Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 05–230, adopted July 13, 2005, and released July 15, 2005. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri is amended by adding Auxvasse, Channel 235A, by removing Channel 234C and by adding Channel 234C0 at Crestwood.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–14960 Filed 8–2–05; 8:45 am]

BILLING CODE 6712–01–P

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 Delist *Sclerocactus wrightiae* (Wright Fishhook Cactus) and Initiation of a 5-Year Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 90-day petition finding and initiation of a 5-year status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding for a petition to remove *Sclerocactus wrightiae* (Wright fishhook cactus), throughout its range, from the Federal list of threatened and endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). We reviewed the petition and supporting documentation and find that there is not substantial information indicating that delisting of Wright fishhook cactus may be warranted. Therefore, we will not be initiating a further 12-month status review in response to this petition. However, we are initiating a 5-year review of this species under section 4(c)(2)(A) of the ESA that will consider new information that has become available since the listing of the species. This will provide the States, Tribes, other agencies, university researchers, and the public an opportunity to provide information on the status of the species. We are requesting any new information on the Wright fishhook cactus that has become available since its original listing as an endangered species in 1979.

DATES: The finding announced in this document was made on August 3, 2005. To be considered in the 5-year review, comments and information should be submitted to us by October 3, 2005.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition finding and 5-year review should be submitted to the Field Supervisor, Utah Ecological Services Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. The complete file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Heather Barnes, Botanist, (*see* **ADDRESSES**) (telephone 801–975–3330).

SUPPLEMENTARY INFORMATION:

Background

Sclerocactus wrightiae (Wright fishhook cactus) is a small barrel shaped cactus, with short central spines. Mature adults produce vessel-shaped, cream-colored flowers with magenta filaments. Wright fishhook cactus is known to occur across portions of four counties in Utah. It has been found on soil formations, such as Emery sandstone, Mancos shale, Dakota sandstone, Morrison, Summerville, Curtis, Entrada sandstone, Carmel, Moenkopi, and alluvium (Neese 1987; Clark and Groebner 2003). Vegetation associations include semi-barren sites within desert scrub or open pinyon juniper woodland communities at 1,300 to 2,300 meters (4,200 to 7,600 feet) in elevation. On October 11, 1979, we listed Wright fishhook cactus as an endangered species (44 FR 58866) based on its limited population size and distribution as well as known and potential threats from collection, mineral resource exploration and extraction activities, and off-road vehicle (ORV) use.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. ''Substantial information'' is defined in 50 CFR 424.14(b) as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' Petitioners need not prove that the petitioned action is warranted to support a ''substantial'' finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition. We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. If we find substantial information exists to support the petitioned action, we are required to promptly commence a status review of the species (50 CFR 424.14).

On February 3, 1997, we received a petition from the National Wilderness Institute, to remove Wright fishhook cactus from the List of Endangered and Threatened Wildlife and Plants on the

basis of ''original data error.'' To the maximum extent practicable, we are to make the finding within 90 days of our receipt of the petition, and must promptly publish the finding in the **Federal Register**. On June 29, 1998, we provided a written response to the petitioner explaining our inability to act upon the petition due to the low priority assigned to delisting petitions in our Listing Priority Guidance Fiscal Year 1997 (61 FR 64475). That guidance identified delisting activities as the lowest priority (Tier 4). Due to the large number of higher priority listing actions and a limited listing budget, we did not conduct any delisting activities during the Fiscal Year 1997. On May 8, 1998, we published the 1998 and 1999 Listing Priority Guidance in the **Federal Register** (63 FR 25502) and, again, placed delisting activities at the bottom of our priority list. Beginning in 1999, work on delisting (including delisting petition findings) was included in the line item for the recovery program instead of the listing program (64 FR 27596). Since 1999, higher priority work has further precluded our ability to act upon this petition.

