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Dated: December 6, 2006.

**David M. Verhey,**

Assistant Secretary for Fish and Wildlife and Parks.

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of two 90-day petition findings and initiation of 5-year review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce two 90-day findings made under the Endangered Species Act of 1973, as amended (Act). One finding concerns a petition to remove Uinta Basin hookless cactus (*Sclerocactus glaucus*) from the List of Endangered and Threatened Plants, and the other a petition to list Pariette cactus (*Sclerocactus brevispinus*) as a threatened or endangered plant. Until recently, these species were considered one taxonomic entity, so the petitions are being considered concurrently in this notice.

We find the petition to remove *Sclerocactus glaucus* from the List of Endangered and Threatened Plants does not present substantial information indicating that the petitioned action may be warranted, and we are not initiating a further status review in response to this petition. However, in order to determine the appropriate status of *S. glaucus* given recent taxonomic revisions to this species, we are initiating a 5-year review under section 4(c)(2)(A) of the Act. Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, this species as it was originally listed (i.e., information pertaining to *S. glaucus*, *S. brevispinus*, and *S. wetlandicus*).

We find the petition to list *Sclerocactus brevispinus* presents substantial information indicating that the petitioned action may be warranted, and we are initiating a further status

review in response to this petition. Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, this species.

**DATES:** The findings announced in this document were made on December 14, 2006. Comments and information must be submitted on or before February 12, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Field Supervisor, Utah Ecological Services Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

(2) You may submit your comments by electronic mail (e-mail) to [fw6\\_sclerocactus@fws.gov](mailto:fw6_sclerocactus@fws.gov). For directions on how to submit comments by e-mail, see the "Public Comments Solicited" section of this notice. In the event that our Internet connection is not functional, please submit your comments by mail, hand-delivery, or fax.

(3) You may fax your comments to (801) 975-3331.

**FOR FURTHER INFORMATION CONTACT:** Larry England, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119 (telephone 801-975-3330; fax 801-975-3331; e-mail [larry\\_england@fws.gov](mailto:larry_england@fws.gov)). Additional information is available at <http://mountain-prairie.fws.gov/species/plants/threecacti/index.htm>.

**SUPPLEMENTARY INFORMATION:****Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate 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 this finding promptly in the **Federal Register**.

Our standard for substantial information 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 information was presented, we are required to promptly commence a status review of the species.

In making these findings, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our 90-day finding process under section 4(b)(3)(A) of the Act and section 424.14(b) of the regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

On October 11, 1979, we listed *Sclerocactus glaucus* as a threatened species (44 FR 58868) based on threats from overcollection for horticultural purposes, energy development (including oil, gas, and potential oil-shale development), grazing, off-road vehicle (ORV) use, and water development (44 FR 58869). A recovery plan for the species was finalized on September 27, 1990. Revisions in the taxonomy of *S. glaucus* began in 1989 (Hochstatter 1989, 1993; Heil and Porter 1994; Porter *et al.* 2000; Welsh *et al.* 2003), and by 2004, the Flora of North America recognized the plant *S. glaucus* that we listed in 1979 as three distinct species: *S. glaucus*, *S. wetlandicus*, and *S. brevispinus*.

In our February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7596), we included *Sclerocactus brevispinus* as a candidate species. Retraction of *S. brevispinus* as a candidate species occurred in our September 19, 1997, CNOR (62 FR 49401) with the following justification: "Because *S. brevispinus* was a part of *S. glaucus* when the latter species was listed as threatened, those plants now referred to as *S. brevispinus* are still considered to be listed as threatened. Therefore, including *S. brevispinus* as a candidate in the 1996 notice of review was inappropriate and unnecessary. To address the recent change in taxonomy, a proposed rule to add *S. brevispinus* to the List of Endangered and Threatened Plants will be published in the **Federal Register** at a later time."

