

present substantial information, nor do we have substantial information in our files, to suggest that fisheries or oil and gas activities, with the possible exception of potential oil spills, may threaten the Pacific walrus. However, all factors will be evaluated when we conduct our status review.

### Finding

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 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 process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents “substantial scientific and commercial information,” which is interpreted in our regulations as “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)). As described in our threats evaluation, above, the petition presents substantial information indicating that listing the Pacific walrus throughout its entire range may be warranted based on Factors A, D, and E. Based on our threats evaluation, the petition does not present substantial information indicating that Factors B and C may be a threat to this species.

Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information indicating that listing the Pacific walrus throughout all or a significant portion of its range may be warranted due to current and future threats under Factors A, D, and E. Therefore, we are initiating a status review to determine whether listing the Pacific walrus under the Act is warranted.

The “substantial information” standard for a 90-day finding is not the same as 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 is not a status assessment of the species and 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 indicate that listing is warranted.

### References Cited

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

### Author

The primary authors of this notice are the staff members of the Alaska Regional 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: September 1, 2009.

**Sam D. Hamilton,**

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS–R8–ES–2009–0047]

[MO 92210530083-B2]

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Amargosa Toad (*Bufo nelsoni*) as Threatened or Endangered**

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

**ACTION:** Notice of 90-day 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 Amargosa toad (*Bufo nelsoni*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). 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 status review to determine if listing the Amargosa toad is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data

and other information regarding this species.

**DATES:** We made the finding announced in this document on September 10, 2009. To allow us adequate time to conduct this review, we request that we receive information on or before November 9, 2009.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R8–ES–2009–0047; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. 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 Solicited** section below for more details).

#### **FOR FURTHER INFORMATION CONTACT:**

Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130, by telephone (702–515–5230), or by facsimile (702–515–5231). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Information Solicited**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review (12-month finding) is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Amargosa toad. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Amargosa toad. We are seeking information regarding:

- (1) The species’ historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat.

- (2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' 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) Any proposed projects or development plans that may result in increased water use in the Oasis Valley.

(4) Information on methods to control crayfish (*Procambarus* spp.) in desert riparian systems.

(5) Information on effects of mosquitofish on eggs and larvae of the Amargosa toad or other species of toad where mosquitofish are not native.

(6) Data on surface water quality or groundwater monitoring in the Oasis Valley, including transport or movement of environmental contaminants from mining operations and the Nevada Test Site.

(7) Information on whether or not UV-B radiation is increasing in the Oasis Valley and, if so, the effects of this increase on Amargosa toads.

(8) Information as to any other threats to Amargosa toads asserted in the petition.

If we determine that listing the Amargosa toad 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 Amargosa toad, we also request data and information on what may constitute physical or biological features that are 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 or not 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 note that 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, as 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." Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not 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 your submission is made via 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 materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, 4701 North Torrey Pines Drive, Las Vegas, NV.

### 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 provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of 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 commence a status review of the species.

On February 27, 2008, we received a petition dated February 26, 2008, from the Center for Biological Diversity and Public Employees for Environmental Responsibility (PEER; hereinafter referred to as "petitioners") requesting that the Amargosa toad be listed as endangered or threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a letter to the petitioners dated May 1, 2008, we responded that we had reviewed the petition and found that an emergency listing was not warranted. We also stated that, although we were currently required to complete a significant number of listing and critical habitat actions, we anticipated making an initial finding on the petition during Fiscal Year 2008. However, due to unforeseen delays, we were not able to complete the finding at that time. This notice constitutes our initial finding on the petition.

### Previous Federal Actions

On August 2, 1977, the Service included the Amargosa toad on a list of amphibians that we were reviewing to determine whether those species should be proposed for listing as endangered or threatened (42 FR 39121). Subsequently, beginning in 1982, we assigned the Amargosa toad as either a category 1 or category 2 candidate species under the Act (47 FR 58454, December 30, 1982; 50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). A category 1 species was a taxon for which the Service has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened under the Act. A category 2 species was a taxon for which the Service has information indicating that proposing to list the species as endangered or threatened is possibly appropriate, but that information is not conclusive data on biological vulnerability or threats that would support a proposed listing.

