species meets the definition of a threatened species under the Act. The conservation strategy notes that the specific factors influencing the integrity of this species are "hydrologic modification, streamflow regulations and manipulation, water quality (NMDGF 2005);" however, they provide no citations nor explanation for how these factors may have affected or may be affecting the species or its habitat. In fact, the conservation strategy acknowledges multiple information gaps including that the "life history of most of the SGCN, including distribution, abundance, status and trends, habitat requirements, and movement information is poorly understood (NMDGF 2005)."

In considering what factors (e.g., agricultural impacts, water issues) 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 may cause actual impacts to the species. If there is exposure to a factor, but no response is observed, or only a positive response is observed, that factor is not considered to be a threat. If there is exposure and the species responds negatively, the factor is considered to be a threat to some degree, and we then attempt to determine how significant a threat it may be. The mere identification of factors that could affect a species negatively is not sufficient to allow us to find that listing under the Act may be appropriate; we interpret the Act to require that the petition include information that these factors are likely operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act. We have determined that the information reviewed concerning agricultural impacts and water issues does not meet the substantial-information standard. We do not consider the assertion of possible extirpation of a historical site due to the past use of pesticides to constitute a current or future threat to the species as a whole, because no information was provided to suggest that the pesticide threat is still affecting the species or is likely to do so in the future. This is particularly so given the conclusory nature of the reference to pesticides (i.e., there was no indication of what agricultural practices the pesticide use was tied to, what pesticides were used, how the pesticides got to the habitat in question, or how they may have affected the species or its habitat). Presentation of some information along these lines would have allowed the Service to evaluate the likelihood that the threat was continuing or was likely to occur in the future. Similarly, we do not consider the information presented concerning water issues to be significant because there is no information to indicate how these factors may be affecting the species and its habitat or are expected to affect the species and its habitat in the future.

Szczythoko and Stewart (1979), cited in NatureServe (2007), note that the stonefly is a rare species. The petitioners assert that, given the restricted known occurrence, a single event (e.g., drought, flood, habitat destruction, pollution, exotic species), could result in extinction. However, in order to determine that there is substantial information that a species may be endangered or threatened, we have to determine that the species actually may be subject to threats (such as the single events listed above). Those threats may be based on environmental or biological factors. In this case, we have no substantial information on threats that we can link to the status of the species in order to make a substantial finding.

When determining whether a species may warrant listing under the Act, it is important to distinguish between the mere presence of threats either now or in the foreseeable future, and the susceptibility of a species to those threats, in order to determine whether those threats may likely impact the species and potentially cause it to be in danger of extinction now or in the foreseeable future. Because rare species may be vulnerable to single event occurrences, as suggested above, it is important to have information on how likely it is such an event may occur (such as referencing historical frequency of that event), whether the specific event might impact the species (for example, whether flooding would actually impact the stonefly), what form that impact would take and by what mechanism it might affect the species (in other words, what specific life history function, habitat requirement, or other need of the species might be impacted and how), and whether the possible impact would likely result in a significant threat to the species (to what extent might the event be a negative impact on the species). In order to determine that there is substantial information that the species may be in danger of extinction now or in the foreseeable future due to the above factors, available information should be specific to the species and should reasonably suggest that these factors may be operative threats that act on the species to the point that it may warrant protection under the Act. Broad statements about a generalized threat to rare species do not constitute substantial information that listing may be warranted. Rather, to raise a substantial question as to whether a species may be threatened with extinction now or in the foreseeable future, information specific to the species and situation (such as life-history characteristics and measures of rarity) should be linked to potential threats. It is not sufficient to say that because a species is rare it is threatened by general stochastic events such as natural catastrophes. There must be some likely stressor acting on the species or its habitat that may affect a species' status such that the species may be threatened now or within the foreseeable future.

Information on a species' rarity is relevant to the conservation status of a species. Generally speaking, a species that has a geographically restricted range is likely to be more susceptible to environmental threats (e.g., fire, flood, drought, human land use), should they occur, than a species that is not rare because one fire or flood could affect a larger total percentage of the range of a rare species than of a widespread species. However, we have no substantial information in this case to evaluate whether any environmental threats are currently acting upon this potentially rare species in a negative way, or are reasonably likely to act on it in the future. Stochastic threats (e.g., catastrophic fire and flood) are unpredictable by nature; however, there must be some information to indicate that the habitats are at least susceptible to catastrophic fire, flood, etc., and that

the species would be negatively affected by those events. The fact that a rare species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given stochastic process within timescales that are meaningful for under the Act.

A species that has always been rare, yet continues to survive, could be well-equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, that fact that a species is rare does not necessarily indicate that it may be in danger of extinction in the foreseeable future.

The petitioner does not provide information to indicate that the range or abundance of the stonefly has been significantly curtailed. In other words, we do not know if the species has always been rare or if it was once more widespread. There are many features of a species' biology, ecology, and habitat that will modify its vulnerability to each threat such as the life history, population structure, geographic location, and characteristics of its local landscape. Whether a given rare species is affected by environmental or biological factors, and the magnitude of the effect of these factors on the species' ability to persist into the foreseeable future, is species- and context-specific. The petitioners have not presented even minimal information about the biology and ecology of the species to indicate that there may be any substantial genetic or demographic impacts to this potentially rare species.

We do not find that rarity alone, without corroborating information regarding threats, meets the substantial information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. As noted above, a species may be determined to be an endangered or threatened species due to one or more of the five factors used to evaluate threats as described in section 4(a)(1) of the Act. We do not find substantial information regarding threats to the stonefly under any of the five factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the stonefly may be warranted.

