81,600 are small entities that may be affected by our rules.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules

This *Report and Order* eliminates the finder's preference program in the 220–222 MHz, 470–512 MHz, 800 MHz, and 900 MHz PLMR bands. The administrative requirements and related costs for filing such finder's preference requests are eliminated. Therefore, no new requirements are imposed by this action.

V. Steps Taken by Agency To Minimize Significant Economic Impact on Small Entities Consistent With Stated Objectives

This *Report and Order* eliminates the finder's preference program in the 220–222 MHz band because we have adopted geographic area licensing and competitive bidding in this band. The competitive bidding and geographic area licensing framework has been designed to implement Congress' goal of providing small businesses and others the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D). We eliminated the finder's preference program in the 800 MHz and 900 MHz SMR bands when we adopted geographic area licensing and competitive bidding. Therefore, the *Report and Order* is consistent with our objective to promote efficient licensing and enhancement of the competitive potential of the 220–222 MHz band and is in accordance with the statutory directives of Section 309(j)(4)(D) of the Communications Act. The elimination of the finder's preference program in the 470–512 MHz, 800 MHz, and 900 MHz PLMR bands should not affect small businesses because the Commission's ongoing oversight and compliance programs are adequate to ensure that unused spectrum is returned and re-assigned efficiently. Additionally, any returned channels in these bands may be applied for by PLMR providers, which are primarily small businesses.

VI. Report to Congress

The Commission will send a copy of this Final Regulatory Flexibility Analysis along with the Report and Order, in a report to Congress pursuant to the SBREFA.[10]

Note: This attachment will not appear in the Code of Federal Regulations.

[FR Doc. 98–22401 Filed 8–19–98; 8:45 am]

BILLING CODE 6712–01–P

[10] See 5 U.S.C. § 801(a)(1)(A).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Plant Pediocactus winkleri (Winkler Cactus) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the plant species *Pediocactus winkleri* (Winkler cactus), to be a threatened species. *P. winkleri* is endemic to lower elevations of the Colorado Plateau in south-central Utah. Four populations of *P. winkleri* are known. These populations total about 20,000 plants that grow on widely separated parcels of habitat between 1 (2.4 acres (ac)) and 20 (48 ac) hectares (ha) in size. This species is threatened by collection and by habitat disturbances due to mining, recreation, and livestock. This determination, that *P. winkleri* is a threatened species, implements protection under the Endangered Species Act of 1973, as amended.

DATES: This rule is effective September 21, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

Pediocactus winkleri was discovered in the early 1960's and described in scientific literature by Heil (1979). The plant genus *Pediocactus* contains eight species, seven of these are rare endemics of the Colorado Plateau region of Utah, Colorado, New Mexico, and Arizona (Heil et al. 1981).

Pediocactus winkleri is a small globose (globular) cactus with stems 2.5 to 6.5 centimeters (cm) (1 to 2.5 inches (in)) tall and up to 5 cm (2 in) in diameter. It has clusters of 9 to 11 small radial spines with dense fine woolly hairs at their base; erect central spines are lacking. The flowers of *P. winkleri* are urn shaped, 1.8 to 2.5 cm (0.7 to 1 in) long and 1.8 to 3.8 cm (0.7 to 1.5 in) in diameter, and have a peach-to-pink color. The fruit is barrel shaped, 0.7 to 1.0 cm (.3 to .4 in) high and 0.8 to 1.1 cm (.31 to .43 in) wide, dehiscing (process of opening) by a vertical slit along the ovary wall. The seeds are shiny black, 3 millimeters (mm) (.12 in) long and 2 mm (.08 in) wide (Heil 1979, Heil et al. 1981; Welsh et al. 1993).

Based on the most recent surveys, the Service has determined that *Pediocactus winkleri* occurs in four populations that total about 20,000 plants (Kass 1997; Fish and Wildlife Service 1994, 1997; D. Clark, Torrey, Utah, personal communication 1998). The October 6, 1993, proposed rule to list *P. winkleri* as endangered (58 FR 52059) stated that *P. winkleri o*ccurred in 6 populations of about 3,500 plants. The abundance estimate of 3,500 plants given in the proposed rule was obtained from Heil (1984). Surveys through 1998, however, have documented about 5,800 individual *P. winkleri* plants (Fish and Wildlife Service 1997, Kass 1997, D. Clark, per. comm. 1998). Recent surveys in 1994 (Fish and Wildlife Service 1994), 1996 (T. Clark, Capitol Reef National Park, pers. comm. 1996), 1997 (Fish and Wildlife Service 1997, Kass 1997), and 1998 (D. Clark, per. comm. 1998) indicate that the species total population could reasonably be estimated to be as many as 20,000 plants based on the amount of available habitat. Each of the four populations contain a number of widely separated sites from 1 ha (2.4 ac) to 20 ha (48 ac) in size. Since the proposed rule was published, a survey conducted by the Bureau of Land Management (BLM) discovered an additional population near the town of Ferron in southwest Emery County, Utah (Fish and Wildlife Service 1994). The Service and BLM conducted additional surveys of the species' entire potential habitat on silty soils derived from the Dakota, Mancos, and Morrison geologic formations. Additional sites were discovered within existing population areas (Fish and Wildlife Service 1997; D. Clark 1998, pers. comm.). The Park Service also reports larger numbers of the cactus within Capitol Reef National Park (K. Heil, pers. comm. 1993; Tom Clark, Capitol Reef National Park, pers. comm. 1996, 1997; D. Clark, pers. comm 1998). The BLM reports larger numbers of the species from the Last Chance Desert population (Wayne Luddington, Bureau of Land Management, Price, Utah, pers. comm. 1997; Fish and Wildlife Service 1997). Service biologists visited these sites and subsequently reviewed the status of all extant populations of *P. winkleri* (Fish and Wildlife Service