On September 21, 1994, the Service received a petition from the Biodiversity Legal Foundation of Boulder, Colorado, requesting emergency listing of the Amargosa toad as endangered. At the time we received the petition, the Amargosa toad was a category 1 candidate species. On March 23, 1995, we announced our 90-day finding that the petitioned action may be warranted and initiated a status review of the species (60 FR 15280). On July 26, 1995,

the Service recommended removal of the Amargosa toad from category 1 candidate status based on information we obtained during the status review. On February 28, 1996 (61 FR 7596), we removed the Amargosa toad from candidate status. On March 1, 1996, we announced our 12-month finding that listing the Amargosa toad as endangered or threatened was not warranted (61 FR 8018).

## Species Information

### *Taxonomy and Description*

The Amargosa toad is a member of the family Bufonidae which includes North American true toads. Stejneger (1893, cited in Lannoo 2005, p. 427) described the Amargosa toad as *Bufo boreas nelsoni*, a subspecies of the western toad (*Bufo boreas*). Savage (1959, pp. 251–254) was the first to refer to the Amargosa toad as *Bufo nelsoni* in accordance with the rules of the International Code of Zoological Nomenclature. Feder (1997, cited in Lannoo 2005, p. 428) diagnosed *Bufo nelsoni* by allozymic data and was the first to publish species rank for the Amargosa toad. Mitochondrial DNA analyses by Goebel (1996, cited in Lannoo 2005, p. 429) are consistent with species status for the Amargosa toad. In 2002, *Bufo nelsoni* was listed as a full species on the Integrated Taxonomic Information System database compiled by the Smithsonian Institution with the highest credibility rating by their Taxonomic Working Group (Lannoo 2005, p. 427).

Adult male Amargosa toads are typically 1.6 to 2.7 inches (in.) (42 to 68 millimeters (mm)) snout-vent length, females typically 1.8 to 3.5 in. (46 to 89 mm) snout-vent length (Nevada Department of Wildlife [NDOW] 2000a, p. A–2). The dorsal body of the Amargosa toad has three paired rows of tubercles, or wart-like skin projections, with brown center coloration. The back has black speckling or asymmetrical spots. Background coloration ranges from almost black to brownish or buffy olive and may vary considerably among individual toads in the same population. A light mid-dorsal stripe occurs along the backbone. The large, wart-like parotid glands located behind the eye are tawny to olive. Underneath, the Amargosa toad is whitish or pale olive with scattered black spots that merge above the legs to form the appearance of “pants.”

### *Historical and Current Range*

Amargosa toads are endemic to Oasis Valley in southern Nye County, Nevada. The area occupied by the Amargosa toad

is isolated with no known or probable connections to members of the western toad complex (NDOW 2000a, p. A–1). The nearest known record for a western toad is approximately 35 linear miles (56 kilometers (km)) away at Furnace Creek in Death Valley National Park, California, where an introduced population of western toad occurs. The historical and current range of the Amargosa toad is estimated to be a 10-mile (16-km) stretch of the Amargosa River and nearby spring systems roughly between the towns of Springdale and Beatty. In 1996, the Amargosa Toad Working Group (ATWG) was organized to provide recommendations for management and conservation of the Amargosa toad. The ATWG consists of representatives of the Service, NDOW, Nevada Department of Conservation and Natural Resources, Bureau of Land Management (BLM), Nye County and local community, the University of Nevada at Reno, and other stakeholders. In 2007, the ATWG prepared a map of all known and potential habitat for the species, including potential movement corridors, and posted the map on the Internet at: [http://www.fws.gov/nevada/nv%5Fspecies/amargosa\\_toad.html](http://www.fws.gov/nevada/nv%5Fspecies/amargosa_toad.html). The total amount of known and potential Amargosa toad habitat delineated on the ATWG map is 8,440 acres (ac) (3,416 hectares (ha)).