Review of the Petition

At the time of listing, in 1979, 5 scattered cactus populations, which included at least 14 occupied sites, were known to occur in Emery and Wayne Counties, Utah, but the plant was not abundant at any 1 location (44 FR 58866: Neese 1986). The petition cited our 1990 Report to Congress: Endangered and Threatened Species Recovery Program (1990 Report to Congress), which said, ''Population and habitat inventories have identified a greater abundance, range distribution, and additional populations of this species than originally known (USFWS 1990).'' By July 1990, inventories by Neese (1987) and Kass (1990) increased the known distribution within Emery and Wayne Counties by documenting 212 occupied sites, but provided no population estimate. As of April 2005, inventories have documented Wright fishhook cactus in portions of Utah's Emery County, Sevier County, Wayne County, and Garfield County at a total of 264 sites (Neese 1987; Kass 1990; San Juan College 1994; Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004).

At the time of listing, a population estimate was not available. The 1982 Technical Review Draft for the *Sclerocactus wrightiae* Recovery Plan provided a population estimate of 2,000 individuals (USFWS 1982). This estimate was not included in the final recovery plan because complete inventory and population counts had not been conducted, casting doubt on the figure's accuracy (USFWS 1985). Based on recent actual counts of individual cacti and recent population estimates, the population total may range from 4,500 to 21,000 individuals (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; Clark 2005 unpublished excel data; Kass 1990; Neese 1987). The high end of this range is based on estimates of questionable reliability. For example, at one site 18 cacti were counted, but the estimated population suggested there may be as many as 500 individuals (Heil 1994). At another site, 384 plants were counted, but the population was estimated to potentially include as many as 10,000 to 15,000 cacti (Heil 1994). Thus, the Service considers the high end of this range an overestimate.

From 1999 to 2002, an interagency rare plant team (Clark 2002a) revisited 104 known Wright fishhook cacti sites where at least 10 years had passed since the last survey, as documented by Neese (1987) and Kass (1990). Sixty-five percent of these sites (68 sites) had fewer or no cacti when revisited, while 35 percent (36 sites) had the same or a greater number of individuals present (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; unpublished excel data Clark 2005, Kass 1990, Neese 1987). Based on demographic monitoring information collected from 1993 to 2000, Kass (2001a; Intermountain Ecosystems 2003) found—(1) No sizable populations with adults larger than 9.0 centimeters (3.5 inches) wide, which represent the most reproductive size-class; (2) that populations showed low recruitment with a mortality-to-recruitment ratio of 2.5 to 1; and (3) the species was experiencing a slow decline. Overall, the species appears to be experiencing a population recession (Kass, pers. comm. 1997; Kass, pers. comm. 2004). Documented declines appear to be linked to—(1) Changes in reproductive age-class structure (primarily influenced by cactus borer beetle (*Moneilma semipunctatum*) and collection activities); (2) direct mortality (the documented causes of which include cactus borer beetle predation, cattle trampling, and crushing by ORVs); and (3) habitat disturbance (including cattle use, ORV activities, hiking and horse trails, dirt bikes, non-designated parking, road grading, and group camping) (Clark and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b).

Conservation Status

In addition to discussing the distribution, status and trends of the species, the petition also asserts that ''other new scientific information gathered since the time of listing already in the possession of the USFWS'' indicates that the species should be delisted. Because the ESA requires an analysis of the threats faced by the species before delisting can occur, we consider that the petition is referencing information affecting these threats. Therefore, what follows below is a preliminary review of the factors affecting this species.

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

The 1979 listing included mineral exploration, ORV use, and development for a power generation station as threats to the species' habitat and range (44 FR 58866). Additionally, the best scientific and commercial information currently available suggests that direct mortality has been caused by cattle trampling and crushing by ORVs, and that habitat disturbance has been caused by cattle use, ORV activities, hiking and horseback riding, dirt bike use, non-designated parking, road grading, and group camping when conducted in non-designated areas (Clark and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b). The petition provided no information addressing these factors.

