

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 10, 2011.

James Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–12766 Filed 5–23–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS–R2–ES–2011–0017; MO 92210–0–0008B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Spot-Tailed Earless Lizard as Endangered or 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 spot-tailed earless lizard (*Holbrookia lacerata*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species 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 spot-tailed earless lizard is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding the spot-tailed earless lizard, including its two subspecies (*Holbrookia lacerata lacerata* and *Holbrookia lacerata subcaudalis*). 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.

DATES: To allow us adequate time to conduct this review, we request that we

receive information on or before July 25, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is Eastern Daylight Time on this date.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the box that reads “Enter Keyword or ID,” enter the Docket number for this finding, which is [Docket No. FWS–R2–ES–2011–0017]. Check the box that reads “Open for Comment/Submission,” and then click the Search button. You should then see an icon that reads “Submit a Comment.” Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [Docket No. FWS–R2–ES–2011–0017]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

After July 25, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office; by U.S. mail at 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone (512–490–0057); or by facsimile (512–490–0974). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:**Request for Information**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the spot-tailed earless lizard from governmental agencies, Native American Tribes, the scientific community, industry, and any other

interested parties. We seek information on:

(1) The biology, range, and population trends of the species and of both its subspecies, 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) Information related to the specific threats to the spot-tailed earless lizard and both subspecies of the spot-tailed earless lizard.

If, after the status review, we determine that listing the spot-tailed earless lizard or either of its subspecies is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the spot-tailed earless lizard, we request data and information on:

(1) What may constitute “physical or biological features essential to the conservation of the species”;

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on “specific 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 section 4 of the Act.

Please include sufficient information with your submission (such as scientific

journal articles or other publications) 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 Web site. 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 is 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, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) 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 provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. 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 the 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 conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On January 21, 2010, we received a petition dated January 13, 2010, from Wild Earth Guardians, requesting that the spot-tailed earless lizard be listed as threatened or endangered and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a July 19, 2010, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. This finding addresses the petition.

Previous Federal Action

There have been no previous Federal actions related to this species.

Species Information

The spot-tailed earless lizard (*Holbrookia lacerata*) is a small lizard that averages 11.5 to 15.2 centimeters (cm) (4.5 to 6.0 inches (in)) from the nose to the end of the tail, and has been described as the most conspicuously spotted of all earless lizards (Conant and Collins 1991, p. 101).

The spot-tailed earless lizard is divided into two distinct subspecies, based on morphological (physical) differences and geographic separation (Conant and Collins 1991, p. 101; Dixon 2000, p. 27). The northern spot-tailed earless lizard subspecies, *Holbrookia laceratalacerata*, has two rows of dark blotches down each side of its back. The dark blotches are often so close together that they appear to be two dark rows down each side of the lizard's back. This subspecies has on average 13 femoral pores, which are openings containing a wax-like material found on the underside of the thighs and are used to leave a scent trail when they rub their legs on the ground. The southern spot-tailed earless lizard, *Holbrookia laceratasubcaudalis*, has 2 distinct rows of dark blotches down each side of its back and an average of 16 femoral pores under each hind leg.

We accept the characterization of *Holbrookia lacerata* lacerate and *Holbrookia laceratasubcaudalis* as subspecies of the petitioned species, *H. lacerata*, because they were properly described in peer-reviewed literature and are recognized as subspecies by

knowledgeable herpetologists: *H. l. lacerata* since 1880, and *H. l. subcaudata* since 1956 (ITIS 2009, p. 1).

In addition to the two subspecies having distinct morphological characteristics (Dixon 2000, p. 27), they are separated geographically along the Balcones Escarpment, which is a geologic fault zone in central Texas (Axtell 1968, p. 56.1). It seems that the Balcones Escarpment serves as a barrier to genetic exchange (Axtell 1968, p. 56.1; Hammerson *et al.* 2007, p. 4). The northern subspecies historically occurred throughout the Edwards Plateau (a geographic region in west-central Texas), while the southern subspecies historically occurred through south Texas into parts of Mexico's States of Coahuila, Nuevo Leon, and Tamaulipas (Axtell 1968, p. 56.1; Conant and Collins 1991, p. 101; Dixon 2000, p. 73; Texas Parks and Wildlife Department (TPWD) 2005a, p. 1; Hammerson *et al.* 2007, p. 2). In central and southern Texas, the spot-tailed earless lizard occurs across 75 counties (TPWD 2005a, p. 1). The TPWD's Comprehensive Wildlife Conservation Strategy (2005b, pp. 1093–1094) suggests that the spot-tailed earless lizard is declining in Texas, especially along the periphery of its range, but does not refer to any specific studies or surveys. Also, the petitioner did not provide any information, and we could not find any readily available in our files, regarding the current species' status or distribution in Mexico. Because population and distribution information is limited throughout the species' range, research is needed to verify the suggested decline in Texas and to determine the species' current distribution.