### *Life History and Ecology*

Amargosa toad habitat requirements for breeding and population recruitment include the presence of open, ponded or flowing water, with riparian vegetative cover in an early to intermediate successional stage to form a partial canopy for shade with minimal emergent vegetation at the water's edges. Immature (metamorphs or toadlets) and adult Amargosa toads are dependent upon the areas described above as well as areas they can use for shelter, including burrows, debris piles, spaces under logs or rocks, or areas of dense vegetation (NDOW 2000a, p. A–2). Adult toads also require adjacent vegetated uplands for nocturnal foraging. Upland habitat typically consists of Mojave and Great Basin desert vegetation with leaf litter, rock outcrops, rodent burrows, woody debris, and open areas that are sparsely vegetated. Dense vegetation and advanced successional stages of riparian vegetation appear to limit habitat suitability and occupancy by all life stages, particularly where open water is not present (NDOW 2000a, p. A–2).

The breeding season for the Amargosa toad begins in mid-February and may extend into July during which time

adults congregate at breeding sites. Jones (2004, p. 19) found 82 percent of clutches were laid from February 27 to March 23 in the 2001 season. Eggs are deposited in strings among vegetation in shallow water. A female may lay up to 6,000 eggs in a single clutch. The eggs typically develop into larvae (tadpoles) within 1 to 2 weeks, but as quickly as 3 days in thermal waters (NDOW 2000a, p. A–2). Larvae are blackish with silvery speckles, rounded tail tips, and translucent tail fins. Larvae feed on algae, decaying plant material, and organic detritus that is suspended in the water column or on the substrate. Larvae may be swept downstream if a current is present. Larval mortality may be very high, although recruitment estimates have not been made (CBD and PEER 2008, p. 10). Amargosa toad tadpoles require relatively open water that persists long enough for the completion of metamorphosis and development into toadlets at which time they leave the water. Tadpoles metamorphose into toadlets in about 4 to 8 weeks, though development is highly variable depending on water temperature and site conditions (Jones 2004, p. 7). Predation and early desiccation of wetlands needed for breeding may destroy an entire breeding effort. Amargosa toads are believed to typically live 3 to 4 years in the wild, but a toad marked in 1998 was recaptured in 2008.

Amargosa toads may be active any time of the year. Toads eat invertebrates including spiders, scorpions, ants, harvester ants, wasps, beetles, flies, grasshoppers, stink bugs, water striders, damselflies, mosquitoes, mites, and snails. They use their sticky tongue to grab prey items in a sit-and-wait predator strategy (CBD and PEER 2008, p. 11).

The mean home range of adult Amargosa toads has been studied at the Torrance Ranch site and at Amargosa River Narrows. Home ranges at these sites are estimated to be approximately 1.5 ac (0.6 ha), with no difference between males and females (Jones 2004, p. 48). Rare movements occur over 0.8 mile (1.3 km) between breeding sites along the Amargosa River and 0.5 mile (0.8 km) across uplands (NDOW 2000b, p. 9). During rain events, toad movements are not always confined to riparian corridors and reports exist of Amargosa toads moving over upland ridges (Jones 2004, p. 49). However, significant genetic differentiation of Amargosa toads among sites suggests Amargosa toads do not make extensive use of upland habitat for movement or migration (Simandle 2006, p. 38). Amargosa toads are attracted to

disturbed areas where they forage and breed (NDOW 2000b, pp. 7–8 and 19), and seemingly co-exist with humans as indicated by survey data collected at developed study sites (urban and residential).