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

The original listing stated that ''one of the major factors in the decline of this species at present is field collection by amateur and professional cactus fanciers for commercial and hobby purposes. These fanciers could quickly reduce known populations if protective measures are not initiated'' (44 FR 58866). Documented illegal collection activities continue to be a significant factor negatively affecting reproduction and population structure (Clark and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b). The petition provided no information addressing this factor.

C. Disease or Predation

The original listing suggested disease and predation were not factors impacting the extinction probability of Wright fishhook cactus (44 FR 58866). The best scientific and commercial information currently available suggests predation by the cactus borer beetle, which may select for larger adult cacti, is causing direct mortality and affecting population age-class structure (Clark

and Groebner 2003; Clark *et al.* 2004; Kaas 2001a, 2001b). The petition provided no information addressing this factor.

D. The Inadequacy of Existing Regulatory Mechanisms

The original listing suggested that Utah State law provided no protections for the species (44 FR 58866); the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) provided protection against international trade, but ''[did] not help regarding internal trade'' (44 FR 58866); and ''Bureau of Land Management (BLM) regulations offer some protection to vegetative resources, but do not address Wright fishhook cactus directions'' (44 FR 58866). The petition did not discuss the adequacy of regulatory measures.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The original listing suggested that the species was ''extremely limited in range * * *, extremely vulnerable to any sort of disturbance and could be completely extirpated by even the most trivial mishap'' (44 FR 58866). The petition cites our 1990 Recovery Report to Congress, which suggested ''a greater abundance, range distribution, and additional populations of this species than originally known'' (USFWS 1990). Individual sites remain vulnerable to extirpation through disturbance. Many of the known Wright fishhook cactus sites are small in number (less than 25 plants) and widely separated in distance (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; Kass 1990; Neese 1987). Across a 10-year period, 65 percent of documented populations experienced a decline or extirpation (Clark 2001, 2002a, 2002b; Intermountain Ecosystems 2002; Clark and Groebner 2003; Clark *et al.* 2004; Clark 2005 unpublished excel data; Kass 1990; Neese 1987). Based on the above discussion, we do not believe that the petition has presented substantial scientific information to indicate that other natural or manmade factors no longer threaten the continued existence of Wright fishhook cactus throughout all or a significant portion of the species' range.

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. Although greater population numbers and distribution of Wright fishhook cactus are known to occur today compared to available information at the time of the 1979 listing, recent site-specific population threats and declines also have been documented (Kass 2001a; Kass 2001b; Clark and Groebner 2003; Clark *et al.* 2004). The petitioner stated that ''other new scientific information gathered since the time of listing which is in possession of the Service'' supports delisting; however, the petition did not identify this new scientific information. In addition, the petitioner did not include any detailed narrative justification for the delisting of Wright fishhook cactus or provide information regarding the status of the species over a significant portion of its range or include any persuasive supporting documentation for the recommended administrative measure to delist the species. After this review and evaluation, we find the petition does not present substantial information to indicate that delisting the Wright fishhook cactus may be warranted at this time.

Five-Year Review

Under the Act, the Service maintains a List of Endangered and Threatened Wildlife and Plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered 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; and/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 active review. This notice announces our initiation of a 5-year review of Wright fishhook cactus.

Information Solicited

To ensure that the 5-year review is complete, we are soliciting any additional information, comments, or suggestions on Wright fishhook cactus from the public, other concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species, and threats to the species. We also request information regarding the adequacy of existing regulatory mechanisms.

The 5-year review will consider the best scientific and commercial data regarding the Wright fishhook cactus that has become available since the current listing determination or most recent status review, such as:

(1) Species biology, including but not limited to population trends, distribution, abundance, demographics, genetics, and taxonomy;

(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.

