

90-DAY FINDING PETITION REVIEW FORM

LISTING AS A THREATENED OR AN ENDANGERED SPECIES

Federal Docket No. FWS-R8-ES-2024-0176

90-DAY FINDING ON A PETITION TO LIST THE AMARGOSA TOAD (*Anaxyrus nelsoni*) AS A THREATENED OR ENDANGERED SPECIES UNDER THE ENDANGERED SPECIES ACT

Petitioned action being requested:

- List as an endangered or a threatened species
- Reclassify (uplist) from a threatened species to an endangered species
- Other

Petitioned entity:

- Species
- Subspecies
- DPS of vertebrates

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) requires that we make a finding on whether a petition to list, delist, uplist (reclassify the species from a threatened species to an endangered species), or downlist (reclassify the species from an endangered species to a threatened species) a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Our regulations provide that, for a petition to meet the “substantial scientific or commercial information” standard, we must determine in the 90-day petition finding that the petition includes “credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted” (50 CFR § 424.14(h)(1)(i)).

The Act and our regulations are clear that the responsibility is squarely on the petitioner to present the requisite level of information to meet the substantial information test to demonstrate that the petitioned action may be warranted. This means that the petitioner must not only present credible information that threats may be present; they also need to present credible information concerning a species’ documented or likely response to that threat, and that the species’ response is to such a level that listing or uplisting may be warranted. Where the petitioner has failed to do so, we should make a not-substantial finding on the petition -- we should not augment their petition with our own knowledge or other information we are aware of. If we are aware of species that may be in danger of extinction, we should undertake a status review on our own accord, regardless of the receipt of a petition.

Our regulations further state that we will consider whether a petition presents a complete and balanced representation of the relevant facts when making our finding of whether a petition presents substantial information that the requested action may be warranted. Thus, if we find that a petition cherry-picked information, ignored relevant and readily available information, and presented a biased and incomplete representation of facts, we should consider whether the petition has met the requirement to present substantial information (see instructions below for more information).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed here. See 50 C.F.R. § 424.14(j). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

Petition History

On May 29, 2024, we received a petition from The Center for Biological Diversity, requesting that the Amargosa toad be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. The Center also asked that we consider using the emergency provisions of the Act to list the species. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). Listing a species on an emergency basis is not a petitionable action under the Act, and the question of when to list on an emergency basis is left to the discretion of the Service. If the Service determines that the standard for emergency listing in section 4(b)(7) of the Act is met, the Service may exercise that discretion to take an emergency listing action at any time. Therefore, we are considering the May 29, 2024, petition as a petition to list the Amargosa Toad. This finding addresses the petition.

Evaluation of a Petition to List the Amargosa toad as an Endangered or Threatened Species Under the Act

Species and Range

Does the petition present substantial information that the petitioned entity may be a listable entity (i.e., a species, subspecies, or distinct population segment)?

Yes

No

Amargosa toad (*Anaxyrus nelsoni*)

Historical Range: Nye County, Nevada

Current Range: Nye County, Nevada

The Amargosa toad is a species within the Great Basin *Anaxyrus boreas* species complex and is found only in the Oasis Valley of Nevada. Adults generally have a snout-vent length of 1.6 to 3.5 inches long, with females being larger than males. Coloration in Amargosa toads is highly variable, but most toads are black, brown, yellow-brown, or olive with black markings.

The Amargosa toad is a recognized species by the Integrated Taxonomic Information System.

Statutory and Regulatory Standards for Evaluation of the Petition

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an “endangered species” or a “threatened species.” The Act defines an endangered species as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a “threatened species” as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether any species is an “endangered species” or a “threatened species” because of any of the following factors:

- (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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

In accordance with 50 CFR 424.14(d), the Service’s determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) Identification of the factors under section 4(a)(1) of the Act that may affect the species and where these factors are acting upon the species; (3) Whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the Act may cause the species to be an endangered species or threatened species (i.e., the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) Information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