On February 3, 1997, we received a petition from the National Wilderness Institute to remove *Sclerocactus glaucus* from the List of Endangered and Threatened Plants on the basis of "original data error," but higher priority actions have precluded addressing this petition to date. On April 18, 2005, the Center for Native Ecosystems and the Utah Native Plant Society petitioned us to designate *S. brevispinus* as threatened or endangered and to designate critical habitat. On October 10, 2005, the same parties filed a complaint in the U.S.

District Court for the District of Colorado alleging that we were in violation of the Act because we had failed to complete a 90-day finding on their petition. In order to settle the case, we agreed to submit to the **Federal Register** a completed 90-day finding by December 8, 2006, and to complete, if applicable, a 12-month finding by September 14, 2007.

### Species Information

Recent genetic studies (Porter *et al.* 2000, pp. 14, 16), common garden experiments (Hochstatter 1993, pp. 94, 98, 100; Welsh *et al.* 2003, p. 79), and a reevaluation of the morphological characteristics of *Sclerocactus glaucus* (Heil and Porter 2004, pp. 200–201; Hochstatter 1993, pp. 91, 95, 99) have led to a reclassification of this species. The recently published Flora of North America (Heil and Porter 2004, pp. 197–207) now recognizes 15 species in the genus *Sclerocactus*, including *S. glaucus*, *S. brevispinus*, and *S. wetlandicus*, which collectively were recognized as *S. glaucus* when the species was listed in 1979 (44 FR 58868). Of importance is the description of *S. wetlandicus* (Hochstatter 1993, pp. 91–92), which now comprises the bulk of the former *S. glaucus* range in Utah. The current *S. glaucus* species is endemic to western Colorado, and *S. brevispinus* (the third species formerly recognized as *S. glaucus*) is a morphologically unique species that occurs in the Pariette Draw drainage in the central Uinta Basin, Utah. This cactus is much smaller than either *S. wetlandicus* or *S. glaucus*, retaining the vegetative characteristics of juvenile *S. wetlandicus* individuals in adult flowering plants. In 1979, when the species was listed, these smaller individuals were thought to represent only ecotypic variations of *S. glaucus*. *S. brevispinus* has been named *S. wetlandicus* var. *ilseae* (Hochstatter 1993, pp. 95–97), *S. whipplei* var. *ilseae* (Welsh *et al.* 2003, p. 79), and *S. brevispinus* (Heil and Porter 1994, p. 26), but is referred to herein as *S. brevispinus*.

Our review of information presented in the petition to remove *Sclerocactus glaucus* from the List of Endangered and Threatened Plants is specific to the taxonomy of the species at the time of listing, which included *S. glaucus*, *S. wetlandicus*, and *S. brevispinus* as one species. We refer to these three species as the *S. glaucus* complex in our review of the information presented in that petition. Our review of the information presented in the petition to list *S. brevispinus* as threatened or endangered refers specifically to that species.

*Sclerocactus glaucus* and *Sclerocactus wetlandicus* are represented by small ball or barrel-shaped cacti usually with straight (i.e., hookless) central spines, solitary, ovoid to nearly globular succulent stems approximately 4 to 18 centimeters (cm) (1.5 to 7 inches (in.)) tall (exceptional plants 30 cm (12 in.) tall), and generally pinkish flowers. Flowering occurs from April to May and fruiting occurs from May to June. The fruit is barrel-shaped, 0.8 to 1.3 cm (0.3 to 0.5 in.) long, and about 0.8 cm (0.3 in.) in diameter.

*Sclerocactus brevispinus* has succulent unbranched stems usually 2.5 to 8 cm (1.0 to 3.1 in.) tall that vary from depressed spheric to shortened cylindrical in shape, and its flowers have a broad, brownish midstripe and pink to purple margins. The fruit is shortened, barrel-shaped, reddish or reddish grey when ripe, 0.7 to 1.2 cm (0.3 to 0.5 in.) wide, and 0.9 to 2.5 cm (0.4 to 1.0 in.) long. More complete species descriptions can be found in Heil and Porter (1994, pp. 25–27) and Hochstatter (1993, pp. 91, 95, and 99).