Predators of toads include common raven (*Corvus corax*), white-faced ibis (*Plegadis chihi*), great egret (*Ardea alba*), snowy egret (*Egretta thula*), great blue heron (*Ardea herodias*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), spotted sandpiper (*Actitis macularius*), American robin (*Turdus migratorius*), American badger (*Taxidea taxus*), crayfish (*Procambarus* spp.), and various fish species (CBD and PEER 2008, p. 11).

#### Status

Since 1998, the Amargosa toad has been classified as a Protected Species by the State of Nevada. No Federal protection is currently afforded the species other than designation as a Special Status Species by the BLM. Conservation and management oversight for the Amargosa toad is provided through the ATWG. The ATWG is comprised mostly of biologists, managers, and private landowners with a common interest in Amargosa toad conservation. The Amargosa Toad Conservation Agreement and Strategy was completed in 2000 (CA/S) (NDOW 2000a, pp. 1–12) and provides management and conservation guidance for the Amargosa toad. Efforts to update the CA/S were initiated at the November 7, 2007, meeting of the ATWG.

In 1998, the Nevada Department of Wildlife (NDOW) initiated a long-term population monitoring program for the Amargosa toad using mark/recapture methods at key sites. The study involves capture and marking (with implanted tags) of all adult Amargosa toads found that are 2 in. (50 mm), or greater in length. As of November 2007, a total of 5,666 Amargosa toads had been captured and tagged since 1998. The 2007 estimate for the number of toads 2 in. (50 mm) or greater in length from all surveyed sites is 5,179, which is 13 percent less than the estimate for 1998 through 2006 (Hobbs 2007, p. 1). Further, additional populations of toads may occur on unsurveyed sites on private land (NDOW 2000b, p. 18).

Simandle (2006, p. 42) determined that Amargosa toads meet the criteria and expectations of metapopulations. This means that occupied habitats, unoccupied but suitable habitats, and intervening habitat that may be occasionally used during infrequent migration events should all be considered as conservation priorities.

Rare events such as intense floods demonstrate that these are dynamic, disturbance-dependent ecological systems upon which the Amargosa toad depends. Events such as floods may simultaneously destroy existing occupied habitat, create new suitable habitat, and facilitate infrequent movement among different sites.

#### Five Factor Evaluation

Section 4 of the Act, and its implementing regulations at 50 CFR 424, set forth the criteria and procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Service determines whether a species is an endangered or threatened species due to one or more of the following 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 Amargosa toad, as presented in the petition and other information available in our files at the time of the petition review, meets the definition of substantial information as stated in 50 CFR 424.14(b)(1), indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

#### Factor A.

##### *Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The petition outlines numerous assertions regarding the present or threatened destruction, modification, or curtailment of the Amargosa toad's habitat or range. Several assertions point to Amargosa toad habitat being threatened by proposed Federal land sales and by development projects on private land. The petitioners claim that federal land proposed for sale and private lands subject to development encompass the majority of the range of the Amargosa toad (CBD and PEER 2008, pp. 3, 19, and 29). The petition states that threats to the Amargosa toad resulting from federal land sales are the development that would take place on these and the surrounding private lands, and the increased demand for groundwater to support that development (CBD and PEER 2008, pp. 3, 17, and 20).

The petition raises the issue of potential development plans for the Town of Rhyolite that would include the need for water (CBD and PEER 2008, p. 20). Indian Spring has been identified as a potential water extraction site that would support Rhyolite development. The petition states that if this were to occur, it would likely adversely affect the water table at that site.

The petition also states that the proposed Reward Mine on BLM land has the potential to affect groundwater in the area. The Reward Mine is approximately 3 miles (4.8 km) southeast of the Amargosa River at the Narrows, south of Beatty. The mine operations would use up to 287 acre-feet of groundwater per year over a period of 6 years (John Shomaker and Associates, Inc. 2008, p. 1). The petitioners claim that proposed water withdrawal potentially may create a cone of depression that could lower water levels upstream and impact toad habitat. The February 2008 analysis provided by BLM on the Reward Mine indicates water for operations would be provided by a well in alluvium next to the Amargosa River (John Shoemaker & Associates Inc. 2008, p. 1). The petitioners assert the combination of river water and local groundwater extracted from the well could lower groundwater levels in Oasis Valley (particularly southern Oasis Valley); however, the petitioner did not provide any support for these assertions.