1994, 1997). The Service consolidated the five *P. winkleri* populations in Wayne County, Utah (Heil 1984 and Neese 1987) into two populations, Notom and Hartnet, (Fish and Wildlife Service 1994) in an effort to be consistent with the two, more recently discovered populations, Last Chance and Ferron, in Emery County.

Individual *Pediocactus winkleri* plants are usually situated on the tops and sides of rocky hills or benches in *Atriplex* (saltbush) dominated desert shrub communities (Heil 1984). The species grows in alkaline silty loam or clay loam soils derived primarily from the Dakota formation, the Brushy Basin member of the Morrison formation, and the Emery sandstone member of the Mancos formation (Heil 1984, Neese 1987, Fish and Wildlife Service 1997).

Three of the four populations of *Pediocactus winkleri* form a narrow arc extending from near Notom in central Wayne County to the vicinity of Last Chance Creek in southwestern Emery County, Utah. The fourth is a disjunct population occurring near Ferron, Utah, in western Emery County. Most of these populations occur in widely scattered patches in a range about 58 kilometers (km) (36 miles (mi)) long and about 0.5 km (0.3 mi) wide. About two thirds of the population occurs on lands managed by the BLM east and north of the Capitol Reef National Park boundary. The remainder of the plants are found within the Park.

The range of *Pediocactus winkleri* converges upon populations of the listed endangered cactus *P. despainii* (San Rafael cactus). *P. despainii* and *P. winkleri* are described as separate species in all taxonomic treatments involving those species in regional floras (Welsh et al. 1993) and in monographs of the genus (Heil et al. 1981; K. Heil, San Juan College, Farmington, New Mexico, pers. comm. 1994, 1998). Recent cytotaxonomic research demonstrates that typical *P. winkleri* from the Notom population is genetically different from typical *P. despainii* from the San Rafael Swell (M. Porter, Rancho Santa Ana Botanic Garden, Claremont, California, pers. comm. 1998). However, the two species are phylogenetically related, and it has been suggested (Kass 1990) that they be treated as varieties (i.e. subspecies) of *P. winkleri*, the first of the two species to be described (Heil 1979; Welsh & Goodrich 1980). Occasional plants within the northern portion of the Last Chance population bear characteristics intermediate between *P. winkleri* and *P. despainii*. The two species are, however, morphologically distinct and geographically separated. The Service recognizes *P. winkleri* as a species distinct from *P. despainii*. If these species are later recognized as subspecies, their designations as threatened and endangered species will remain valid because section 3(15) of the Act allows for the listing of subspecies.

Previous Federal Action

Federal actions relating to this species began when the Secretary of the Smithsonian Institution prepared a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51) was then presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) formally accepting the report as a petition under section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and acknowledging its intention to review the status of those plants. *Pediocactus winkleri* was not included in the 1975 notice but was included as a new candidate species in the **Federal Register** notice of December 15, 1980 (45 FR 82480). The 1980 notice included *P. winkleri* as a Category 1 species. Category 1 species were those taxa for which the Service had on file substantial information on the biological vulnerability and threats to support proposing them as endangered or threatened species.

Section 4(b)(3)(B) of the 1982 amendments to the Act required the Secretary of the Interior to make a finding within 1 year of receiving a listing petition as to whether the listing is warranted, warranted but precluded by other pending proposals of higher priority, or not warranted. In this case a ''warranted but precluded'' finding was made. This category requires a finding each year thereafter until the petitioned taxa are either proposed for listing or a final ''not warranted'' finding is made.

Section 2(b)(1) of the 1982 amendments further required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. To facilitate making the necessary annual ''warranted but precluded'' findings on several plant taxa, the Service made an administrative decision to treat all the plant candidates in Category 1 and Category 2 at that time as if their listings had been petitioned on October 13, 1982. This included species such as *Pediocactus winkleri* which was included as a candidate in the 1980 Notice of Review but was never the subject of a petition. As a result of the administrative decision to treat these species as petitioned, *P. winkleri* was included in the annual warranted but precluded findings, first published on October 13, 1983.