The spot-tailed earless lizard is found in a variety of habitats, but typically they use habitat with sparse vegetation or bare ground (Axtell 1968, p. 56.1). Spot-tailed earless lizards inhabit flat and open prairies or meadows, sand dunes, chaparral-shrubland, mixed woodland areas, and graded roads in Texas (Axtell 1968, p. 56.1; TPWD 2005b, p. 1093), as well as the desert habitats of northern Mexico (Axtell 1968, p. 56.1). The lizard tends to burrow in soil, fallen logs, and other ground debris, and avoid obstructions, such as waterways, buildings, and pavement (Axtell 1968, p. 56.1).

The TPWD (2005a, p. 1093) described differences in habitat associations between the two spot-tailed lizard subspecies. The northern spot-tailed earless lizard apparently prefers caliche soils (hardened deposit of calcium carbonate found in arid regions that cements together other materials,

including gravel, sand, clay, and silt) of the Edwards Plateau in moderately open prairie-brushland, oak-juniper woodlands, and mesquite associations. The southern spot-tailed earless lizard is most often found in flatter areas in association with dark clay, clay-loam soils, and in mesquite-prickly-pear associations.

In conclusion, the spot-tailed earless lizard's present population status is largely unknown. The TPWD suggests that the species may be declining along the periphery of its range, but more surveys are needed to determine the species' current distribution. To ensure that the status review is comprehensive and up to date, we are soliciting information on the species' status and distribution throughout its range.

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 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.

In making this 90-day finding, we evaluated whether information regarding threats to the spot-tailed earless lizard, as presented in the petition and documented in other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

Information Provided in the Petition

The petitioner asserts that the conversion of native habitat to cropland and nonnative grasses for livestock, as well as habitat fragmentation by road construction and development, are threats to the spot-tailed earless lizard.

In support of the conversion of native habitat to cropland and nonnative grasses for livestock, the petitioner cited NatureServe (2009, pp. 1–2) and TPWD's Conservation Wildlife Strategy (2005a, p. 1094), which mentioned that the eastern portion of the species' historical range is now used for agricultural production.

Also, in support of its assertion that the species is threatened by habitat fragmentation from road construction and development, the petitioner presented data adapted from the U.S. Census Bureau showing that the total human population of the counties included within the spot-tailed earless lizard's historical range increased by 33 percent between 1990 and 2008, to over 6.2 million people (U.S. Census Bureau 2009). Additionally, the petitioner stated that 5 counties in Texas (Williamson, Hays, Comal, Kendall, and Guadalupe) within the lizard's historical range are among the 100 fastest growing counties in the United States (U.S. Census Bureau 2009, pp. 1–5).

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

In reference to the petitioner's claims concerning the conversion of native habitat to cropland and nonnative grasses for livestock, the information presented appears to be reliable. The petitioner cited TPWD's Comprehensive Wildlife Conservation Strategy, which noted that the spread of nonnative

grasses is a problem in Texas (TPWD 2005b, p. 88). However, the petitioner provided no information indicating how the spread of nonnative grasses may be acting on the species. Also, the petitioner provided no information on the conversion of native habitat to cropland, the extent to which this may be occurring within the range of the species, or how this might impact the spot-tailed earless lizard. Therefore, the petitioner has not provided substantial information indicating that conversion of native habitat to cropland or nonnative grasses for livestock may be a threat to the spot-tailed earless lizard, and our files do not contain any information to support the petitioner's claims.