Evaluation of Information in the Petition

When evaluating a petition, we assess the information in the petition and the sources that it includes as references. While we may use any readily available information (e.g., in our files or published literature that we are aware of) to determine the credibility of the information presented in the petition, we do not use readily available information to bolster the petition, should the petitioner fail to provide substantial information, because the Act requires that we

make a finding as to whether the petition itself presents substantial information indicating that the petitioned action may be warranted. Our implementing regulations at 50 CFR 424.14(h)(1)(i) state that conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial information.” “Credible scientific or commercial information” may include all types of data, such as peer-reviewed literature, gray literature, traditional ecological knowledge, etc. Thus, we first must determine whether the information provided in the petition is credible. In other words, the Service must evaluate whether the information in the petition is substantiated and not mere speculation or opinion. Any claims that are not supported by credible scientific or commercial information do not constitute substantial information and will not be further evaluated. Next, we determine whether the conclusions drawn in the petition are reasonable (i.e., actually supported by that credible information).

After identifying the claims in the petition that are supported by credible information, we consider those claims in the context of the factors in section 4(a)(1) of the Act. When evaluating information presented in the petition, we consider factor D in light of the other factors, not independently. In other words, we consider whether the petition presents substantial information indicating that existing regulatory mechanisms may be inadequate to address the magnitude or imminence of threats identified in the petition related to the other four factors; therefore, we consider existing regulatory mechanisms in conjunction with each relevant claim presented in the petition.

To complete our analysis for a 90-day finding on a petition to list or uplist, we first identify the claims in the petition that are supported by credible information indicating that a potential threat is occurring or is likely to occur within the species’ range. After identifying the claims that are supported by credible information that a threat is occurring or likely to occur, we next determine whether the petition has presented credible information that those threats affect the species at a population or species level, after taking into account any mitigating actions or conditions that may ameliorate those threats, such that the petitioned action may be warranted. If we find that the petition does not present substantial information that the petitioned action may be warranted based on the information provided regarding the status and trends of the species or on one or more factors, we consider the cumulative impact of all of the threats that are supported by credible information.

After evaluating the petition and the credible information it provides in support of these claims, we make a finding based on the standard for 90-day findings, which is whether the petition presents “credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted.” Our evaluation assesses the extent to which the credible information in the petition indicates that a reasonable person would conclude that the petitioned action may be warranted.

In accordance with 50 CFR 424.14 (h)(1)(iii), the “substantial scientific or commercial information” standard must be applied in light of any prior reviews or findings the Services have made on the listing status of the species that is the subject of the petition. 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 an endangered species or threatened

species (42 FR 39121). Subsequently, the Amargosa toad was identified as a Category 1 or 2 species from 1982 through 1991 (47 FR 58454; 50 FR 37958; 54 FR 554; 56 FR 58804; 59 FR 58982).

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. 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 an endangered species or threatened species was not warranted (61 FR 8018).

On February 27, 2008, we received a petition from the Center for Biological Diversity and Public Employees for Environmental Responsibility requesting that the Amargosa toad be listed as endangered or threatened species and that critical habitat be designated under the Act. 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. On September 10, 2009, we published a 90-day finding stating the petition contained substantial information to indicate the petitioned action may be warranted, and we announced the initiation of a status review of the species (74 FR 46551). On July 20, 2010, we announced our 12-month finding that listing the Amargosa toad as an endangered species or threatened species was not warranted (75 FR 42040).

We reviewed the current information provided by the petitioners and have determined that the petition presents substantial information indicating that the species may be warranted for listing. We will continue to engage with all partners in the local area including state and federal land management agencies and private entities to develop strategies to ensure the conservation of the species and its habitat.

Claims Addressing Threats

We first assess whether the petition supported its claims with credible information (i.e., whether the petition has presented credible information that the threat is occurring or is likely to occur and that the species may be exposed to the threat) (Table 1). If the supporting information indicates that the threat is occurring or is likely to occur in the future and that the species may be exposed to it, we then assess whether the petition presented credible information that reasonably indicates the presence of negative effects on the species as a whole.

