

headlamp manufacturer. Once chosen, the mark establishes the reference axis that will be used to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. NHTSA will use this mark to identify the reference axis, and will conduct its compliance testing accordingly.”<sup>9</sup>

Although BMW claimed that the petitioned modification would have no negative impact on traffic safety, BMW did not provide data to demonstrate that the requested new specifications would provide safety benefits comparable to those of the existing standard or that cost savings would be realized without compromising safety.

Considering the flexibility with which a manufacturer has in determining the location of the axis of reference, the agency is concerned that modifying the standard as suggested by BMW would create a disconnect between the physical attributes of the lamp and the location of the axis of reference. While the agency understands that the focal center of a complex headlamp may not be at the center of the light source, the agency continues to believe that the light source provides the best physical attribute with which to link the location requirements of paragraph S10.17.1.1.2. Considering the flexibility with which manufacturers have in choosing the optical axis marking and thus the location of the reference axis and the lack of demonstrable benefits, the agency is denying this petition from BMW in order to avoid ambiguity in the requirement.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued: April 20, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2010-9587 Filed 4-23-10; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0026]  
[MO 92210-0-0008-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered

**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 harlequin butterfly (*Atlantea tulita*), a butterfly endemic to Puerto Rico, as endangered under the Endangered Species Act of 1973, as amended, and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the harlequin butterfly 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 harlequin butterfly is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. **DATES:** To allow us adequate time to conduct this review, we request that you send us your information on or before June 25, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below) the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

After June 25, 2010, 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.

**ADDRESSES:** You may submit comments 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 FWS-R4-ES-2010-0026. 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: FWS-R4-ES-2010-0026; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

**FOR FURTHER INFORMATION CONTACT:** Edwin Muniz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone (787) 851-7297; or by facsimile (787) 851-7440. If you use a telecommunications device for the deaf (TDD) may 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 harlequin butterfly from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We seek information on:

- (1) The species’ biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range, including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species or 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;

<sup>9</sup> Letter of Interpretation to Mr. Hyodo (May 2007), available at <http://isearch.nhtsa.gov/files/06-005429as-6.htm> (last accessed March 29, 2010).

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The potential effects of climate change on this species and its habitat.

If, after the status review, we determine that listing the harlequin butterfly 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 harlequin butterfly, 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 a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review.

However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments 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, Caribbean 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 February 25, 2009, we received a petition dated February 24, 2009, from Mr. Javier Biaggi-Caballero requesting that we list the harlequin butterfly as endangered and designate critical habitat under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required in 50 CFR 424.14(a). In an April 9, 2009, letter to the petitioner, we responded that we had received the petition. We stated that we would make a finding, to the maximum extent practicable within 90 days, as to whether or not the petition presented substantial information. We have been unable to respond to the petition until now.

In that letter, we also stated that if this initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, we must commence a review of the status of the species concerned. Section 4(b)(3)(B) of the Act gives us one year from the date we received the petition to determine whether the petitioned action is not warranted, warranted, or warranted but precluded; we must promptly publish notice of our finding in the **Federal Register**. At the conclusion of our status review, we will prepare and publish our 12-month finding on the petition to list the harlequin butterfly as endangered and, if warranted, designate critical habitat under the Act.

### Previous Federal Actions

There have been no previous Federal actions concerning this species.

### Species Information

The harlequin butterfly is endemic to the island of Puerto Rico and is one of the four species endemic to the Greater Antillean genus *Atlantea* (Biaggi-Caraballo 2009, p. 1). The species was described by German lepidopterist Dr. Herman Dewitz in 1877, from specimens collected by Dr. Leopold Krug in the municipality of Quebradillas, Puerto Rico.

The harlequin butterfly has a wing span of about 2-2.5 inches (in) (6 centimeters (cm)) wide. Both female and male harlequin butterflies are similar in color patterns and size. This butterfly is brownish black at the dorsal area with deep orange markings and confused black markings at the half basal anterior wing. The posterior wing has a wide black border enclosing a set of reddish-bronze sub-marginal points. The ventral side of the anterior wing is similar to the dorsal anterior wing, and the posterior is black with orange basal spots and a complete postdiscal beige band with a band of reddish spots distally and sub-marginal white half-moons. The costa, the most anterior (leading) edge of a wing, in males is gray and wide. Females are multivoltine ovopositors (produce several broods in a single season) (Biaggi-Caraballo 2009, p. 2).