The petitioners assert that lowering of the water table from increased groundwater use could seriously impact toad habitat (CBD and PEER 2008, p. 17). Further, they claim that portions of the Amargosa River may have become dewatered from overuse by humans (CBD and PEER 2008, p. 17). A detailed analysis of the impacts of groundwater and surface water withdrawals on water levels in the Amargosa River would be required to demonstrate the above effects. There is no indication in our files or submitted with the petition that such an analysis has been completed. However, we have in our files a 1998 ruling on an application for groundwater withdrawal in the Oasis Valley issued by the Nevada State Engineer (NSE). This ruling recognized a high degree of connection between groundwater and surface water in Oasis Valley (NSE Ruling 4669). The NSE found that combined groundwater and surface water allocations significantly exceeded the current estimate of perennial yield in the basin. Proposed land uses and development in and near the area of Oasis Valley could lead to additional groundwater allocations, accompanied by a reduction in

Amargosa toad habitat through a lowering of local groundwater levels. A small decrease in groundwater levels in Oasis Valley could lead to a significant reduction in the area of open pools of water at springs, along spring branches, or along the Amargosa River (particularly during dry summer months), all of which provide habitat for the Amargosa toad (Braumiller 2008, p. 1). Therefore existing and future water use in the Oasis Valley may pose a threat to the Amargosa toad.

Other potential threats identified by the petitioners include alterations of the riparian corridor that may affect toad movements and habitat connectivity; habitat loss and fragmentation resulting from proposed projects including flood control projects, a railroad, and a mineral material site; overgrowth of vegetation as a result of fencing; feral burro and livestock effects on springs and toads; direct mortality associated with roads and highways; and off-highway vehicle (OHV) use.

The petitioners generally describe the potential effects that could result from flood control projects (CBD and PEER 2008, pp. 17 and 20). However, the petitioners do not provide information on any specific flood control projects that may threaten the species or its habitat, and the Service is unaware of any proposed flood control actions that would alter the Amargosa River.

The petitioners state that construction of a new railroad, as proposed by the U.S. Department of Energy to transport nuclear waste to Yucca Mountain, may cross the northernmost portion of the Oasis Valley, north of Colson pond, disturbing approximately 20 ac (8 ha) of Amargosa toad habitat (CBD and PEER 2008, p. 18). Although habitat is suitable, Amargosa toads are not known to occur in this area (ATWG 2006, pp. 1–2).

Vegetation overgrowth and use of springs by feral burros and cattle are other land management issues raised by the petitioners that may result in degraded habitat and depressed Amargosa toad numbers (CBD and PEER 2008, pp. 17–18, 21 and 23–25). Fencing has been installed at the Crystal and Indian springs sites to exclude feral burros. While burros and livestock (ungulates) may trample Amargosa toad eggs and larvae, light to moderate disturbance is important to Amargosa toads (ATWG 2005, p. 2). In the absence of disturbance, vegetation grows uncontrolled and reduces open areas necessary for Amargosa toads. Intensive and uncontrolled use of Amargosa toad habitat by ungulates may threaten the species by resulting in habitat degradation and potential loss of

individual Amargosa toads; however, light to moderate use may be beneficial to the Amargosa toad. Targeted grazing on the Torrance Ranch by The Nature Conservancy improved habitat, and Amargosa toads responded positively as indicated by use of the area by Amargosa toads for feeding and breeding. Complete removal of ungulates could lead to overgrowth of vegetation, and may pose a more serious threat to the Amargosa toad than moderate ungulate use.