In the November 28, 1983, supplemental notice (48 FR 53640), the Service changed the status of *Pediocactus winkleri* from Category 1 to Category 2 as a result of a careful review of the status information. Category 2 species were taxa for which the Service had information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data were needed on biological vulnerability and threats. The Service discontinued use of a category system in the February 28, 1996, **Federal Register** notice (61 FR 7596).

On September 27, 1985, the Service published a Notice of Review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. This Notice of Review included *Pediocactus winkleri* as a Category 1 species, a change resulting from a status survey for *P. winkleri* (Heil 1984), which documented the vulnerability and threats to this species. The Service published Notices of Review on February 21, 1990 (55 FR 6184) and September 27, 1993 (58 FR 51144), which retained *P. winkleri* as a Category 1 species. The Service's proposal to list *P. winkleri* as endangered on October 6, 1993 (58 FR 52059), constituted the warranted 12-month petition finding for this species. During the public comment period on the 1993 proposal, the Service received substantive comments on information contained in the proposal regarding the threats to and population numbers of *P. winkleri.* Since that time, the Service has made efforts through additional surveys to obtain the best available scientific information in making the decision to list *P. winkleri.* The Service believes this final rule is an accurate assessment of the population numbers and threats faced by this species. In order to obtain and incorporate any new scientific information into this final determination for *P. winkleri,* and due to new information on the species range and abundance obtained by the Service since the comment period closed on December 6, 1993 (58 FR 52059), the Service reopened the public comment period for 30 days on June 22, 1998 (63 FR 33901).

The Service published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened

Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Comments and Recommendations

In the October 6, 1993, proposed rule and associated notifications, and the June 22, 1998, notice, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and were requested to comment. Newspaper notices requesting public comments were published in The Salt Lake Tribune and the Deseret News on November 4, 1993, and the Emery County Progress on November 2, 1993.

In accordance with the Services' peer review policy published on July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of three botanists regarding information contained in the proposed rule and new information obtained following the proposal on the species status. The three reviewers chosen are associated with colleges and universities and are considered experts on the species. All three reviewers responded and concurred with the Service's assessment of the threats facing this species.

During the comment period the Service received a total of twelve comment letters which are addressed in the following summary. Pertinent information received during the comment period has been incorporated into this final rule.

Issue 1: Botanical surveys by Neese (1987), Heil (1987), and Kass (1990), while in or near the habitat of *Pediocactus winkleri*, had objectives other than a specific inventory for *P. winkleri.* The population of *P. winkleri* may be greater than 3,500 as stated in the proposed rule, which was apparently based on the Heil (1984) status report for *P. winkleri.* The Heil status report does not document how the species population of 3,500 was arrived at. Additional inventory is needed to establish a more accurate species population number.

Service Response: From the close of the initial 1993 comment period on December 6, 1993, several additional surveys and studies were conducted (Fish and Wildlife Service 1994; 1997; Kass 1997; D. Clark, pers. comm. 1998). As described above in the ''Background'' section, these surveys documented a larger population than was known in 1993 and give a better understanding of the natural and human caused impacts to the species. Surveys through 1998 have documented actual numbers of *Pediocactus winkleri* plants at about 5,800 (Fish and Wildlife Service 1997, Kass 1997, D. Clark, per. comm. 1998). Based on these most recent surveys, the Service concurs with estimates by the BLM that *P. winkleri* occurs in four populations with a total number of approximately 20,000 plants, which results from acceptable extrapolation of direct survey counts (Kass 1997; Fish and Wildlife Service 1994, 1997; D. Clark, pers. comm. 1998).

Issue 2: The Service should resolve the taxonomic relationship between *Pediocactus despainii* and *P. winkleri* before final listing. Distinguishing between the two species in wild populations is difficult.

Service Response: Pediocactus despainii and *P. winkleri* are currently considered separate species in all taxonomic treatments involving those species in regional floras (Welsh et al. 1993) and in monographic treatments of the genus (Heil et al. 1981; K. Heil, pers. comm. 1994, 1998). However, the two species are phylogenetically related, and it has been suggested (Kass 1990) that they be treated as varieties of *P. winkleri*, the first of the two species to be described (Heil 1979; Welsh & Goodrich 1980). Plant taxonomists working specifically on this genus have no information, at this time, which would warrant an alternative taxonomic treatment (Welsh et al. 1993; K. Heil, pers. comm. 1994, 1998; M. Porter, pers. comm. 1994, 1998).