In reference to the petitioner's claim that habitat fragmentation by road construction and development is a threat to the species, the information appears reliable. The petitioner referenced human population growth in conjunction with habitat fragmentation by road construction, but provided no information indicating how this potential threat may be acting on the species. Also, we have no information available in our files indicating that the spot-tailed earless lizard's movements are inhibited by roads or that roads are acting as barriers to the lizard. Based on the above, the petitioner has not provided substantial information indicating that habitat fragmentation by road construction and development may be a threat to the spot-tailed earless lizard.

We believe that crossing highways may result in mortality to individual lizards; however, there is no evidence indicating that road-related mortalities are having an impact on the species' status. We believe the impact of road-related mortality is minimal because of the species' small home range size. In a similar species, Jones and Droge (1980, pp. 127–132) found that the mean home range of the lesser earless lizard (*Holbrookia maculata*) was less than 1 acre (0.4 hectare). Therefore, it's likely that the spot-tailed earless lizard would have to be living right next to a road for the possibility of a road-related mortality to occur. We have no information readily available in our files and the petitioner provided no information indicating that road-related mortalities may have an impact on the species' overall status. Based on the above, the petitioner has not provided substantial information indicating that road-related mortalities may be a threat to the spot-tailed earless lizard.

In summary, we find that the petition, along with information readily available in our files, has not presented

substantial information that the spot-tailed earless lizard may warrant listing due to the present or threatened destruction, modification, or curtailment of its habitat or range.

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

Information Provided in the Petition

The petition states that the extent of impacts due to this factor is currently unknown and suggests that the Service should investigate whether collection of the spot-tailed earless lizard for scientific purposes or for the pet trade is a threat to this species.

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

We currently have no information readily available in our files that suggests that overutilization for commercial, recreational, scientific, or educational purposes may be a threat to this species. Therefore, we find that the petition, along with information available in our files, has not presented substantial information that the spot-tailed earless lizard may warrant listing due to this factor.

C. Disease or Predation

Information Provided in the Petition

The petitioner asserts that the redimported fire ant (*Solenopsis invicta*) (fire ant), a nonnative species, is a threat to the spot-tailed earless lizard. In support of this threat, the petitioner cited Hammerson *et al.* (2007, p. 6), which stated that the existence of fire ants in the spot-tailed earless lizard's habitat is a threat to the species. Also, the petitioner provided a map showing that the current range of the fire ant covers the entire current spot-tailed earless lizard range in Texas (USDA 2006, p. 1). The petitioner states that fire ants prey on reptiles and their eggs, and are reportedly contributing to the decline of native species (Reagan *et al.* 2000, pp. 475–478; Allen *et al.* 2004, pp. 88–103). Fire ants also prey on hatchlings and adult animals (Wojcik *et al.* 2001, pp. 16–23).

Additionally, the petitioner noted that habitat disturbances can lead to invasions by fire ants across specific locations (Zettler *et al.* 2004, p. 517). Fire ant colonies multiply in disturbed and early-succession areas, such as woody debris in clearcut areas (Todd *et al.* 2008, p. 540). Thus, clear cutting in spot-tailed earless lizard woodland habitat could trigger fire ant invasions. Further, the petitioner provided support by citing Todd *et al.* (2008, p. 540),

which noted that spot-tailed earless lizards burrow into fallen logs and other ground debris, and use these substrates as escape habitat or cover in harsh environmental conditions, but these habitats can function as a trap for the lizards in areas where fire ants have invaded.

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

In reference to the petitioner's claims that the fire ant is a threat to the spot-tailed earless lizard, the petitioner provided no information and we have none readily available in our files concerning the spread of the fire ant over the spot-tailed earless lizard's range in Mexico. However, information readily available in our files supports the petitioner's claim that the current range of the fire ant covers the entire current spot-tailed earless lizard range in Texas.