If the petition did not present credible information indicating population-level effects, our analysis of that individual threat presented in the petition is complete, as there would be no species-level effects; we may then analyze that threat later if we need to evaluate cumulative effects. If the credible information about the particular threat indicates species-level effects, our analysis of that individual threat presented in the petition is complete. If the credible information about the particular threat does not indicate species-level effects but does indicate population-level effects, we assess the extent to which the credible information in the petition indicates that the scale of the effects of that threat are such that a reasonable person would conclude that listing or uplisting may

be warranted.

If we find that there is credible information indicating that threats are having or are likely to have a negative effect on the species as a whole, such that a reasonable person would conclude that listing may be warranted, we can stop and make a positive “substantial information” finding. We would then evaluate all of the threats in detail based on the best scientific and commercial data available when we conduct the status assessment and make the 12-month finding. A positive 90-day petition finding does not indicate that the petitioned action is warranted. Such a finding indicates only that the petition presents substantial information that the petitioned action may be warranted and that a full review should occur.

TABLE 1: Evaluation of claims in the petition. Assessment of the credibility of scientific and commercial information in the petition and the extent to which claims supported by credible scientific or commercial information in the petition corroborates the presence of negative impacts to populations, or the species.

Threat or Activity	Exposure. Is the claim of the threat in the petition supported by credible scientific and commercial information? Does the petition support the claim that there is a potential threat and it is occurring or is likely to occur within the range of the species? If no, explain. If yes, include brief summary statement and citations to the credible information.	Response (Populations/Species). Do the claims and the supporting information indicate negative effects such that listing or uplisting may be warranted? Yes or no. Explain and describe below.
Gold mining (Factor A)	<p>Yes. The petition presents credible information that gold mining is likely to occur and to subsequently present threats to the groundwater-dependent habitat of the Amargosa Toad (Roux 2024, p. 4-7; HydroGeoLogica 2023, p. 112-114). The Amargosa toad occurs only in the Oasis Valley in Nye County, Nevada along a 14-mile stretch of the Amargosa River (NDOW 2023, p. 1-2).</p> <p>There are currently seven gold mining projects proposed around the Amargosa toad’s habitat: North Bullfrog, Bullfrog, South Bullfrog, Reward, Mother Lode, Sterling, and Expanded Silicon (Zacapa Resources 2023, p. 2-3). Of these seven projects, the North Bullfrog project is the only one of these new proposed gold mines in the permitting process. The proposed mining operation of the North Bullfrog project is early in the environmental review process and has not been permitted. The Bureau of Land Management (BLM) was accepting public comments to inform its Environmental Impact Statement (EIS) for the</p>	<p>Yes. The Amargosa toad requires open, ponded, or flowing water with early to intermediate successional stage riparian vegetative cover for breeding and population recruitment (NDOW 2022b, p. 323). The petition presents credible information about potential negative population-level effects due to gold mining in areas where the Amargosa toad occurs. The petition claims that dewatering and production pumping of groundwater for gold mining may cause drawdown of groundwater levels across the Oasis Valley. Hydrological modeling of different pumping scenarios indicate that a drawdown of between >1 and <10 feet could cause the loss or degradation of Amargosa toad habitat along the Amargosa River (CBD 2024, Appendix B). The petition claims that the drying of wetland habitat required for breeding would negatively impact Amargosa toad reproductive success (Wildlife Action Plan Team 2012, p. S-61). If dewatering of Amargosa toad habitat occurs along the Amargosa River corridor it could cause a direct reduction in habitat availability and quality and would also likely reduce habitat connectivity throughout the range of the Amargosa toad (NDOW 2000, p. A-5).</p> <p>The Nevada Department of Wildlife (NDOW) has conducted a long-term population monitoring program for the Amargosa</p>

