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 Indiana, is amended by removing Channel 243A at Corydon and by adding Lanesville, Channel 243A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22879 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3010; MB Docket No. 04–367; RM–11070]

Radio Broadcasting Services; Genoa, CO; Security, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Optima Communications, Inc. requesting the substitution of Channel 288C2 for Channel 288C3 at Security, Colorado and the modification of Station KSKX(FM)'s license accordingly. The coordinates for Channel 288C2 at Security are 38–37–30 NL and 104–49–00 WL. There is a site restriction 16.12 kilometers (10 miles) southwest of the community. To accommodate the proposal, petitioner requests the substitution of Channel 291C3 for vacant Channel 288C3 at Genoa, Colorado. The coordinates for Channel 291C3 at Genoa are 39–15–35 NL and 103–17–15 WL with a site restriction 18.4 kilometers (11.4 miles) east of the community.

DATES: Comments must be filed on or before November 15, 2004, and reply comments on or before November 30, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Optima Communications, Inc., c/o Mark N. Lipp, Esq., Vinson & Elkins, L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 367, adopted September 22, 2004, and released September 24, 2004. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of l980 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 Colorado, is amended by removing Channel 288C3 and by adding Channel 291C3 at Genoa; by removing Channel 288C3 and by adding Channel 288C2 at Security.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22880 Filed 10–8–04; 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 the Ute Ladies'-Tresses Orchid and Initiation of a 5-Year Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Ute ladies'-tresses orchid (*Spiranthes diluvialis*) from the Federal List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information and are initiating a status review to determine if delisting this species is warranted. We are requesting submission of any new information (best scientific and commercial data) on the Ute ladies'-tresses orchid since its original listing as a threatened species in 1992.

Following this status review, we will issue a 12-month finding on the petition to delist. Because a status review is also required for the 5-year review of listed species under section 4(c)(2)(A) of the Act, we are electing to prepare these reviews simultaneously. At the conclusion of these simultaneous reviews, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act, and make the requisite finding under section 4(c)(2)(B) of the Act based on the results of the 5-year review.

DATES: The 90-day finding announced in this document was made on October 12, 2004. To be considered in the 12-month finding on this petition or the 5-year review, comments and information should be submitted to us by December 13, 2004.

ADDRESSES: Comments, material, information, or questions concerning this petition and finding should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. The separate petition finding, supporting data, and comments are available for public review, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Maddux, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Utah Field Office, at the above address or by telephone at 801–975–3330.

SUPPLEMENTARY INFORMATION:

Background

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 to indicate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we must make this finding within 90 days of receiving the petition and publish a notice of the 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)). When a substantial finding is made, we are required to promptly begin a review of the status of the species, if one has not already been initiated.

When considering an action for listing, delisting, or reclassifying a species, we are required to determine whether a species is endangered or threatened based on one or more of the five listing factors as described at 50 CFR 424.11. These factors are given as—(A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting the continued existence of the species. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates 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.

In 1992, we listed Ute ladies'-tresses orchid (*Spiranthes diluvialis*) as threatened (57 FR 2053). We made this determination based upon the best scientific and commercial information available at the time. As stated and documented in the final listing rule, this action was taken, in part, because of —(1) The threats of habitat loss and modification and (2) the orchid's small population and low reproductive rate make it vulnerable to other threats. We did not designate critical habitat for Ute ladies'-tresses orchid because such action was not considered prudent at the time. On May 10, 1996, we received a petition from the Central Utah Water Conservancy District to delist Ute ladies'-tresses orchid pursuant to the Act. A ''Special Status Species Update'' for Ute ladies'-tresses orchid, dated April 1996, accompanied the petition as supporting information.