Information in our files also indicates that fire ant predation may be a factor that is negatively impacting the overall status of the spot-tailed earless lizard. The fire ant is an aggressive and indiscriminate predator that can have devastating and longlasting impacts on native populations and communities (Vinson and Sorenson 1986, p. 17; Porter and Savignano 1990, p. 2095). The petitioner provided references that support the claim that fire ants predate on eggs, hatchlings, and adults of a variety of species, including lizards (Wojcik *et al.* 2001, pp. 19–20). Although there is no direct information on the decline of the spot-tailed earless lizard due to fire ant predation, the information presented about other reptiles, in addition to the aggressive and indiscriminate predatory nature of the fire ant, leads us to believe there may be negative impacts to the spot-tailed earless lizard. It is likely that fire ants are preying on adults, hatchlings, and eggs of spot-tailed earless lizards. Therefore, information provided by the petitioner and readily available in our files constitutes substantial information indicating that fire ants may be a threat to the spot-tailed earless lizard.

Regarding the petitioner's claim that habitat disturbances can lead to invasions by fire ants across specific locations, the information provided appears reliable. A study by Todd *et al.* (2008, pp. 542–545) found that fire ant abundance increases with disturbances to native species habitat. Porter *et al.* (1988, p. 916) reported that the invasion of fire ants is known to be aided by any disturbance that clears a site of heavy vegetation and disrupts the native ant community. Therefore, it is likely that

disturbances such as a clear cutting can trigger fire ant invasions.

In summary, there is substantial information on the adverse effects of fire ants on native fauna in general, including reptiles, and substantial information that fire ants may pose a threat to the spot-tailed earless lizard through direct predation on adults, hatchlings, and eggs. In addition, there is substantial information that fire ants occur across a large part of the spot-tailed earless lizard's range. Therefore, we find that the information provided in the petition, along with information readily available in our files, has presented substantial information indicating that the species may warrant listing due to predation, primarily by the fire ant.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner asserts that the spot-tailed earless lizard has no regulatory protection. Yet, the petitioner also cites NatureServe (2009, p. 2) and states that one to two spot-tailed earless lizard populations are appropriately protected and managed. Other citations provided by the petitioner include the IUCN's Red List Ranks (Hammerson *et al.* 2007) and TPWD's Wildlife Conservation Strategy (TPWD 2005b).

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

In reference to the petitioner's claim that the lack of regulatory protection is a threat to the spot-tailed earless lizard, the petitioner provided no information indicating how this potential impact may be acting on the species. We have identified the fire ant as a potential threat, but we are not aware of any regulatory mechanism that would address this potential threat. Therefore, we find that neither the petition nor information readily available in our files presented substantial information that the species may warrant listing due to the inadequacy of existing regulator mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioner asserts that pollutants, obstructions to movement, and climate change are threats to the spot-tailed earless lizard. In support of pollutants being a threat, the petitioner stated that the most severe threat to the spot-tailed earless lizard's survival is the use of agricultural pesticides and herbicides (NatureServe 2009, p. 1). Also, the

petitioner pointed out that environmental pollutants are likely major threats to reptiles around the globe and gave examples of the adverse effects of carbaryl (a chemical in the carbonate family used chiefly as an insecticide) on locomotion, energy use, and overall fitness of terrestrial lizards (DuRant 2006, pp. 39–41; DuRant *et al.* 2007a, pp. 446–447; DuRant *et al.* 2007b, pp. 20–23) and atrazine's (an organic compound used as an herbicide) possible effect as an endocrine disruptor in reptiles (Deb 2005, p. 401).

In support of obstructions to movement being a threat, the petitioner asserted that spot-tailed earless lizards that try to cross highways usually do not survive (NatureServe 2009, p. 1). In addition, the petitioner alleges that buildings, pavement, human structures, rivers, ponds, and lakes are barriers to the lizard's movement, but no other evidence or references are provided to indicate whether the spot-tailed earless lizard is exposed to the barriers or whether the species responds to these barriers in a way that causes actual impacts to the species.

In regards to climate change being a threat to the spot-tailed earless lizard, the petitioner cited studies on the potential adverse effects of climate change. For example, the petitioner claims that climate change is expected to cause more extreme and frequent weather events that include droughts, heavy rainfall, and heat waves (Karl *et al.* 2009, p. 126). The petitioner further states that climate-driven changes are likely to combine with other human-induced stresses to increase the vulnerability of natural ecosystems to pests, invasive species, and loss of native species (Karl *et al.* 2009, p. 126). Fischlin *et al.* (2007, pp. 224–226) proposed that the productivity, structure, and carbon balance of grassland ecosystems are extremely sensitive to climatic shifts. Root and Schneider (2002, pp. 29–30) addressed how climate is likely to affect animals with habitat associations in particular vegetation types. The ranges of animals relying on plant communities could become compressed, and in some instances, both the plants and the animals could become extinct (Root and Schneider 2002, pp. 29–30).