The two species are morphologically distinct and geographically separated as discussed above in the above ''Background'' section. *Pediocactus winkleri* has uniformly smaller seeds than *P. despainii. P. winkleri* areoles (the basal structure at the tip of stem tubercles which forms the base from which the spines arise) are wooly with dense villous hairs. *P. despainii* areoles are naked except for its spines. These facts strongly suggest the current taxonomic classification is accurate (K. Heil, pers. comm. 1993). Recent cytotaxonomic research indicates that the *P. winkleri* and *P. despainii* are taxonomically distinct (M. Porter, pers. comm. 1998).

Issue 3: Recreational off-road vehicle (ORV) use is not affecting all populations of *Pediocactus winkleri.* The heaviest ORV use in the Notom area occurs outside the species' occupied habitat. The Hartnet site is located within Capitol Reef National Park where no ORV use is occurring. *P. winkerli*'s characteristic of shrinking underground during its vegetative stage naturally protects the species and it is only vulnerable during its spring flowering period. The BLM has restricted ORV use in the Price Resource Area within *P. winkleri* habitat.

Service Response: ORV's are affecting all of the species' populations to some degree, with the exception of the Last Chance population where no ORV use occurs. Locally heavy use occurs with observed adverse impacts in the Ferron population. Although ORV use does not occur in that portion of the Harnet population contained within Capitol Reef National Park, the remainder of this population occurs on BLM land and is subject to ORV use. Occupied *Pediocactus winkleri* habitat within the BLM portion of the Hartnet population experiences frequent ORV spillover from the adjacent Dry Wash area where heavy ORV use occurs. The Service agrees that the heaviest ORV use occurs outside of occupied habitat in the Notom area, however, this population also experiences frequent ORV spillover use (K. Heil, pers. comm. 1993; Fish and Wildlife Service 1994, 1997; Wayne Luddington, Bureau of Land Management, Price, Utah, pers. comm. 1996, 1997). The BLM ORV restrictions in the Price Resource Area are for and within populations of *P. despainii*, a listed endangered species, not *P. winkleri.* Regarding the characterisic of the species to shrink underground see discussion under Factor A.

Issue 4: Livestock trampling is a minimal and decreasing threat to *Pediocactus winkleri*. The BLM has reduced livestock grazing levels in all *P. winkleri* habitat, in some cases to less than 20% of previous levels.

Service Response: The Service is aware of adverse impacts to this cactus from livestock trampling. Recent survey and habitat monitoring information show that livestock trampling continues to kill *Pediocactus winkleri* plants (K. Heil, pers. comm. 1993; Fish and Wildlife Service 1994, 1997). This species is poorly adapted to the impacts of large, sharp-hoofed ungulates, and plants are easily dislodged and killed by domestic livestock herds moving through its habitat. This trampling impact is most damaging during periods

when the soil surface is wet. These conditions occur most commonly during mild winter and early spring days when livestock grazing is most intense in the species' desert range habitat. Most of the reduction in livestock grazing within Capitol Reef National Park occurred in the southern portions of the Park outside the species' range. However, the Service acknowledges that this threat is decreasing and is, at present and by itself, a low level chronic threat, not a high level acute threat.

Issue 5: Mining and mining claim assessment work for gypsum and uranium is a minimal and decreasing threat to *Pediocactus winkleri.* Known occurrences of gypsum in the vicinity of *P. winkleri* populations occur in the Carmel Formation which is not habitat for the species. Development of known occurrences of uranium have only a slight potential to affect the species. Current low prices for uranium ore are expected to decrease interest in prospecting and mining claim assessment work within the range of the species. Changes in regulations affecting mining claim assessment activities are expected to decrease surface disturbance associated with mining claim assessment work.

Service Response: The Service has noted the above comment and has revised the final rule appropriately. The recent development of a mine for high quality, cosmetic grade bentonite clay is adversely affecting the species in the Last Chance Desert (Fish and Wildlife Service 1994, 1997). Mining claims cover the entire Last Chance Desert population of *Pediocactus winkleri.* Oil and gas activity is directly affecting the Ferron population. A portion of this population was lost to a gas well. A portion of the Hartnet population is in an oil and gas lease area.

Issue 6: A commenter questioned whether or not the Notom *Pediocactus winkleri* population has experienced an 80 percent loss of its individuals to collectors. Another commenter questioned a statement in the June 22, 1998, notice reopening the comment period that the FWS estimation of the population size at Notom has declined from about 2,000 individuals in 1984 to an estimated 700 individuals in 1997.