Mayfly (no common name) (*Fallceon eatoni*)

This mayfly was originally known from an 1892 collection from northern Sonora, Mexico (McCafferty 2006). No other occurrence was recorded until a single specimen was identified as *Fallceon eatoni* from among various specimens of other species originally collected in Salt River Canyon, Gila County, Arizona in 2005 (McCafferty 2006). An additional occurrence from 1969 was reported recently in Cottonwood Canyon in the San Bernardino Mountains in Riverside County, California (Meyer and McCafferty 2008).

The petitioners discuss Arizona's Comprehensive Wildlife Conservation Strategy (Arizona Game and Fish Department 2005) and claim that the species is threatened by inadequate regulatory mechanisms because the mayfly is not included in the conservation strategy. However, there must first be a potential threat acting on the species that requires adequate regulation in order to claim that regulation of that potential threat is inadequate. We do not consider the information presented concerning inadequate regulatory mechanisms to be substantial information indicating that the mayfly may warrant listing.

The petitioners claim that the mayfly is vulnerable to extinction due to its known occurrence at only one site. The petitioners assert that, given the restricted known occurrence, a single event (e.g., drought, flood, habitat destruction, pollution, exotic species), could result in extinction. McCafferty (2006), cited in NatureServe (2007), notes that, "Because of possible low numbers and restricted distribution, it may be considered a species of environmental concern." However, in our assessment of threats, we consider whether a species might be rare and whether rarity might make it more vulnerable to threats. In order to determine that there is substantial information that a species may be endangered or threatened, we have to determine that the species actually may be subject to threats (such as the single events listed above). Those threats may be based on environmental or biological factors. In this case, we have no substantial information on threats that we can link to the status of the species in order to make a substantial finding.

When determining whether a species may warrant listing under the Act, it is important to distinguish between the mere presence of threats either now or in the foreseeable future, and the susceptibility of a species to those threats, in order to determine whether those threats may likely impact the species and potentially cause it to be in danger of extinction now or in the foreseeable future. Because rare species may be vulnerable to single event occurrences, as suggested above, it is important to have information on how likely it is such an event may occur (such as referencing historical frequency of that event), whether the specific event might impact the species (for example, whether flooding would actually impact the mayfly), what form that impact would take and by what mechanism it might affect the species (in other words, what specific life history function, habitat requirement, or other need of the species might be impacted and how), and whether the possible impact would likely result in a significant threat to the species (to what extent might the event be a negative impact on the species). In order to determine that there is substantial information that the species may be in danger of extinction now or in the foreseeable future due to the above factors, available information should be specific to the species and should reasonably suggest that these factors may be operative threats that act on the species to the point that it may warrant protection under the Act. Broad statements about a generalized threat to rare species do not constitute substantial information that listing may be warranted. Rather, to raise a substantial question as to whether a species may be threatened with extinction now or in the foreseeable future, information specific to the species and situation (such as life-history characteristics and measures of rarity) should be linked to potential threats. It is not sufficient to say that because a species is rare it is threatened by general stochastic events such as natural catastrophes. There must be some likely stressor acting on the species or its habitat that may affect a species' status such that the species may be threatened now or within the foreseeable future.

Information on a species' rarity is relevant to the conservation status of a species because small populations are generally at greater risk of extinction than are large populations. Generally speaking, a species that is rare is likely to be more susceptible to environmental threats (e.g., fire, flood, drought, human land use), should they occur, than a species that is not rare because one fire or flood could affect a larger total percentage of the range of a rare species than of a widespread species. However, we have no substantial information in

this case to evaluate whether any environmental threats are currently acting upon this potentially rare species in a negative way, or are reasonably likely to act on it in the future. Stochastic threats (e.g., catastrophic fire and flood) are unpredictable by nature; however, there must be some information to indicate that the habitats are at least susceptible to catastrophic fire, flood, etc. and that the species would be negatively affected by those events. The fact that a rare species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given stochastic process within timescales that are meaningful under the Act.

A species that has always been rare, yet continues to survive, could be well-equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, the fact that a species is rare does not necessarily indicate that it may be in danger of extinction in the foreseeable future.

The petitioner does not provide information to indicate that the range or abundance of the mayfly has been significantly curtailed. In other words, we do not know if the species has always been rare or if it was once more widespread. There are many features of a species' biology, ecology, and habitat that will modify its vulnerability to each threat such as the life history, population structure, geographic location, and characteristics of its local landscape. Whether a given rare species is affected by environmental or biological factors, and the magnitude of the effect of these factors on the species' ability to persist into the foreseeable future, is species- and context-specific. The petitioners have not presented even minimal information about the biology and ecology of the species to indicate that there may be any substantial genetic or demographic impacts to this potentially rare species.

We do not find that rarity alone, without corroborating information regarding threats, meets the substantial information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. As noted above, a species may be determined to be an endangered or threatened species due to one or more of the five factors used to evaluate threats as described in section 4(a)(1) of the Act. We do not find substantial information regarding threats to the mayfly under any of the five factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the mayfly may be warranted.

## Finding

We reviewed and evaluated information in the petition and the literature cited in the petition that was readily available on the Internet and in local libraries. We also reviewed reliable information readily available in our files. On the basis of our review under section 4(b)(3)(A) of the Act, we have determined that the petition does not present substantial scientific or commercial information indicating that listing may be warranted for the stonefly or for the mayfly.

## References Cited

A complete list of references cited is available on the Internet at Docket No. FWS-R2-ES-2010-0020 at *http://www.regulations.gov* and upon request from the Southwest Regional Ecological Services Office (see **ADDRESSES**).

## Author

The primary authors of this document are the staff members of the Southwest Regional Ecological Services Offices (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 25, 2010.

**Jeffrey L. Underwood,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2010–7550 Filed 4–5–10; 8:45 am]

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