In response to the petitioner's request to delist Ute ladies'-tresses orchid, we sent a letter to the petitioner on June 10, 1996, explaining our inability to act upon the petitions due to the low priorities assigned to delisting petitions in our 1996 Listing Priority Guidance (61 FR 24722, May 16, 1996). Prior to 1999, the Service listing budget (including delistings, reclassifications, and designations of critical habitat) was underfunded, which meant that lower tier priority actions went unaddressed. 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, May 20, 1999). Since 1999, higher priority work has further precluded our ability to act upon this petition.

In making this finding we rely on information provided by the petitioners and evaluate that information in accordance with 50 CFR 424.14(b). The contents of this finding summarize that information included in the petition and which was available to us at the time of the petition review. Our review for the purposes of a so-called ''90-day'' finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, at the 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary. Thus, in this finding, we express no view as to the ultimate issue of whether the species should be delisted. We can come to a conclusion on that issue only after a more thorough review of the species' status. In that review, which will take approximately 9 more months, we will perform a rigorous critical analysis of the best available scientific information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and the Information Quality Act (Pub. L. 106–554). We ask the public to submit to us any pertinent information concerning the status of or threats to this species.

Discussion

The petition states that there is substantial new information indicating that the population size and distribution are much larger than known at the time of listing; there is more information on life history and habitat needs, allowing better management; and threats are not as great in magnitude or imminence as understood at the time of listing. The petition was accompanied by a ''Special Species Status Update.'' The Status Update compiled, synthesized, and described information from Service files that had been acquired about Ute ladies'-tresses orchid since it was listed. Information included taxonomy and genetics, reproductive biology and life history, pollination, and population size and distribution. The five listing factors (as defined in section 4(a)(1) of the Act) were then addressed using this new information.

Since the date of the petition to delist, additional information has been acquired and provided to the Service. In 1995, the total estimated population size was 20,500 individuals. With discoveries since 1995, population estimates have increased. The total population size of Ute ladies'-tresses orchid is currently estimated to be 60,000 individuals.

New occurrences have been documented in Nebraska, Wyoming, Washington, Idaho, Utah, and Colorado, substantially increasing the known range and estimated population size. Monitoring of species numbers, certain demographic parameters, and habitat

characteristics has improved our understanding of population fluctuations, habitat preferences, and threats to habitat conditions. Research has continued on pollination biology, genetics, and root-associated fungi. Research and monitoring have been conducted on the relationship of stream flows, ground water levels, and stream channel form to surfaces on which the orchid occurs. All new information will be considered and fully analyzed as part of the species status review.

Finding

We have reviewed the petition and its supporting documentation. We have found that the petition presents substantial information indicating that delisting Ute ladies'-tresses orchid may be warranted. As the petition to delist asserts, new information acquired since the orchid was listed indicates that population size is greater than originally known. While significant questions remain about the actual size of populations, requirements for seedling establishment and recruitment, and severity of impacts due to habitat modifications such as water development projects, we consider these to be issues relevant to the listing determination and warranting further investigation. Accordingly, we believe it is appropriate to consider this information and any other new information available about this species and the threats it may face in a status review. A status review is a component of both the 12-month finding and the five-year review; therefore, we will be conducting these reviews simultaneously.

Five-Year Review

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) and the provisions of subsection (a) and (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 from threatened to endangered. 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 active review of the Ute ladies'-tresses orchid.

Public Information Solicited

We are requesting information for both the 12-month finding and the 5-year review, as we are conducting these reviews simultaneously.

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on Ute ladies'-tresses orchid. This includes information on taxonomy and genetics, reproductive biology and life history, pollination, population size, distribution, habitat management, and the five listing factors (including type and imminence of threats). We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of Ute ladies'-tresses orchid.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review. Categories of requested information include (A) species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to comment for either the 12-month finding or the 5-year review, you may submit your comments and materials concerning this finding to the Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES** section). 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 us 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 in this finding is available, upon request, from the U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES** section).

Authority: The authority for this action is section 4 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2004.

Paul Henne,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–22735 Filed 10–8–04; 8:45 am]

BILLING CODE 4310–55–U