Service Response: In the 1993 proposal, the Service estimated that about 80 percent of the plants in the Notom area were taken by plant collectors over the last 10 years. The Service has revised this final rule to indicate that only the portion of the Notom population in the area of the monitoring transect has undergone a significant reduction in numbers of plants primarily from collection. In 1984 the Service established a monitoring transect in the Notom population of *Pediocactus winkleri* in an easily accessible area that cactus collectors frequent (Fish and Wildlife Service 1994, 1997). The Service has periodically monitored this transect, usually at 2-year intervals. The *P. winkleri* population along this transect declined from 53 plants in 1984 to zero plants in 1997. Overall the population in the immediate vicinity of the monitoring transect declined from 387 individuals in 1994 to 221 in 1997 (Fish and Wildlife Service 1997). The Service feels that this loss of plants is primarily attributed to collection, however, other factors including the characteristic of this species to remain underground during dry years may have contributed to a higher estimate of plant loss then has really occurred. The spring 1998 survey estimated the entire Notom population at about 4,000 individuals.

The Service, during its 1997 survey of the Notom population, discovered 27 shovel marks within the occupied habitat of this species. These marks were at the locations of plants last observed in 1994 and missing in 1997, and are obviously the remains of an effort to exploit this horticulturally desirable species. Most field collected cacti, however, are collected using smaller garden trowels, and consequently excavation scars are usually not noticeable after a few months.

Issue 7: The BLM has the ability to manage for the conservation of candidate species on lands under their jurisdiction and can control collection of the species.

Service Response: Collection of desirable small rare cacti is a difficult action to detect and to control. The recognition and protection offered a listed species under the Act focuses resources for its preservation and recovery, and reinforces the actions of the BLM and other Federal agencies through sections 7 and 9 of the Act for conservation of the species. The listing of species under the Act focuses the management actions of all Federal agencies to provide active conservation and protection for listed species and provides opportunities for States to assist in plant conservation under Section 6 of the Act.

Issue 8: People living in an area where endangered species are proposed for listing should be informed in time to be able to comment and to hold public hearings.

Service Response: One commenter requested a 2- to 3-year comment period and also requested that a public hearing should be held. This was the only request for a public hearing and the request was not received during the specified open comment period.

As stated previously, immediately after publication of the proposed rule on October 6, 1993, the Service contacted all known interested parties (i.e., Federal and State agencies, county governments, scientific organizations, and others), and comments were solicited from them. In addition, newspaper notices requesting public comments were published (between November 2 and 4, 1993) in three newspapers that cover the potentially affected area. Thus, the Service believes that adequate time was given to receive requests for public hearings.

The Service specified that public hearing requests must be received by November 23, 1993, and no such request was received by that date. However, at the request of Emery County, a representative of the Service met with county officials to explain the Service's rationale for proposing to list the species, and to receive the County's comments. The Emery County commissioners were concerned that the listing of *Pediocactus winkleri* would interfere with the economic activities of grazing and mining within their County. These concerns were also expressed in writing. The Service recognizes that potential restrictions in land use to protect this cactus could limit some future mining development plans and livestock grazing activities on Federal lands within the species' range. *P. winkleri* has a limited distribution and therefore widespread restrictions on these activities on public lands in Emery and Wayne counties is not anticipated. The Service reopened the public comment period again on June 22, 1998. The second comment period closed on July 22, 1998. The Service received four comments during the reopened comment period and has incorporated new information provided during the comment period in this finding.

Issue 9: The BLM believes that threats to the species have not been adequately quantified, have lessened since the proposed rule was published, and that species' protection under a conservation agreement would be more appropriate than listing.

Service Response: Threats to the species continue unabated since the proposed rule was published in October 1993. Evidence of take was documented not only at a specific transect which has been monitored since 1984, but also from site visits where photographs of cattle trampling, collecting, and ORV loss were documented. These losses are

not natural losses which could be expected to occur but losses which could be prevented through stricter regulation and enforcement activities.

The Service commends the BLM for initiating the ''*Pediocactus winkleri* and *Pediocactus despainii* Conservation Agreement and Strategy'' and for its anticipated future implementation. The proposed agreement contains strategies which, if implemented over time, would assist in the recovery of both species of cactus. However, the agreement is in draft form and is not signed. As such, the Service is not able to consider the effectiveness of this agreement in reducing or eliminating the threats to this species in the future as part of the decision to list.

Copies of the listing proposal were provided to three professional botanists with research experience with rare flora including *Pediocactus winkleri*. The supplemental population information provided by BLM was also forwarded for their review. The three reviewers continue to support listing due to continued threats to the species.

The Service does not believe that the larger numbers of *Pediocactus winkleri* found in BLM's most recent data is a function of reduced threat, but instead is a function of the increased effort put forth to find individual plants. Most surveys up until this year were conducted by one or two individuals with limited resources. More recent BLM surveys were conducted by four or more individuals over a period of several weeks.

Even though the increased surveys resulted in increased numbers of *Pediocactus winkleri*, the threats to the species have not diminished to the point that the species does not need protection under the Act. The Service therefore believes listing as threatened is justified as described in the following sections.