The petitioners claim that OHV activity has been increasing around the Beatty area and results in decreased habitat quality, loss of riparian habitats, and direct mortality of Amargosa toads (CBD and PEER 2008, pp. 21 and 27). Most OHV use in the Beatty area, including the Terrible's 200 Las Vegas to Reno race, occurs during the daytime when toads are likely sheltering. OHVs are used by community residents within the town limits of Beatty mostly along existing roads and trails. However, OHV travel within the river corridor, washes, or other areas used by toads for breeding or for sheltering during daylight hours may impact Amargosa toads, particularly eggs and tadpoles that are known to occur in road depressions. Although the extent of impacts to the Amargosa toad as a result of OHV use is largely unknown, we believe this current OHV use could pose a threat to the Amargosa toad.

In summary, we find that the information provided in the petition, as well as information in our files, presents substantial scientific or commercial information indicating that listing the Amargosa toad as threatened or endangered may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, including existing and future water development, use of groundwater to support land development, overgrowth of vegetation, excessive habitat use by ungulates, and OHV use in toad habitat. We will investigate whether there are additional potential threats to the Amargosa toad related to Factor A during our status review.

#### **Factor B.**

##### *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petitioners state that there is no evidence that scientific research has resulted in negative consequences on studied populations of the Amargosa toad (CBD and PEER 2008, p. 22). We have no information in our files that indicates overutilization for

commercial, recreational, scientific, or educational purposes is a threat to the Amargosa toad. However, we will further investigate whether overutilization for commercial, recreational, scientific, or educational purposes is a potential threat to the toad during our status review.

#### **Factor C.**

##### *Disease or Predation*

The petitioners did not present evidence, and no evidence exists in our files, that disease may be a threat to the Amargosa toad at this time. However, we will further investigate whether disease is a potential threat to the toad during our status review.

The petitioners claim that exotic species or nonnative predators and competitors, including nonnative crayfish (*Procambarus* spp.), largemouth bass (*Micropterus salmoides*), nonnative trout (*Oncorhynchus* spp.), black bullhead catfish (*Ictalurus melas*), mosquitofish (*Gambusia affinis*), and nonnative bullfrogs (*Rana catesbeiana*), are a serious threat to the Amargosa toad. Since their introduction in the mid-1980s, nonnative crayfish have become established along most of the Amargosa River and springs occupied by the Amargosa toad, and occur in large numbers (CBD and PEER 2008, p. 3). Crayfish consume toad eggs and larvae, and were located in 7 of 11 sites surveyed during a study (CBD and PEER 2008, p. 23; Jones 2004, pp. 24–25). Bass are known to occur in at least one pond on private property in Oasis Valley, but there is no information in our files to support the claim that trout currently occur in Oasis Valley. Black bullhead catfish are known at one pond that is also occupied by Amargosa toads. Catfish and toads have co-occurred at this site for at least 9 years. Mosquitofish have been introduced into waters of Oasis Valley and occur at most sites occupied by toads. Mosquitofish have been observed to remove and consume eggs of the arroyo toad (*Bufo californicus*; Lannoo 2005, p. 399) and may also prey on Amargosa toad eggs. It is conceivable that nonnative predators have an impact on Amargosa toads; however, the overall effects of these introduced aquatic species specifically to the Amargosa toad are unknown.

In summary, we find that the information provided in the petition, as well as information in our files, presents substantial scientific or commercial information indicating that listing the Amargosa toad may be warranted due to the threat of predation by introduced species.

**Factor D.***Inadequacy of Existing Regulatory Mechanisms*

The petitioners cite BLM's failure to protect the Amargosa toad through designation of important toad habitat as an Area of Critical Environmental Concern (ACEC) or through provision of a comparable level of protection through other means (CBD and PEER 2008, pp. 19 and 27). Further, they claim that the Town of Beatty and Nye County have failed to cooperate in local community efforts to develop a conservation area in Oasis Valley (CBD and PEER 2008, p. 20), and, therefore, that Amargosa toad habitat on private land is threatened by potential development which may proceed without conservation for the Amargosa toad (CBD and PEER 2008, p. 19). Finally, the petitioners assert that the State of Nevada fails to provide adequate protection for the Amargosa toad through existing statutes particularly regarding permit exemptions for residential groundwater use up to 1,800 gallons per day and habitat threats on private lands (CBD and PEER 2008, pp. 20 and 28).