	<p>project (DOI-BLM-NV-B020-2024-0019-EIS) through May 10, 2024 (BLM 2024, p. 2).</p> <p>The petition claims that these mining projects have the potential to impact groundwater availability in Amargosa toad habitat by groundwater pumping, pit lake development, and diversion and/or collection of surface water. Over the expected 16-year life of the project, the annual water supply demand for the North Bullfrog project is estimated to range from 450 to 1,600 gallons per minute to support mine construction, operations, and closure (EM Strategies 2023, p. 31). Hydrological modeling of different pumping scenarios indicate that a drawdown of between >1 and <10 feet along the Amargosa River is likely to occur as a result of mining activities (CBD 2024, Appendix B).</p>	<p>toad since 1998 (75 FR 42041-42042). From 1998 to 2016 the total estimated Amargosa toad population size across all parcels has remained relatively stable at 2,000 toads, but the population at the Harlan-Keal parcel was observed to decline from 350 individuals in 1998 to 124 individuals in 2013 (Kegerries et al. 2019, p. 18, 20-21). Surface water diversion, invasive species, and impacts from burro grazing have been observed at this site in recent years (DRI 2023, p. 44) The petition claims that there is a lack of available monitoring reports and survey data since 2018, aside from one 2023 report at The Nature Conservancy’s 7J Ranch and adjacent BLM land (NDOW 2023, p. 1-2).</p> <p>The petition presents credible information that despite existing conservation efforts and regulatory mechanisms there continue to be negative impacts of gold mining. The Amargosa toad is designated as a Species of Greatest Conservation Need in the 2022 Nevada Wildlife Action Plan (NDOW 2022a, p. 38). The Amargosa toad is also designated as a Protected Amphibian by the State of Nevada and is listed as a Sensitive Species by the BLM (NDNH 2023, p. 20). However, these regulatory mechanisms provide discretionary protections only for the species and do not guarantee protection. Also, these designations do not protect the availability of water for the Amargosa toad. The BLM must analyze impacts to sensitive species in National Environmental Policy Act documents when evaluating proposed actions (BLM 2008, p. 37), and the responsible BLM official may still authorize impacts to occur. The Amargosa Toad Working Group (ATWG) was organized in 1996 for the management and conservation of the Amargosa toad, and includes federal, state, academic, private, and non-profit representatives (75 FR 42044). The ATWG completed a conservation agreement and strategy (CAS) for the Amargosa</p>
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		<p>toad, which provides management and conservation guidance for the species (NDOW 2000, entire) but does not provide any regulatory protection. The petition claims that the CAS does not adequately protect the Amargosa toad from the threat of gold mining and associated loss of groundwater-dependent habitat.</p>
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Cumulative Effects of Claims Supported by Credible Information

Because we have found that the petition presented substantial information that one or more threats are having an impact on the species to the point that the species' status may have changed, the petition presents substantial information indicating that the species may warrant listing. We do not need to assess cumulative effects at the 90-day finding stage because we will address cumulative effects of all threats in the 12-month finding.

Evaluation of Information Summary

We reviewed the information provided by the petitioner and have determined the petition presented credible information to support potential impacts to the species as a whole such that the species may be warranted for listing. The petitioner provided credible information indicating potential threats to the Amargosa toad from gold mining (Factor A). The petitioner also provided credible information that despite the existing regulatory mechanisms potential threats are still negatively impacting the species (Factor D). The petitioners also presented claims about solar energy development, wild burros, livestock grazing, off-road vehicles, road, invasive plants, water abstraction and diversion, chytridiomycosis, predation by bullfrogs and nonnative crayfish, hybridization with Woodhouse's toad (*Anaxyrus woodhousii*), climate change, and stochastic events as threats to the Amargosa toad, which we will evaluate during our 12-month finding.

Petition Finding

We reviewed the petition, sources cited in the petition, and other readily available information (within the constraints of the Act and 50 CFR 424.14(h)(1)). We considered the credible information that the petition provided regarding effects of the threats that fall within factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding gold mining (Factor A), we find that the petition presents substantial scientific or commercial information indicating that listing the Amargosa toad (*Anaxyrus nelsoni*) as a threatened species or an endangered species may be warranted. The petitioners also presented information suggesting solar energy development, wild burros, livestock grazing, off-road vehicles, road, invasive plants, water abstraction and diversion, chytridiomycosis, predation by bullfrogs and nonnative crayfish, hybridization with Woodhouse's toad (*Anaxyrus woodhousii*), climate change, and stochastic events may be threats to the Amargosa toad. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

Author

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