Summary of Factors Affecting the Species

After a thorough review of all available information, the Service has determined that *Pediocactus winkleri* should be listed as a threatened species. Procedures found in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. 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). These factors and their application to *P. winkleri* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The small, restricted populations of *Pediocactus winkleri* make the species highly vulnerable to human-caused habitat disturbances. ORV activity, mineral development, road and utility corridor development, and livestock trampling have adversely affected this species (Heil 1984, 1987; Heil, pers. comm. 1993; Neese 1987; Fish and Wildlife Service 1994, 1997). This species is especially vulnerable during the spring flowering period when seasonally moist soils make it susceptible to damage and mortality from surface disturbance of its habitat. The species is easily dislodged by domestic livestock and ORV's during periods when the soil is wet. ORV use and livestock grazing are most intense during the mild spring season when the species is most vulnerable to habitat disturbance. During periods of drought, these cacti do not protrude above ground level, thus rendering them less susceptible to livestock trampling and damage by ORV activity. However, the species forms flower buds in the autumn that persist over winter (Heil et al. 1981). These flowering buds at the ground surface level are very vulnerable to surface disturbance.

A considerable portion of the habitat of this species, as well as individual plants, are being damaged by ORV activity (Heil 1984, Neese 1987; Fish and Wildlife Service 1994, 1997). At the northern and southern limits of the species' range, occupied *Pediocactus winkleri* habitat, located on sparsely vegetated slopes in readily accessible areas, is adjacent to heavily used ORV recreational areas, and is being impacted by ORV activity. Except for habitat within Capitol Reef National Park and the Last Chance population on BLM lands, the remaining habitat of *P. winkleri* is experiencing similar but lesser impacts from ORV activity (Fish and Wildlife Service 1997). Hard-tired ORVs such as motorcycles and four wheel drive trucks and other highway vehicles are most damaging to the species. These hard-tired vehicles can cause damage and mortality even when the plant is dormant. Increased erosion as a consequence of ORV's damaging the natural desert pavement and cryptogamic crust potentially increases the species' exposure to losses from extreme weather events which occur in the area.

Livestock trampling has affected every population of this cactus including those in Capitol Reef National Park (the Park is not closed to livestock grazing). According to the BLM, livestock use in areas of *Pediocactus winkleri* habitat has decreased in recent years, but the impacts of trampling to some populations continue (Heil, pers. comm. 1993; Fish and Wildlife Service 1994, 1997). The Service believes grazing and trampling impacts are, for the most part, more chronic than acute and rarely impact more than one percent of the population each year. Individuals lost due to livestock trampling probably could be replaced by natural recruitment from the populations' seed bank. However, cumulative impacts from collecting, localized ORV destruction, and natural losses from disease and parasitism are at sufficient levels in some portion of the species' range (i.e. Notom and Ferron populations) that population viability is impaired.

The habitat of *Pediocactus winkleri* contains bentonite clay, oil and gas and some uranium ore deposits. The development of these mineral and petroleum deposits and surface disturbance by annual assessment work has directly affected the species. Currently, oil and gas field development activities are impacting the Ferron population. This activity has destroyed individual plants and occupied habitat. Over eighty percent of the area occupied by the Ferron population is leased for oil and gas (Fish and Wildlife Service 1997). In addition, bentonite clay mining has impacted the Last Chance population by destroying individual plants and occupied habitat (W. Luddington, pers. comm. 1994, 1996, and 1997). Much of the Last Chance population is in areas with registered mining claims (Fish and Wildlife Service 1997). The transfer of mining claim patents from the Public domain to private ownership is not affected by the Act. Unauthorized utility and road development within the species' Notom population caused individual plant mortality and habitat degradation in 1995 and remains a potential threat to the species (Fish and Wildlife Service 1997).

B. *Over-utilization for commercial, recreational, scientific, or educational purposes. Pediocactus winkleri* is an attractive small cactus, especially when it is in flower. Although difficult to cultivate in most horticultural settings, this rare plant is highly desired in cactus collections and gardens and has been sought by both hobby and commercial cactus collectors (Hochstätter 1990, Heil 1984, Heil, pers. comm. 1993, 1998). The fact that this species is difficult to maintain in garden settings stimulates a continual demand for replacement plants as cultivated garden and greenhouse plants die. Cactus collectors are active in the Colorado Plateau, going from the habitat of one species of *Pediocactus* to the next to collect a complete set of the genus

(Heil, pers. comm. 1994; Fish and Wildlife Service 1994, 1997). A portion of the Notom population of *P. winkleri* has been severely reduced primarily from losses to plant collectors (Heil 1984 and U.S. Fish and Wildlife Service 1997) (Also discussed under Issue 6). In addition to the Notom population, the Hartnet and Ferron populations are highly vulnerable to specimen collecting due to their ease of access and their being known to cactus collectors (Heil 1984, and Fish and Wildlife Service 1994, 1997).