The currently known distribution of the three cactus species includes Federal, State, Tribal, and private lands in Uintah, Duchesne, and Carbon Counties, Utah, and in Mesa, Delta, Garfield, and Montrose Counties, Colorado. Eight populations were known to occur in a five-county area in western Colorado and eastern Utah when the species was listed in 1979 (44 FR 58869, October 11, 1979). Two small outlier populations near Gateway, Colorado, and Bonanza, Utah, have since been identified (Heil and Porter 1993, pp. 18–45; Colorado Natural Heritage Inventory (CNHI) 2006, pp. 2–3; Utah Natural Heritage Inventory (UNHI) 2006, pp. 2–3). Ninety percent of the total population of the three species occurs on Bureau of Land Management (BLM) lands, and the remaining 10 percent is located on State of Utah and private lands (44 FR 58869, October 11, 1979).

*S. glaucus* and *S. wetlandicus* are generally found on coarse soils derived from cobble and gravel river and stream terrace deposits, or rocky surfaces on mesa slopes at 1,350 to 1,900 meters (m) (4,400 to 6,200 feet (ft)) in elevation (Heil and Porter 1993, pp. 14–16; Heil and Porter 1994, pp. 25–26; Service 1990, p. 7; Rechel *et al.* 1999, p. 2). *S. brevispinus* grows on fine soils in clay badlands derived from the Uinta formation (Service 1990, p. 7).

Population estimates for the three species have been variously reported between approximately 4,872 and 10,000 individuals in Colorado, and 10,000 and 16,828 individuals in Utah

(Heil and Porter 1993, pp. 29, 45; Service 1990, p. 4; CNHI 2006, p. 2; UNHI 2006). The population of *S. brevispinus* is currently estimated at 3,795 individuals (BLM 1985). Recovery criteria for *S. glaucus* (which includes all three cactus species) include a total population of 30,000 individuals in 6 separate populations of at least 2,000 individuals each with formal management designations protecting the habitat for at least 4 of these populations over the long term. To date these criteria have not been met.

### Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth procedures for adding species to, or removing species from, the Federal List 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) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making our findings, we evaluated whether threats to the *Sclerocactus glaucus* complex, as they were presented in the National Wilderness Institute's petition, and in relation to other information available in our files at the time of the petition reviews, may pose a concern with respect to the species' survival. We further evaluate threats to *S. brevispinus* as presented in the petition filed by the Center for Native Ecosystems and the Utah Native Plant Society in a separate section following our finding on the *S. glaucus* complex.

### Uinta Basin Hookless Cactus (the *Sclerocactus glaucus* complex)

The National Wilderness Institute's petition to remove the *Sclerocactus glaucus* complex from the Federal List of Endangered and Threatened Plants cited our December 1990 Report to Congress that stated, “[P]opulation and habitat inventories have identified a greater abundance, range distribution, and additional populations of this species than originally known. Evaluation will be undertaken to consider delisting.” The petition further states that “information already in the possession of the USFWS demonstrates \* \* \* [that] there is not a justifiable basis for inclusion of this plant” on the List of Endangered and Threatened

Plants and suggests that we should delist the *S. glaucus* complex due to original data error. The petition provided no information about the status or threats to the species.

Information in our files substantiates our description of the *S. glaucus* complex at the time of the listing in 1979. In addition, the threats identified in the 1979 listing rule remain relevant to this species complex. Therefore, the petition fails to present evidence to support the allegation of data error.

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

The petition did not provide any information or list any habitat-related threats to the *Sclerocactus glaucus* complex. Nor did it provide any information that the threats have been successfully addressed such that they are no longer affecting the status of the species. Neither did the petition provide any evidence that the species is recovered. Based on the petition and information available in our files for this factor, we find that the petition does not present substantial information indicating that the petitioned action may be warranted.

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

The petition did not provide any information or list any threats to the *Sclerocactus glaucus* complex from overutilization for commercial, recreational, scientific, or educational purposes. Nor did it provide any documentation that the species is no longer facing threats in this area. Based on the petition and information available in our files for this factor, we find that the petition does not present substantial information indicating that the petitioned action may be warranted.