The harlequin butterfly has only been observed utilizing the prickly bush (*Oplonia spinosa*) as its host plant (plant used for laying eggs and serves as a food source for the development of larvae). The chrysalis (the hard-shelled pupa of a butterfly) is also attached to dried twigs of the host plant (Biaggi-Caraballo 2009, p. 3). The adult butterflies feed from the nectars of the flowers available nearby but have not

been observed feeding from the prickly bush.

Currently, the harlequin butterfly is only known from one small colony in the municipality of Quebradillas, at the northern karst region of Puerto Rico (Biaggi-Caraballo 2009, p. 4). This colony is located in the Terranova-San Jose Ward, in Quebradillas, Puerto Rico. The species has been observed in a forest associated with the coastal cliffs of the area. Based on the information provided by the petitioner, census tracts yield no more than 50 adults on a given date (Biaggi-Caraballo 2009, p. 5). Larva counts are estimated to be around 10-100 per census day, and the presence of more than one generation confirms its multivoltine nature. From July to December, the larva population is lower than the rest of the year.

Carrión-Cabrera (2003, p. 40) states that the dispersion of the species is limited by the monophagus habit of the larvae (only utilizes the prickly bush). Additionally, the butterfly flies slowly and is weak and fragile; the species is considered sedentary (not able to move or disperse in a given environment) (Carrión-Cabrera 2003, p. 51).

#### 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 procedures for adding species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

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

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

##### Information Provided in the Petition

The petitioner asserts that development pressure and the construction of a residential development in the habitat of the harlequin butterfly is the main threat to the species. The petitioner also states that the habitat of the species has been modified by past developments of the city of Quebradillas, reducing the butterfly habitat to a tract north of State Road PR-2, and that future developments have been approved in the same area. Furthermore, these developments are endangering the prickly bush, the only host plant of the harlequin butterfly. The petitioner asserts that the construction of residential projects within the suitable habitat for the species will substantially affect the distribution and abundance of the harlequin butterfly as well as its habitat throughout its range.

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

Information in our files supports the petitioner's contention that the current habitat of the harlequin butterfly is currently threatened by the construction of residential and tourist development projects. According to the petitioner, the only area where the species currently occurs is in Terranova-San José Ward (Biaggi-Caraballo 2009, p. 4). This area is classified as a Zone of Tourist Interest (ZTI) in the land use maps of the Puerto Rico Planning Board for the municipality of Quebradillas. In the last 3 years, the Service has provided comments and technical assistance to local agencies on at least three proposed development projects within the Terranova and San José Wards; two projects, proposed within Terranova Ward, affected approximately 40.0 acres (ac) (16 hectares (ha)), and another project, proposed within San José Ward, affected approximately 13.0 ac (5 ha). These projects are located within the area identified as suitable habitat for the species in the petition.

Based on the information provided in the petition and available in our files, we conclude that the petitioner has presented substantial information to indicate that the present or threatened destruction or modification of habitat or range may present a significant threat to status of this species and its habitat.

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

Neither the petition nor information in our files presents information indicating that overutilization of the harlequin butterfly for commercial, recreational, scientific, or educational purposes is a threat. Therefore, we find that the petition does not present substantial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the harlequin butterfly. However, we intend to assess this factor more thoroughly during the status review for the species.

#### C. *Disease or Predation*

Neither the petition nor information in our files presents information indicating that disease or predation is a threat to the harlequin butterfly. Therefore, we find that the petition does not present substantial information to indicate that disease or predation may present a threat to the harlequin butterfly. However, we intend to assess this factor more thoroughly during the status review for the species.

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

##### Information Provided in the Petition

The petitioner claims that although the Department of Natural and Environmental Resources (DNER) for the Commonwealth of Puerto Rico included this species in the Commonwealth list of endangered species, development projects are still being approved within the habitat of the species. The petitioner also states that DNER, under the advice of the petitioner and researchers, began designation of critical habitat for the species under Puerto Rican law. The petitioner believes that without listing and designation of critical habitat under the Act, the continued existence of the harlequin butterfly is imminently threatened.