The petitioners also claim that BLM allows OHV racing near the Crystal Springs enclosure and in a wash potentially used by Amargosa toads. They further state that BLM usually does not enforce OHV exclusion from riparian areas in Oasis Valley (CBD and PEER 2008, p. 27).

Finally, the petition claims that BLM failed to follow through with habitat projects (CBD and PEER 2008, pp. 20 and 25) and the CA/S has failed at protecting toad habitat and increasing toad populations (CBD and PEER 2008, p. 27).

Water development may adversely affect areas occupied by Amargosa toad. The State of Nevada permits exemptions for up to 1,800 gallons per day for residential use, which may collectively result in a substantial volume of groundwater withdrawal. The structure of State water regulations and absence of sufficient data on groundwater and surface water to support development without affecting toad habitat constitutes a potential threat to the Amargosa toad. Further, the Service is unaware of a final master plan that guides community planning in concert with toad conservation. The Service acknowledges that activities and potential development on private lands within Oasis Valley are significant threats to the toad.

Near the Crystal Spring enclosure, BLM has approved OHV events that occur over a 2-day period during the daytime when Amargosa toads are

sheltering. The BLM imposes permit conditions to minimize impacts to the area. The Service is unaware of any information that indicates these events or casual OHV use are threats to the Amargosa toad or that BLM fails to enforce OHV exclusion from riparian areas. In 2008, BLM chose an alternate route away from toad habitat for OHV events near Crystal Spring.

Following a recent review of the CA/S, the ATWG concluded that implementation of the CA/S was an overall success. While some projects have not been completed, a number of important activities not identified in the CA/S have been conducted. The updated CA/S will include information on all accomplishments that benefit the toad. The petition asserts that several habitat enhancement projects proposed in the CA/S (CBD and PEER 2008, p. 20) were not completed, but these projects will be revisited in the upcoming review of CA/S.

In summary, we find that the information provided in the petition, as well as information in our files, does present substantial scientific or commercial information indicating that listing the Amargosa toad may be warranted due to the inadequacy of the existing regulatory mechanisms, particularly State regulations that allow for residential groundwater use up to 1,800 gallons per day without the need for a permit and the lack of a final master plan for the Oasis Valley.

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

The petitioners assert that the Amargosa toad is particularly vulnerable to extinction due to its exceedingly small range and small population size; most of its range has been impacted by humans (Simandle 2006, p. 14; Petition, pp. 16 and 29), and small populations are particularly vulnerable to genetic drift. Information in our files also suggests that the historical and current range of the Amargosa toad is small, i.e., approximately 10 miles (16 km) long consisting of 8,440 ac (3,416 ha) centered on the Amargosa River and including movement corridors among adjacent spring sites and the river. Small population size and range, compounded by threats under Factor A, could threaten the Amargosa toad. Therefore, we find that the information in the petition and in our files presents substantial information that small range and population size may be an important threat to the Amargosa toad

when combined with potential threats from development identified in Factor A.

The petition states that species found in few locations, such as the Amargosa toad, are susceptible to stochastic events such as fire or floods (CBD and PEER 2008, p. 22). Controlled burns conducted on Torrance Ranch in 2008 were successful at reducing vegetation and improving toad habitat; toad reproduction was documented immediately following the burn (ATWG 2008, p. 1). Flood events are a natural disturbance and may benefit the Amargosa toad through periodic habitat disturbances. We will further investigate whether susceptibility to stochastic events is a potential threat to the toad during our status review.