C. *Disease or predation.* Because of its small size and the shortness of its spines, this species of cactus is less protected from animals than other, more spiny species. The effects of livestock grazing on desert vegetation may produce indirect impacts on *Pediocactus winkleri* populations. The desert range of *P. winkleri* had very sparse use by large, wild ungulates prior to the introduction of domestic livestock. Livestock grazing has caused changes in the floristic composition of the species' desert ecosystem with the introduction of weeds. These introduced weeds have the potential to outcompete over the long term, and to eventually reduce or displace native species, including *P. winkleri.* The effects of livestock trampling are discussed in Factor ''A'' above. This species is also susceptible to natural infestations of beetle larvae which will kill an individual within two years of initial infestation (Fish and Wildlife Service 1994).

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal or State laws or regulations directly protecting *Pediocactus winkleri* or its habitat. The National Park Service (NPS) restricts, and in most cases forbids, the collection of plants and plant materials from National Parks. The BLM Manual 6840 (Special Status Species Management) states that ''The BLM shall carry out management, consistent with multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as Threatened or Endangered.'' The BLM has the authority to control the removal of vegetative materials from Federal lands under its management and presently requires a permit to collect plant species. Current BLM policy is to require a permit to collect any cactus from the habitat area of *P. winkleri.* However, this species has populations that are scattered over remote country, thus making protection from unauthorized collecting difficult, even in Capitol Reef National Park. The Utah Forest Products Act requires proof of ownership to harvest or transport native vegetation from State, private, and Federal wildlands in Utah. Listing of *P. winkleri* would also provide for greater statutory protection and a more stringent penalty for take. Therefore, a greater deterrent for taking the species would be established.

The species is listed in Appendix I of The Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES import and export permits are generally required for international trade in Appendix I species, and permits are not allowed for commercial shipments. The small size of these species makes them easy to hide and therefore hard to detect in international commerce.

E. *Other natural or manmade factors affecting its continued existence. Pediocactus winkleri* is restricted to a limited geographic area with scattered, isolated occurrences and relatively low population numbers per occurrence, which render this cactus vulnerable to human disturbances. These additional stresses to the plant may exacerbate natural disturbances to populations of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. As described under the Act, a species should be found to be endangered if the species is in danger of becoming extinct throughout all or a significant portion of its range. The term threatened is defined as likely to become endangered within the foreseeable future throughout all or a significant portion of its range. In the proposed rule, *Pediocactus winkleri* was proposed to be listed as an endangered species. With the new information collected on this species since the proposed rule the Service has found that the population numbers are larger than previously estimated. Based on a reevaluation of the population numbers and threats, the preferred action is to list *P. winkleri* as threatened. Collection has been documented in a portion of the Notom population to significantly lower its numbers and is considered a primary threat to the Hartnet and Ferron population. Surface disturbances are impacting the ecosystem in which the species occurs and may increase in the future, especially from recreational ORV use. However, in an effort to eliminate soil compaction and plant destruction, the draft BLM Conservation Agreement and Strategy will restrict ORV use to existing roads and trails through the preparation of a managment plan. Because of new information indicating a relatively larger population of *P. winkleri,* and the expected implementation of a Conservation Agreement and Strategy aimed at reducing and eliminating threats to *P. winkleri,* threatened status is a more accurate assessment of the current condition of this species. For the reasons given below, it is not prudent to designate critical habitat at this time.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12(a)) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species.

As noted under Factor B in the ''Summary of Factors Affecting the Species'', *Pediocactus winkleri* is threatened by collection, an activity difficult to prevent. The listing of species as endangered or threatened publicizes their rarity and may make them more susceptible to collection. The publication of precise maps and descriptions of critical habitat would make *P. winkleri* more vulnerable to collection. Precise maps could also threaten more remote areas of *P.*

winkleri habitat, currently not subject to collection, by providing specific location information to cactus collectors. The Service feels that publication of precise maps for this species along with this final listing rule would put this species at greater risk of collection by cactus enthusiasts given the well documented history of previous collections.

Critical habitat designation, by definition, directly affects only Federal agency actions. *P. winkleri* occurs entirely on lands under Federal (BLM and NPS) management. Federal actions that might affect this species and its habitat include activities such as mining, grazing, and ORV use. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Federal actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect the outcome of consultation. The Service recognizes that there may be some benefit in designating critical habitat for highly endangered species whose survival and recovery depend upon expansion of range and numbers into currently unoccupied habitat. However, this is not the case for *P. winkleri* which is being listed as threatened and does not require unoccupied habitat for its survival or recovery. Habitat protection for *P. winkleri* can be accomplished through the section 7 jeopardy standard and there would be no benefit from designating critical habitat for this species.