If you wish to comment on the 5-year review, you may submit information to the Field Supervisor, Utah Ecological Services Office (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

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

Author

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

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

Dated: July 19, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–15301 Filed 8–2–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU22; 1018–AI48

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-Owl From the Federal List of Endangered and Threatened Wildlife; Proposal To Withdraw the Proposed Rule To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973 (Act), as amended, propose to remove the Arizona distinct population segment (DPS) of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) from the Federal List of Endangered and Threatened Wildlife and accordingly to eliminate its designated critical habitat. The Arizona DPS of the pygmy-owl was listed as endangered on March 10, 1997 (62 FR 10730), and critical habitat was designated on July 12, 1999 (64 FR 37419). On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of our listing of the pygmy-owl as a DPS and the designation of its critical habitat. After the District Court of Arizona remanded the designation of critical habitat (*National Association of Home Builders* et al. v. *Norton,* Civ.–00–0903–PHX–SRB), we proposed a new critical habitat designation on November 27, 2002 (67 FR 7102). Ultimately, as a result of this lawsuit, the United States Court of Appeals for the Ninth Circuit issued an opinion on August 19, 2003, stating that ''the FWS acted arbitrarily and capriciously in designating the Arizona pygmy-owl population as a DPS under the *DPS Policy*'' (*National Association of Home Builders* v. *Norton,* 340 F. 3d 835, 852 (9th Cir. 2003)). In light of the Ninth Circuit's opinion, we have reassessed the application of the DPS significance criteria to the Arizona pygmy-owl. Based on our assessment, we do not believe that the available information and science satisfy the criteria to indicate that pygmy-owls in Arizona are an entity that qualifies for listing under the Act. Accordingly, we propose to remove the Arizona population of pygmy-owls from the list in 50 CFR 17.11, remove the critical habitat designation for this population at 50 CFR 17.95, and withdraw our November 27, 2002, proposed rule to designate new critical habitat.

DATES: We will accept comments until October 3, 2005. Public hearing requests must be received by September 19, 2005.

ADDRESSES: Comments and materials concerning the proposed delisting of the Arizona DPS of the pygmy-owl should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Written comments may also be sent by facsimile to 602/242–2513. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor (*see* **ADDRESSES**) (telephone 602/242–0210; facsimile 602/242–2513).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be based on the best available information. We have gathered and evaluated new information related to the pygmy-owl that has become available since the 1997 listing and are seeking any other pygmy-owl information. We will continue to support surveys of pygmy-owls in Mexico to further elucidate the status of the species in Mexico, and to identify threats to the population.

We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) Biological, genetic, and/or morphological data related to the taxonomic classification of the pygmy-owl throughout its current range;

(2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current population status;

(3) Additional information related to current versus historical range, current distribution, genetic diversity, and population sizes of the Arizona pygmy-owl population and its contribution to the taxon as a whole;

(4) Status of the pygmy-owl in Mexico, particularly threats to populations or habitat; and

(5) Information related to discreteness, significance, and conservation status of any potential pygmy-owl DPS.

We will take into consideration the comments and any additional information received, and such communications may lead to a final determination that differs from this proposal.

Background

The cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) is in the order Strigiformes and the family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6.75 inches (in)) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Color may vary, with some individuals being more grayish brown. The crown is lightly streaked, and a pair of black/dark brown spots outlined in white occur on the nape suggesting ''eyes.'' This species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars (Proudfoot and Johnson 2000). The pygmy-owl is primarily diurnal (active during daylight) with crepuscular (active at dawn and dusk) tendencies. They can be heard making a long, monotonous series of short, repetitive notes, mostly during the breeding season (Proudfoot and Johnson 2000).

The pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of the pygmy-owl is listed as an endangered species (62 FR 10730; March 10, 1997).

Historically, pygmy-owls were recorded in association with riparian woodlands in central and southern Arizona (Bendire 1892; Gilman 1909; Johnson *et al.* 1987). Plants present in these riparian communities included cottonwood (*Populus fremontii*), willow (*Salix* spp.), ash (*Fraxinus velutina*), and hackberry (*Celtis* spp.). However, recent records have documented that pygmy-