*C. Disease and Predation*

The petition did not provide any information or list any threats to the *Sclerocactus glaucus* complex from disease or predation. Our final listing rule concluded that disease and predation were not factors impacting the extinction probability of the *S. glaucus* complex (44 FR 58869, October 11, 1979).

*D. The Inadequacy of Existing Regulatory Mechanisms*

The petition did not provide any information regarding the adequacy of regulatory mechanisms to protect the *S. glaucus* complex should it be delisted. We find that the petition does not present substantial information

indicating that the petitioned action may be warranted.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The petition did not provide any information or list any threats to the *Sclerocactus glaucus* complex that may result from other natural or manmade factors. Our final listing rule did not identify any natural or manmade factors affecting the species other than those discussed above (44 FR 58869, October 11, 1979).

**Finding**

We have reviewed the information provided in the National Wilderness Institute's petition. The information was very sparse. The petition relied solely on a Service budget document from 1993 that listed the Uinta Basin hookless cactus as a candidate for delisting. After this review and evaluation, we find the petition does not present substantial scientific information to indicate that removing the *S. glaucus* complex from the Federal List of Endangered and Threatened Plants may be warranted at this time.

**5-Year Review**

Although we will not conduct a status review in response to the National Wilderness Institute's petition, we acknowledge that a review of the *Sclerocactus glaucus* complex (*S. glaucus*, *S. brevispinus*, and *S. wetlandicus*) is necessary at this time to address the taxonomic revisions that have occurred since the species was listed. As such, we are initiating a 5-year review of the *S. glaucus* complex under section 4(c)(2)(A) of the Act. Based on this 5-year review, we will determine whether or not any of the species included in the *Sclerocactus glaucus* complex should be removed from the list (*i.e.*, delisted) or otherwise reclassified. Delisting or reclassifying a species must be supported by the best scientific and commercial data available and we will only consider delisting a species if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under review. This notice announces our intention to

prepare a 5-year review of the *Sclerocactus glaucus* complex and opening of a 60-day comment period (see **DATES**). We encourage interested parties to provide comments on any or all of the species included in the *S. glaucus* complex (*S. glaucus*, *S. brevispinus*, and *S. wetlandicus*) to the Field Supervisor, Utah Ecological Services Office (see **ADDRESSES**).

**Pariette Cactus (*Sclerocactus brevispinus*)**

The Center for Native Ecosystems' petition provided a summary of the distribution, status, and trends of *Sclerocactus brevispinus* and cited limited distribution, minimal monitoring, negative population trends, impacts to pollinators, drought, and habitat disturbance as examples of threats affecting the species. The petition described *S. brevispinus* as "a narrow endemic occurring in a series of small scattered populations in badlands near Myton, Utah" (Heil and Porter 1994, p. 26) occupying an area approximately 16 kilometers (km) (10 miles (mi)) long and 5 km (3 mi) wide astride the Duchesne and Uintah County line. The petition identified a population size of 3,795 individuals in 1985 (BLM 1985, p. 4; Heil and Porter 1995, p. 45). Long-term or recent status or trend data for *S. brevispinus* was not provided.

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

The petition asserted that ongoing oil and gas development threatens the species. According to the petition, over 90 percent of the species' habitat occurs in active oil and gas fields, and *Sclerocactus brevispinus* individuals and habitat have been lost to oil and gas development. The petition provides examples of habitat and individual plant loss by citing the BLM Draft Environmental Impact Statement (EIS) for the Castle Peak/Eightmile Flat project (BLM 2004, pp. 4.1–4.26), including the complete loss of 172.4 hectares (ha) (462 acres (ac)) of occupied *S. brevispinus* habitat (5.6 percent of total suitable habitat) and 926 ha (2,288 ac) of unsurveyed potential suitable habitat (30 percent of total suitable habitat) to date.

The Service now has the Final EIS for the Castle Peak/Eightmile Flat project in our files (BLM 2005a). The following discussion results from our analysis of information in the Final EIS and global information system (GIS) data (Service 2006) where it corresponds to Draft EIS information identified in the petition.