Radiation poisoning through groundwater contamination (from atomic testing on the Nevada Test Site) was also cited by the petitioners (CBD and PEER 2008, p. 21). The petitioners also assert that pollution of unknown levels on private land is a threat to the Amargosa toad (CBD and PEER 2008, p. 25). No information on groundwater connections or the types, amounts, infiltration speed, or locations of pollution was provided in the petition or exists in our files to support this claim as an important threat to the Amargosa toad. However, we will further investigate whether radiation poisoning through groundwater contamination is a potential threat to the toad during our status review.

Environmental factors, including global warming, were identified by the petitioners as factors that could decrease habitat for the Amargosa toad through drought. The petitioners also mentioned increased UV-B radiation, which could weaken the Amargosa toad's immune system and result in mortality from disease (CBD and PEER 2008, p. 22). As acknowledged in the petition (CBD and PEER 2008, p. 23), disease has not been observed in Amargosa toads, and no field observations of Amargosa toad mortalities suggesting disease have been reported.

We acknowledged in Factor A that management of water resources to meet the needs of the Amargosa toad is important for Amargosa toad conservation. Environmental changes due to climate change, including drought, could exacerbate the threats under Factor A. Therefore, we find that the information in the petition and in our files presents substantial information to indicate environmental changes due to climate change could exacerbate threats under Factor A and combine to threaten the Amargosa toad.

Finally, the petitioners claim that introduced, invasive trees have become established along stretches of the Amargosa River and springs, which may reduce prey and microhabitat available for the Amargosa toad (CBD and PEER 2008, pp. 24 and 26). Since the CA/S was signed in 2000, removal of invasive trees, tamarisk (*Tamarix ramosissima*) and Russian olive (*Elaeagnus angustifolia*) has been ongoing and successful as a joint effort involving State, Federal, and private landowners. Amargosa toads are known to use areas underneath tamarisk and Russian olive trees for feeding and sheltering. Tamarisk and Russian olive removal efforts generally include replacement with native riparian species that will provide the same function. We will further investigate whether invasive trees are a potential threat to the toad during our status review.

In summary, we find that the information provided in the petition and in our files presents substantial scientific or commercial information indicating that listing the Amargosa toad may be warranted due to threats from other natural or manmade factors. These factors, particularly small populations, small range size, and environmental changes due to climate change, could exacerbate threats identified under Factor A.

### Finding

We have reviewed the petition and the literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed information that was readily available in our files. Based on our evaluation of the information provided in the petition, and information in our files, we find that the petition presents substantial scientific information

indicating that listing the Amargosa toad may be warranted.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents “substantial scientific or commercial information,” which is interpreted in our regulations as “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)). Section 4(a) of the Act states the Secretary shall, by regulation promulgated in accordance with subsection (b) of the Act, determine whether any species is an endangered species or a threatened species because of any of the five listing factors. Furthermore, regulations at 50 CFR 424.11(c) state a species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species’ status, that the species is endangered or threatened because of any one or a combination of the five listing factors.

As described in our Five-Factor Evaluation above, the petitioners presented substantial information indicating that the Amargosa toad may be threatened throughout its entire range due to four of the five listing factors described in the Act. Therefore, based on our determination that the petitioned action may be warranted due to substantial information presented under Factors A, C, D and E, we are initiating a status review to determine whether listing the Amargosa toad under the Act is warranted. We will address any other potential threats during our status review. To ensure that the status review is comprehensive, we are soliciting scientific and commercial

information regarding the Amargosa toad relevant to all five listing factors.

The “substantial information” standard for a 90-day finding differs from the Act’s “best scientific and commercial data” standard that applies to a 12-month finding after a status review to determine whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act’s standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

### References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Nevada Fish and Wildlife Office, Las Vegas, Nevada (see **FOR FURTHER INFORMATION CONTACT**).

### Author

The primary authors of this notice are the staff members of the Nevada Fish and Wildlife 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: August 26, 2009.

**Daniel M. Ashe,**

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

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