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

According to information in our files, the DNER designated the species as Critically Endangered under Commonwealth Law 241 and Regulation 6766 in July 2007 (DNER 2007, 42pp). According to Article 2 of Regulation 6766, the designation as Critically Endangered prohibits any person to take the species, with the term 'take' including harm, possess, transport, destroy, import or export individuals, nests, eggs or juveniles, without

previous authorization from the Secretary of DNER. At the present time, the DNER has not designated critical habitat for the species under Regulation 6766. Therefore, the level of protection to the species' habitat is uncertain.

Based on the information provided in the petition and available in our files, we conclude that the petitioner has presented substantial information to indicate that existing regulatory mechanisms may be inadequate to protect the habitat of the harlequin butterfly.

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

##### Information Provided in the Petition

The petitioner asserts that the species is vulnerable to extinction due to low population numbers, restricted distribution (only one small colony), and monophagous habits, coupled with habitat alteration or loss. The petitioner also asserts that the species' habitat is threatened by fires associated with an illegal garbage dump on road PR-4485.

Carrión-Cabrera (2003, p. 60) conducted a species' survey of the harlequin butterfly, and observed only 235 individuals in 16 months of surveys (2 sample days per month), with a maximum of 50 individuals in a sample day (mean = 9 individuals per sample day). The petitioner asserts that with a low population and limited geographical area, coupled with habitat loss and pressure for development, the species may not be able to reach the minimum population mass to sustain a population in the wild and, therefore, is extremely vulnerable to extinction (Biaggi-Caballero 2009, p. 6).

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

Information in our files also suggests that the range of the harlequin butterfly is restricted to 10 small patches of habitat in the municipality of Quebradillas (Monzón-Carmona 2007, pp. 83-84). Small population size and range, compounded by threats to its habitat as discussed under Factor A, could threaten this species. In addition, we have no information in our files regarding the petitioner's claim that the species' habitat is threatened by fires associated with an illegal garbage dump on road PR-4485. Based on the information presented in the petition and available in our files, we find that the petition presents substantial information indicating that other natural or manmade factors in combination with other probable threats to the

species habitat may pose a significant risk of extinction for the harlequin butterfly.

#### **Finding**

On the basis of our evaluation of the information presented under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the harlequin butterfly throughout its entire range may be warranted. This finding is based on information provided under Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (other natural or manmade factors affecting the species' continued existence). Because we have found that the petition presents substantial information indicating the harlequin butterfly may be at risk of extinction now or in the foreseeable future and therefore listing under the Act may be warranted, we are initiating a status review to determine whether listing the harlequin butterfly 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.

The petitioner requested that we designate critical habitat for this species. If we determine in our 12-month finding that listing the harlequin butterfly is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking. The proposed rulemaking may be published concurrently with the 12-month finding or at a later date.

#### **References Cited**

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

#### **Authors**

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

#### **Authority**

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

Dated: April 13, 2010

#### **Rowan W. Gould**

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

[FR Doc. 2010-9533 Filed 4-23-10; 8:45 am]

**BILLING CODE 4310-55-S**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 18**

[Docket No. FWS-R7-FHC-2010-0002; 71490-1351-0000-L5-FY10]

**RIN 1018-AW94**

#### **Marine Mammal Protection Act; Deterrence Guidelines**

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

**ACTION:** Proposed rule; availability of draft environmental assessment; request for comments.

**SUMMARY:** These proposed guidelines set forth best practices that we, the Fish and Wildlife Service, find are appropriate for safely and nonlethally deterring polar bears from damaging private and public property and endangering the public. We would not require anyone to implement these guidelines, nor would anyone be liable if they did not implement them. If the guidelines are finalized, anyone deciding to implement them could do so without our authorization or supervision. We are proposing these guidelines to reduce occurrences of bear-human interactions with only minor, short-term behavioral effects on polar bears. As discussed in the background section of this proposed rule, we authorize other, more aggressive deterrence activities through separate provisions of the Marine Mammal Protection Act. We seek public comment on these proposed guidelines.

**DATES:** We will consider comments on the proposed guidelines or draft environmental assessment received on or before May 26, 2010.

**ADDRESSES:** You may submit comments on the proposed guidelines and associated environmental assessment by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No.