The total range of *Sclerocactus brevispinus* comprises approximately 5,733 ha (14,166 ac) (Service 2006) within which suitable habitat is scattered in naturally occurring mosaics (BLM 2005b, pp. 3–30). Of the species' total range, 91 percent (5,209 ha/12,871 ac) occurs within the approved Castle Peak/Eightmile Flat project area and the pending Gasco Uinta Basin Natural Gas Field Development project (Service 2006; 71 FR 7059, February 10, 2006). The remaining 848 ha (2,095 ac) of *S. brevispinus*' range contains wells drilled in the Sand Wash and Greater Boundary Units (Service 2006). The BLM administers 4,649 ha (11,488 ac) (81 percent) of the species' range (Service 2006). Expansion of the Castle Peak/Eightmile Flat oil and gas field overlaps much of the remaining suitable habitat for *S. brevispinus* by doubling the number of wells and the amount of surface disturbance in cactus habitat (BLM 2005a, pp. 4.2–4.14). The analysis in the BLM Biological Assessment (BLM 2005b, pp. 3–31) assumed 6,659 ha (16,454 ac) of potential suitable *S. brevispinus* habitat would be affected.

For the purpose of evaluating information presented in the petition, we reviewed GIS data of known well activity within the range of *Sclerocactus brevispinus* (Utah 2006; Service 2006). That information shows that all known *S. brevispinus* individuals are within 300 m (984 ft) of a well, and 96 percent of the species' range is within 400 m (1,312 ft) of a well. Additional wells and facilities are anticipated based on pending oil and gas development projects.

The petition notes that indirect effects to *Sclerocactus brevispinus* from these development activities include soil compaction, increased road access, increased ORV use, increased surface disturbance, and habitat fragmentation (BLM 2005b, pp. 3–35; BLM 2005a, pp. 5–18). Increased road access can result in increased illegal collection of the species, resulting in direct loss of individual plants (BLM 2005b, pp. 3–35). Roads also increase sediment deposition on cacti, which has been documented to result in the mortality of mature plants (BLM 2004, pp. 4.1–4.28; BLM 2005b, pp. 3–36), and increase habitat fragmentation (BLM 2005b, pp. 3–34 to 3–35). As well field road density increases within cactus habitat areas, cactus populations become more physically isolated from each other (BLM 2005b, pp. 3–36).

Increased ORV use would likely result in crushing of cacti, and increased erosion, soil compaction, and sedimentation (BLM 2005b, pp. 3–35). Increased surface disturbance from

wells, pipelines, and roads would facilitate proliferation of noxious weeds (BLM 2005a, pp. 5–18). Noxious weeds can negatively change the ecological characteristics of hookless cactus habitat (BLM 2005b, pp. 3–35).

Rehabilitation of soils and vegetation following surface disturbance is expected to be difficult; approximately 73 percent of soils in the Castle Peak/Eightmile Flat project area have moderate to high re-vegetation constraints (BLM 2005a, pp. 4.2–4.11). The Castle Peak/Eightmile Flat project EIS (BLM 2005a, pp. 4.2–4.12, 4.3–4.7) estimates that successful re-vegetation would be expected to occur over the long term (up to 50 years) in desert shrub and sagebrush communities. Drought conditions could further extend the recovery period, and noxious weeds would persist regardless of control efforts (BLM 2005a, pp. 4.3–4.7).

Conservation measures are developed and implemented for oil and gas projects to minimize effects to *Sclerocactus brevispinus* by surveying for, and avoiding or minimizing the loss of, individual cacti (BLM 2005a, pp. 2–23). These measures include preconstruction cactus surveys and application of avoidance buffers. For example, BLM administers the 4,719 ha (11,660 ac) Pariette Wetlands Area of Critical Environmental Concern (ACEC), which emphasizes protection of *S. brevispinus*. Approximately 1,450 ha (3,584 ac) of the ACEC occur within the range of *S. brevispinus*. The EIS Record of Decision defers approval of new wells and ancillary facilities located on BLM-administered land within the Pariette Wetlands ACEC until a comprehensive population survey has been completed for *S. brevispinus*; however, it does not preclude long-term development (70 FR 61301, October 21, 2005). Citing valid existing lease rights, and current management prescriptions included in the Diamond Mountain Resource Management Plan, the EIS Record of Decision did not stipulate a blanket “no surface occupancy” requirement for oil and gas development within the Pariette Wetlands ACEC or within the range of *S. brevispinus* (BLM 2005a, p. 5). Following cactus surveys, development could occur within the ACEC. Regardless of conservation efforts, adverse indirect effects are still expected due to the loss and fragmentation of suitable habitat (BLM 2005a, pp. 5–18; BLM 2005b, pp. 3–35).

The petition questioned the adequacy of available monitoring to evaluate population status or threats. Information in Service files indicates that BLM has initiated monitoring of *Sclerocactus brevispinus* populations, including

monitoring of impacts associated with oil and gas development. Results are preliminary, given that the study was initiated in 2005. However, initial results show potential impacts from oil and gas development (e.g., roads, well pads) to the survival and reproduction success of *S. brevispinus* (Ulloa 2006). For example, in 2005 monitoring, survival of *S. brevispinus* in plots impacted by roads associated with energy development was 17 percent compared to 47 percent survival for plots not associated with roads. Twenty-two percent of cacti successfully reproduced on plots not impacted by roads while 13.8 percent reproduced at plots adjacent to roads. More information is needed to determine if these effects are the result of energy development or other environmental factors (Ulloa 2006).

The petition states that continued infilling of additional oil and gas wells and supporting road and pipeline facilities will further impact the species' population. We have documented the direct loss of *S. brevispinus* individuals to oil field development activities including mechanical disturbance of occupied habitat with the loss of individual plants and sedimentation from roads and well pads burying other individuals. These losses have occurred despite conservation efforts implemented by BLM and the oil field operator (Newfield, Inc.). The proximity of the species occupied habitat and oil field development features to each other requires an ongoing vigilant effort by the BLM and the oilfield operators to conserve this species.

We have no information in our files that contradicts the assertions made in the petition for this factor; information supports the petitioner's claims. As the petition demonstrates, energy development is occurring in *Sclerocactus brevispinus* habitat at a rate much greater than existed at the time of the original *S. glaucus* complex listing in 1979. Therefore, we find that the petition, supporting information, and information readily available in our files for this factor, presents substantial information indicating that the petitioned action may be warranted.

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

The petition references our original listing rule for the *Sclerocactus glaucus* complex, which stated that “the cactus \* \* \* has been and will continue to be a particular prize among collectors and therefore is very threatened by unregulated commercial trade” (44 FR 58868, October 11, 1979). The petition

further supports this claim by providing information regarding illegal collecting from Welsh (2004), Heil and Porter (1999), and BLM (2004). In addition, the Castle Peak/Eightmile Flat EIS, as noted in the petition, recognizes that additional energy development and ensuing road development would result in increased potential for illegal collecting (BLM 2005a, pp. 4.1–4.26).

We have information in our files that verifies the assertions made in the petition for this factor. As the petition demonstrates, illegal collecting continues to occur and may increase as new roads are developed to support energy projects. Therefore, we find that the petition, supporting information, and information readily available in our files for this factor, presents substantial information indicating that the petitioned action may be warranted.

#### C. Disease or Predation

The petition identifies parasitism by what appeared to be a grub infestation in one study plot of a larger monitoring effort and referenced a 1990 Service report that stated that “termite and beetle larvae have been observed to parasitize the roots and stems of *Sclerocactus glaucus*.” However, information provided in the petition is not conclusive, and the significance of parasitism on the species’ survival is not known.

The petition also suggests that predation may affect *Sclerocactus brevispinus*, but it also recognizes that there is no information to indicate the extent of the possible effects. Based on the information presented in the petition and available in our files for this factor, we find that the petition does not present substantial information indicating that the petitioned action may be warranted based on this factor alone.

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

The petition states that *Sclerocactus brevispinus* is not adequately protected by the *S. glaucus* complex listing, that BLM regulations do not adequately protect the species, and that there are no State regulations that apply. Regarding protections provided by the *S. glaucus* complex listing, the petition states that *S. brevispinus* is not adequately protected because evaluation of effects to *S. brevispinus*, developed through interagency consultations under section 7 of the Act, are muted by the fact that this species is listed as part of a much larger taxonomic entity. The petition concludes that if *S. brevispinus* were listed as its own species, in accordance with current taxonomic understanding,

then effects of proposed actions would be evaluated at a more appropriate scale. For example, if a project impacts 3,500 plants (last population count for *S. brevispinus*; Nitschke-Sinclair 1985, p. 3) out of a total 10,000 plants (*i.e.*, the *S. glaucus* complex as currently listed; 44 FR 58869, October 11, 1979), that project impacts 30 percent of the total population. However, if the same project occurs entirely within *S. brevispinus* habitat, it would impact almost 100 percent of the total population. Absent successful implementation of appropriate conservation measures, a project with 100 percent overlay of a species’ distribution would have more severe effects to the long-term existence of that population than a project with more limited impacts to a smaller portion of a species’ range.

However, according to information in our files *Sclerocactus brevispinus* conservation is being addressed, to the extent possible under section 7 of the Act, through its current status under the umbrella of the *S. glaucus* complex. Although the jeopardy threshold may be different, we have no information indicating whether a new threshold would provide greater protections to the species. In any case, appropriate conservation measures would be the same, and given additional regulations available to BLM now, which were not available at the time of listing, there is no indication or information available to suggest these provisions are not sufficient to protect the species.

BLM also maintains *Sclerocactus brevispinus* as a sensitive species. Information from Service files indicates that the recently completed formal interagency consultation and Final EIS (BLM 2005) for the Castle Peak/Eightmile Flat project provided specific conservation measures to protect *S. brevispinus* and its habitat (Service 2005, pp. 4–7, 42–44). For example, BLM and Newfield, Inc., have agreed to a moratorium on new oil field developments within the Pariette Wetlands ACEC (which contains approximately 1,249 ha (3,086 ac) of the *S. brevispinus* range, or 22 percent) until a complete reinventory of *S. brevispinus* is completed. This inventory is tentatively scheduled for the species’ flowering period in spring 2007 (Gerbig 2006).

BLM policy (BLM 2001, p. 6) regarding federally listed species includes measures to implement management plans and programs that will conserve listed species and their habitats and implement conservation recommendations included in biological opinions. Information in our files

indicates that the Pariette Wetlands ACEC includes a goal to “enhance and protect the wetlands community and associated habitat adjacent to Pariette and Castle Peak Washes \* \* \* while meeting the management objectives of the final recovery plans for the special status species associated with the area” (BLM 1994, pp. 3–20). The ACEC management prescriptions also state that BLM will authorize no action in suitable habitat for threatened and endangered species if it jeopardizes the continued existence of the species or result in severe modification of the habitat. Of the 4,719 ha (11,660 ac) of federally managed lands in the ACEC, about 8 ha (20 acres) are open with standard lease terms and conditions for leasable minerals, 3,189 ha (7,880 ac) are leased with stipulations, and 1,497 ha (3,700 ac) are leased with highly restricted measures, but do not include a “no surface occupancy” stipulation.

Information in Service files indicates there are sufficient Federal regulations that offer protections to *S. brevispinus*, even though there are no State regulations addressing plant resources. Therefore, based on the information presented in the petition and available in our files for this factor, we find that the petition does not present substantial information indicating that the threats identified under this factor are significant, and the petitioned action is not warranted based on this factor alone.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petitioners identified drought, genetic swamping of *Sclerocactus brevispinus* by *S. wetlandicus*, small population size, pollination problems, and climate change as additional threats facing *S. brevispinus*. Potential threats from severe drought are well documented (Service 1990, p. 11; BLM 2005). However, the threat to *S. brevispinus* by genetic swamping from *S. wetlandicus* is a natural evolutionary process postulated by Heil and Porter (2004, p. 199) and as such may take numerous generations and perhaps thousands of years to fully manifest itself.

Information in our files indicates that the species’ inherent vulnerability due to its small population size may be a significant concern (Ellestrand and Ellam 1993, p. 228). However, there is no information to indicate that the species’ range and population numbers have been significantly larger than at present, although recent losses from oil and gas development and illegal collection are known. The specifics of the species’ pollination biology are not

known, and the specific impacts of climate change on *Sclerocactus brevispinus* are not known. Small population size and fragmentation, in combination with other natural factors such as limitations of the cacti's pollinator's range, may be impacting reproductive success. While the petition raises some interesting issues with respect to this factor, there is insufficient information to conclude that listing may be warranted based on this factor alone.

### Finding

We have reviewed the petition and literature cited in the petition and evaluated that information in relation to other pertinent literature and information available in our files. After this review and evaluation, we find that the petition presents substantial information indicating that listing *Sclerocactus brevispinus* may be warranted. The petition provides substantial information supporting the present and threatened destruction of the species' habitat from direct and indirect effects associated with energy development across more than 90 percent of the species' range. Illegal and unauthorized overcollection of the species for horticultural purposes also was identified in the petition and is verified by information in our files. As such, we are initiating a further status review of *S. brevispinus* to determine whether listing the species under the Act may be warranted.

We also have reviewed the available information to determine if the existing and foreseeable threats pose an emergency to this species. We have determined that an emergency listing is not warranted at this time because the species receives current protection under the Act by its inclusion within the currently listed *Sclerocactus glaucus* complex.

The petitioners also request that we designate critical habitat for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing *Sclerocactus brevispinus* is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

### Public Comments Solicited

Section 4(b)(3)(B) of the Act requires that we make a 12-month finding as to whether a petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals to determine whether other species are threatened or endangered, and we are making

expeditious progress to list or delist qualified species. The 12-month finding is based on a status review that is initiated by a positive 90-day finding.

At this time, we are opening a 60-day comment period (see DATES) to allow all interested parties an opportunity to provide information on the status of *S. brevispinus* and on the 5-year review for the entire *Sclerocactus glaucus* complex (including *S. glaucus*, *S. wetlandicus*, and *S. brevispinus*), including potential threats to these cacti. We will base our 12-month finding, and our 5-year review (as discussed previously), on a review of the best scientific and commercial information available, including the studies cited in this notice and all such information received during the public comment period. Information regarding the following topics would be particularly useful: (1) Species biology, including but not limited to population trends, distribution, abundance, demographics, genetics, and taxonomy, including any evaluations or reviews of the studies cited in this notice; (2) habitat conditions, including but not limited to amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) threat status and trends; and (5) other new information or data.

When our 12-month status review, and 5-year review, processes have been completed, our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names, home addresses, or other personal information, but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Please submit electronic comments in an ASCII or Microsoft Word file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: Uinta Basin Hookless Cactus" or "Attn: Pariette Cactus" along with your name and return address in

your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods provided in the ADDRESSES section.

### References Cited

A complete list of all references cited herein is available, upon request, from the Utah Fish and Wildlife Service Office (see ADDRESSES).

### Author

The primary author of this document is Larry England, Botanist, Utah Ecological Services Office, U.S. Fish and Wildlife Service (see ADDRESSES).

### Authority

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

Dated: December 7, 2006.

### Kenneth Stansell,

Acting Director, Fish and Wildlife Service

[FR Doc. E6-21259 Filed 12-13-06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 061121304-6304-01; I.D. 112006B]

RIN 0648-AT87

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Red Snapper Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** This proposed rule would implement interim measures to reduce overfishing of Gulf red snapper. This proposed rule would reduce the commercial and recreational quotas for red snapper, reduce the commercial minimum size limit for red snapper, reduce the recreational bag limit for Gulf red snapper, prohibit the retention of red snapper under the bag limit for captain and crew of a vessel operating as a charter vessel or headboat, and establish a target level of reduction of shrimp trawl bycatch mortality of red