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

In reference to the petitioner's claim that pollutants may be a threat to the spot-tailed earless lizard, the information appears reliable. References cited in the petition on the effects of carbonate are studies on the western

fence lizard (*Sceloporus occidentalis*), which is in the same family as the spot-tailed earless lizard (DuRant 2006, pp. 39–41; DuRant *et al.* 2007a, pp. 446–447; DuRant *et al.* 2007b, pp. 20–23). Because the lizards are in the same family, it is plausible to assume that if the spot-tailed earless lizard is exposed to carbonate pollutants, similar results to exposure to the pesticides would likely occur. Also, the reference to atrazine is only a very general reference to reptiles (Deb 2005, p. 401), but it does suggest that the pesticide could act as an endocrine disruptor in the spot-tailed earless lizard. However, the petition does not provide information on the current or historical use of these pesticides or any other agricultural pesticides within the spot-tailed earless lizard's range, and we have no information readily available in our files indicating the extent of use of these pollutants in the species' range, or if these pollutants may be having an impact on the spot-tailed earless lizard. Consequently, the petitioner has not provided substantial information indicating that pollutants may be a threat to the spot-tailed earless lizard.

In reference to the petitioner's claim that obstruction to movements is a threat to the spot-tailed earless lizard, the petitioner did not provide reliable data to support their claim. We previously addressed the petitioner's claims regarding roads as a threat under Factor A above. Concerning other barriers to movement, the petitioner provided no information indicating how these potential impacts may be acting on the species. Therefore, the petitioner has not provided substantial information indicating that obstruction to movement may be a threat to the species.

In reference to the petitioner's claim that climate change is a threat to the spot-tailed earless lizard, the information appears to be reliable. However, the petitioner provided references to studies that discussed climate change in general terms, that discussed the potential impacts of climate change in areas outside of the spot-tailed earless lizard's range, and that discussed the potential impacts of climate change on unrelated species. No information was provided by the petitioner indicating whether the spot-tailed earless lizard might be sensitive to environmental changes resulting from climate change, and no information was provided regarding the extent of potential exposure of the spot-tailed earless lizard to climate change impacts. The petitioner cited Root and Schneider (2002, pp. 29–30) who addressed how climate is likely to affect animals with

habitat associations in particular vegetation types. However, the spot-tailed earless lizard is found in a variety of habitats across a broad geographic range (Axtell 1968, p. 56.1; Conant and Collins 1991, p. 101; Dixon 2000, p. 73; TPWD 2005a, p. 1; Hammerson *et al.* 2007, p. 2). Also, it is hypothesized that plant and animal communities are generally expected to shift toward the poles or increase in altitude with increasing global temperatures and drought conditions (Parmesan *et al.* 2000, p. 443; Cameron and Scheel 2001, p. 676; Root and Schneider 2002, pp. 22–23; Karl *et al.* 2009, pp. 72, 132). We believe that increasing global temperatures and drought conditions may have little impact on spot-tailed earless lizards, because the species is physiologically and behaviorally well adapted to warm, arid landscapes. Therefore, based on the above information, the petitioner has not provided substantial information indicating that the environmental changes associated with climate change may be a threat to the spot-tailed earless lizard.

In summary, we find that the petition, along with information readily available in our files, did not present substantial information that the spot-tailed earless lizard may warrant listing due to other natural or manmade factors.

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 both the northern and southern subspecies of the spot-tailed earless lizard throughout their entire ranges may be warranted. This finding is based on information provided under factor C, the potential threat from fire ant predation.

Because we have found that the petition presents substantial information indicating that listing the spot-tailed earless lizard may be warranted, we are initiating a status review to determine whether listing the spot-tailed earless lizard 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 is available on the Internet at <http://www.regulations.gov> and upon request

from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

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

Authority

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

Dated: May 17, 2011.

Rowan W. Gould,
Acting Director, U.S. Fish and Wildlife Service.

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