Both the BLM and NPS are actively involved in the management and monitoring of *Pediocactus winkleri* and are aware of the threats facing this species. BLM has drafted a Conservation Agreement, with the assistance of the NPS and other partners, aimed at reducing and eliminating identified threats to *P. winkleri.* Designation of critical habitat would not increase the commitment or management efforts of the BLM or NPS. The Service believes that protection of *P. winkleri* will be better addressed through the recovery process and through section 7(a)(2) of the Act, as amended.

The Service finds that the designation of critical habitat is not prudent because of the increase of threat from collection which far outweighs any benefit that might be gained from identifying areas in need of special protection. The Service feels that recovery of the species will be accomplished more effectively with the current coordination process that the Service has established with the BLM and NPS.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Pediocactus winkleri occurs on Federal lands managed by the BLM and the NPS. Both of these Federal agencies are responsible for insuring that all activities and actions on lands that they manage are not likely to jeopardize the continued existence of *P. winkleri.*

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of ''cultivated origin'' appears on their containers. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that permits will be sought for cultivated specimens, which are currently available through domestic and international nurseries. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; telephone number 303–236–7398; facsimile number 303–236–0027. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–6649. For additional information concerning these permits and associated requirements, see 50 CFR 17.72.

On July 29, 1983, *Pediocactus winkleri* was included in Appendix I of CITES. Appendix I species generally require both an export and import permit before international shipment of this species can occur. Such shipment is strictly regulated by CITES party nations to prevent effects that may be detrimental to the species' survival. Generally, the import or export of an Appendix I species cannot be allowed if it is for primarily commercial purposes. If plants are certified as artificially propagated, however, international

shipment requires only export documents under CITES, and commercial shipments may be allowed.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following actions would not be likely to result in a violation of section 9:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing, ORV activity, mining) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot (e.g., sight seeing, photography, hiking).

The Service believes that the following activities would likely result in a violation of section 9:

(1) Unauthorized collection and knowingly damaging *Pediocactus winkleri* plants;

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

(3) Use of herbicides or pesticides in violation of label restrictions.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Anyone interested in determining whether a particular activity would constitute a prohibited act under section 9(a)(2) should contact the Service's Field Supervisor in Salt Lake City (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Salt Lake City, Utah, Field Office (see **ADDRESSES** section).

Authors

The primary author of this document is John L. England, botanist (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service amends part 17, Subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Pediocactus winkleri	Winkler cactus	U.S.A. (UT)	Cactaceae	T	641	NA	NA
*	*	*	*	*	*	*	

Dated: August 13, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–22448 Filed 8–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

[Docket No. 980501114–8213–02; I.D. 041698G]

RIN 0648–AK48

Stone Crab Fishery of the Gulf of Mexico; Amendment 6

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). Amendment 6 and this rule will reinstate for up to 4 years (through June 30, 2002) the previously existing temporary moratorium on the Federal registration of stone crab vessels that expired on June 30, 1998. The intended effect is to provide additional time for the industry and Florida to develop and implement a limited access system for the fishery.

DATES: This rule is effective August 20, 1998.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 727–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 654.

On April 23, 1998, NMFS announced the availability of Amendment 6 and requested comments on the amendment (63 FR 20162). On May 14, 1998, NMFS published a proposed rule to implement Amendment 6 and requested comments on the rule (63 FR 26765). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. On July 22, 1998, after considering the comments received on the amendment and the proposed rule, NMFS approved Amendment 6.

Comments and Responses

Two public comments were received on Amendment 6 and/or the proposed rule. The U.S. Fish and Wildlife Service submitted comments supporting Amendment 6. Comments from the U.S. Coast Guard concluded that there were no vessel safety or enforcement concerns. NMFS concurs with these comments. The proposed rule has been adopted as final without change.

Classification

The Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA (AA), determined that Amendment 6 is necessary for the conservation and management of the stone crab fishery of the Gulf of Mexico and that Amendment 6 is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, based on the Council's Regulatory Impact Review that assesses the economic impacts of management measures in this rule on fishery participants, certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Because this rule merely reinitiates a moratorium that was in place until June 30, 1998, and does not require any participants in the fishery to take action to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary. Accordingly, the AA reinitiates the moratorium effective upon the date of publication in the **Federal Register**.

List of Subjects in 50 CFR Part 654

Fisheries, Fishing.

Dated: August 14, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 654 is amended as follows:

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 654 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 654.3, paragraph (d) is revised to read as follows.

§ 654.3 Relation to other laws.

* * * * *

(d) Under Amendment 6 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico, there is a temporary moratorium on the issuance by the Regional Director of Federal identification numbers and color codes for vessels and gear in the stone crab fishery in the management area. The moratorium will end not later than June 30, 2002. During the moratorium, fishermen must obtain identification numbers and color codes for these vessels and gear from the State of Florida. (See § 654.6(a).)

[FR Doc. 98–22431 Filed 8–19–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 081498A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens