provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The technical amendments on this rule do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources. The technical relief for the Tier 3 timeframe seeks to compensate for any emissions impact by encouraging earlier use of Tier 4 engines requiring the equipment manufacturer to give up specific Tier 4 flexibilities.

*K. Statutory Authority*

The statutory authority for this action comes from section 202 of the Clean Air Act as amended (42 U.S.C. 7521). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

*40 CFR Part 89*

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

*40 CFR Part 1039*

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 6, 2007.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. E7–18163 Filed 9–17–07; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus, S. glaucus*, and *S. wetlandicus*

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding and proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We also propose to change the taxonomy of the currently threatened *Sclerocactus glaucus* ''complex'' to three distinct species: *Sclerocactus brevispinus*, *S. glaucus*, and *S. wetlandicus.* Because these species make up what was formerly the ''complex'', each will maintain its status of being listed as threatened.

After review of all available scientific and commercial information, we find that reclassifying *S. brevispinus* as endangered is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. However, *S. brevispinus* is currently listed as threatened as part of the *S. glaucus* (Uinta Basin hookless cactus) complex.

We further propose to revise the taxonomy of *S. glaucus* (Uinta Basin hookless cactus) (previously considered a ''complex''), which is currently listed as a threatened species. In accordance with the best available scientific information, we propose to recognize the three distinct species: *S. brevispinus*, *S. glaucus*, and *S. wetlandicus.* Because each of these three species constitute the *S. glaucus* complex, we consider all three species to be threatened under the Act. In addition, we propose common names for *S. glaucus* and *S. wetlandicus.*

**DATES:** The finding announced in this document was made on September 18, 2007. We will accept comments on the proposed taxonomic change from all interested parties until November 19, 2007.

**ADDRESSES:** *Comments on Proposed Taxonomic Change:* If you wish to comment on the proposed rule to revise the taxonomy of *S. glaucus*, you may submit your comments and materials by any one of several methods:

1. *By mail or hand-delivery to:* Larry England, Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119.

2. *By electronic mail (e-mail) to: fw6_sclerocactus@fws.gov*. Please see the Public Comments Solicited section for other information about electronic filing.

3. *By fax to:* the attention of Larry England at 801–975–3331.

4. *By the Federal eRulemaking Portal at: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Supporting Documents for 12-Month Finding:* Supporting documents for this finding are available for public inspection, by appointment, during normal business hours at the Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119. The petition finding, related **Federal Register** notices, the Court Order, and other pertinent information may be obtained on the Internet at *http://www.fws.gov/mountain-prairie/species/plants/Pariettecactus/*. We ask the public to submit any new data or information concerning the status of or threats to *Sclerocactus brevispinus* to us at the above address. This information will help us monitor and encourage the ongoing conservation of this species, and formulate a future proposed listing rule, should one be necessary.

**FOR FURTHER INFORMATION CONTACT:** Larry England, Utah Field Office (see **ADDRESSES**) (telephone 801–975–3330; facsimile at 801–975–3331). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

This document consists of: (1) A proposed rule to change the taxonomy of the currently threatened *Sclerocactus glaucus* ''complex'' to three distinct species: *Sclerocactus brevispinus, S. glaucus*, and *S. wetlandicus*, each of which will continue to be listed as threatened; and (2) a 12-month finding on a petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For the sake of convenience, we present the proposed taxonomic change first, followed by the 12-month finding.

**Proposed Rule for Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus*, *S. glaucus*, and *S. wetlandicus***

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning *Sclerocactus* taxonomy, including any evaluations of the studies cited in this notice.

You may submit your comments and materials concerning this proposal by one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include ''Attn: Pariette Cactus'' in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our Utah Field Office at 801–975–3330. Please note that we must receive comments by the date specified in the **DATES** section in order to consider them in our final determination and that the e-mail address *fw6_sclerocactus@fws.gov* will be closed out at the termination of the public comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119 (telephone 801–975–3330).

**Taxonomic Classification**

The original listing rule (44 FR 58868, October 11, 1979) included all hookless (straight central spines) *Sclerocactus* populations at the extreme periphery of the *Sclerocactus* genus' distribution in western Colorado and northeastern Utah, and referred to them as *Sclerocactus glaucus* per L. Benson (1966, pp. 50–57; 1982, pp. 728–729). This taxonomic classification is no longer supported by results of genetic and morphological research. The separation of *Sclerocactus glaucus* into three species (*S. glaucus, S. wetlandicus*, and *S. brevispinus*) is reinforced by recent genetic studies (Porter *et al.* 2000, pp. 14, 16; Porter *et al.* 2006, pp. 6, 7, 10), common garden experiments (Hochstatter 1993, pp. 94, 98; Welsh *et al.* 2003, p. 79), and a reevaluation of morphological characteristics (Heil and Porter 2004, pp. 200–201; Hochstatter 1993b, pp. 93, 97, 99).

Revisions to the taxonomy of *S. glaucus* began in 1989 (Hochstatter 1989 in 1993, pp. 91–92; Heil and Porter 1994, pp. 25–27; Porter *et al.* 2000, pp. 8–23; Welsh *et al.* 2003, p. 79). By 2004, the *Flora of North America* recognized the plant *S. glaucus* (that we listed in 1979) as three distinct species: *S. glaucus* (Uinta Basin hookless cactus), *S. wetlandicus* (no common name), and *S. brevispinus* (Pariette cactus). Thus, we now consider the Uinta Basin hookless cactus ''complex'' to be comprised of three distinct species: *S. glaucus, S. wetlandicus*, and *S. brevispinus*, and we propose to amend the List of Endangered and Threatened Plants at 50 CFR 17.12(h) to reflect this revision to taxonomy.

*Sclerocactus glaucus* is endemic to western Colorado. Its common name, Uinta Basin hookless cactus, refers to a geological area in Utah. Therefore, the common name of Uinta Basin hookless cactus is a misnomer that would be more accurately applied to *S. wetlandicus*, which currently has no common name. We believe that ''Colorado hookless cactus'' is a more appropriate common name for *S. glaucus*, and we propose to adopt that common name.

*Sclerocactus wetlandicus* (no common name) was first described in 1989 (Hochstatter 1989 in 1993, pp. 91–92), and comprises the bulk of the previously termed Uinta Basin hookless cactus complex in Utah (in the Uinta Basin proper). It is considered a separate population. As described above, we believe that the common name ''Uinta Basin hookless cactus'' is more appropriate for this species, and propose to adopt that common name.

*Sclerocactus brevispinus* (Pariette cactus) is a morphologically unique *Sclerocactus* population occurring only in the Pariette Draw in the central Uinta Basin in Utah. This cactus is much smaller than either *S. wetlandicus* or *S. glaucus*, and retains the vegetative characteristics of juvenile *S. wetlandicus* individuals in adult flowering plants. At the time of the species listing in 1979, these smaller-statured individuals were thought to represent an ecotypic variation of *S. glaucus*. This unique cactus from Pariette Draw has been variously named *S. wetlandicus* var. ilseae (Hochstatter 1993, pp. 95–97), *S. brevispinus* (Heil and Porter 1994, p. 26), and *S. whipplei* var. *ilseae* (Welsh *et al.* 2003, p. 79). We propose to adopt the taxonomic change accepted by the *Flora of North America* (Heil and Porter 2004, pp. 197–207) as *S. brevispinus*, and propose to adopt the common name ''Pariette cactus'' for this species.

In summary, in the Proposed Regulation Promulgation section of this document, we propose the taxonomic change from *Sclerocactus glaucus* to *Sclerocactus brevispinus* (Pariette cactus), *Sclerocactus glaucus* (Colorado hookless cactus), and *Sclerocactus wetlandicus* (Uinta Basin hookless cactus).

**Peer Review**

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we are to seek the expert opinions of appropriate and independent specialists regarding the science in proposed rules. Since the basis for this proposed taxonomic change has appeared in peer-reviewed journals, it is not necessary to seek additional peer review of this proposed rule.

**Clarity of the Rule**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Since this proposed rule is simply a taxonomic change, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**National Environmental Policy Act**

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

**12-Month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as Endangered or Threatened**

Section 4(b)(3)(B) of the Act requires that, for any petition that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, and requiring a subsequent finding to be made within 12 months.

**Previous Federal Actions**

On October 11, 1979, we published a final rule listing *Sclerocactus glaucus* (Uinta Basin hookless cactus) as threatened (44 FR 58868). On April 25, 2005, we received a petition, dated April 18, 2005, from the Center for Native Ecosystems and the Utah Native Plant Society, requesting that we: (1) List *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the provisions of section 4 of the Act (independent of its current listing as threatened as part of *S. glaucus*); (2) promulgate an emergency listing rule; and (3) designate critical habitat concurrent with the listing. On October 10, 2005, the petitioners entered a complaint in the U.S. District Court of Colorado seeking to compel us to list *S. brevispinus* as either threatened or endangered. Per an October 11, 2006, court-ordered settlement agreement, we agreed to publish a 90-day petition finding in the **Federal Register** on or before December 8, 2006.

On December 14, 2006, we published a 90-day finding on this petition (71 FR 75215) in which we concluded that emergency listing was not necessary, but that the petition provided substantial information indicating that listing *S. brevispinus* as endangered or threatened may be warranted, and we initiated a status review. Please refer to that finding for greater detail concerning the listing history of *Sclerocactus glaucus* (Uinta Basin hookless cactus).

This notice constitutes the 12-month finding on the April 25, 2005, petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species.

**Species Description**

Cacti species of the Uinta Basin hookless cactus complex are described in the 90-day petition finding for *Sclerocactus brevispinus* (71 FR 75215, December 14, 2006). Descriptions were adapted from Heil and Porter 1994 (pp. 25–27), and Hochstatter 1993 (pp. 91, 95, and 99).

**Biology and Distribution**

*Sclerocactus brevispinus* habitat is a sparsely vegetated desert shrubland dominated by *Atriplex*, *Chrysothamnus*, and *Tetradymia* species (USFWS 1990, p. 7). The species' life history is poorly known, but it is thought to be a long-lived perennial usually flowering after 3 or 4 years. A broad assemblage of native bees, and possibly other insects including ants and beetles, pollinates *S. brevispinus* (USFWS 1990, p. 7).

*Sclerocactus brevispinus* grows on fine soils in clay badlands derived from the Uinta formation (USFWS 1990, p. 7). The species is restricted to one population in an area about 16 kilometers (km) (10 miles (mi)) long by 8 km (5 mi) wide astride the Duchesne-Uintah County boundary on Bureau of Land Management (BLM), Ute Tribe, State of Utah, and private land. We estimate the total species population to be about 8,000 individuals on approximately 7,200 hectares (ha) (18,000 acres (ac)), distributed largely across BLM and Ute Tribal lands.

We do not have recent, long-term status or trend population data for *Sclerocactus brevispinus.*

A 1985 species inventory documented a population of 3,795 individuals on approximately 6,000 ha (15,000 ac) of BLM land, and minor amounts of State and private lands (BLM 1985, p. 4; Heil and Porter 1994, p. 45). BLM estimated that this population represented 75 percent of the species population on BLM-managed lands (Sinclear 1985). Based on this information, we consider the *Sclerocactus brevispinus* population on BLM lands to be comprised of approximately 5,000 individuals. BLM conducted an inventory in 2007, but its final data are not yet available. We estimate the total area of potential habitat for *S. brevispinus* on BLM lands to be approximately 6,000 ha (15,000 ac).

The total population of *Sclerocactus brevispinus* on the Uintah and Ouray Reservation of the Ute Tribe, directly north and adjacent to BLM lands, is unknown. The Ute Tribe conducted an inventory in 2007, and preliminary results indicate an estimated 3,000 individuals (O'Hearn 2007). However, the Tribe's final data are not yet

available. We estimate the total area of potential habitat for *S. brevispinus* on Ute Tribal lands, based on exposures of the Wagon Hound member of the Uinta formation with desert shrub vegetation, to be about 1,200 ha (3,000 ac).

**Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize below information regarding the status and threats to *Sclerocactus brevispinus* in relation to the five factors provided in section 4(a)(1) of the Act.

In making this 12-month finding, we considered all scientific and commercial information received or acquired between the time of the initial petition (April 2005) and the end of the public comment period (February 12, 2007), and additional scientific information from ongoing species surveys and studies as they became available. During the public comment period (71 FR 75215, December 14, 2006), we received four comments and information on *Sclerocactus brevispinus* and the other two species in the Uinta Basin hookless cactus complex from private citizens, organizations, and other entities.

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

The total range of *Sclerocactus brevispinus* comprises approximately 7,200 ha (18,000 ac) (USFWS 2006, p. 2; Childs 2007, p. 5), within which suitable habitat is scattered in naturally occurring mosaics (BLM 2005b, p. 3–30). The population is comprised of irregularly distributed occurrences across the landscape. Its entire known range occurs within active and pending oil and gas fields.

**Oil and Gas Development**

Seventy-two percent of the total range of the species (5,209 ha /12,865 ac) occurs within the approved Castle Peak/Eightmile Flat Oil and Gas Expansion Project (5,012 ha/12,530 ac) and the pending Gasco Uinta Basin Natural Gas Field Development Project (134 ha/335 ac) on BLM lands (USFWS 2006, p. 3). Current well-field development in these project areas has resulted in direct and indirect effects to 765 ha (1,891 ac) of *Sclerocactus brevispinus* habitat (BLM 2005b, p. 4.1–26). BLM proposes to double the number of wells and the amount of surface disturbance in cactus habitat (BLM 2005b, p. 4.2–14). An additional 848 ha (2,095 ac) of *S. brevispinus*' range (12 percent) contains wells drilled in the Sand Wash and Greater Boundary Oil and Gas Field adjacent to the Castle Peak/Eightmile Flat Project (USFWS 2006, p. 7). In summary, 100 percent of *S. brevispinus*' range on BLM land (84 percent of the species' total range) is included within oil and gas development project boundaries.

In addition, the Ute Tribe has leased occupied *S. brevispinus* habitat north of and directly adjacent to the Castle Peak/Eightmile Flat Project for oil and gas development. Nine wells, affecting 215 *S. brevispinus* individuals, are scheduled for drilling in 2007 (Childs 2007, p. 6). The biological assessment for this project indicates that, including 12.7 km (7.9 mi) of new road, 15.6 ha (39 ac) of habitat would be disturbed, and 3.3 ha (8.2 ac) of occupied habitat would be lost (Childs 2007, p. 1). The project boundary will include 100 percent of *S. brevispinus*' range on Ute Tribal land (16 percent of the species' total range).

In its Castle Peak/Eightmile Flat Oil and Gas Expansion Project Final Environmental Impact Statement (FEIS), BLM also identifies indirect effects to *Sclerocactus brevispinus* from the Castle Peak/Eightmile Flat Project, including soil compaction, increased road access, increased off-road vehicle (ORV) use, increased surface disturbance, and habitat fragmentation (BLM 2005b, pp. 4.1–26, 4.2–22, 4.3–14, 5–18). In this same FEIS, BLM established a range of influence for indirect effects from roads and well pads (such as fugitive dust, erosion, and impacts to pollinators) of 300 meters (m) (984 feet (ft)). Using this range of influence, BLM calculated that approximately 5,297 ha (13,090 ac) (73 percent) of *S. brevispinus'* range within and immediately adjacent to the Castle Peak/Eightmile Flat Project area would be impacted by indirect effects (BLM 2005b, p. 5–28). Increases in well-field facilities within cactus habitat will result in some cactus populations becoming more physically isolated from each other (BLM 2005b, p. 5–27).

BLM has identified 261 mi (420 km) of new and existing access roads, with adjacent parallel utility corridors for buried water pipelines, and above ground natural gas gathering pipelines, in connection with the Castle Peak/Eightmile Flat Project (BLM 2005b, ROD p. 4). Development of roads in support of oil and gas development can result in increased erosion, soil compaction, and sedimentation. Roads can cause cactus mortality in areas of high sediment movement and deposition (BLM 2005b, p. 4.1–28). Mortality of mature cactus plants, including S. *brevispinus*, has been observed when erosion of road sediments bury the plants (BLM 2005b, p. 4.1–28). Cacti seeds have been buried and lost due to erosion runoff from well-field facilities (BLM 2005b, p. 4.1–28). In addition, dust particles increase leaf temperature and reduce photosynthesis in cacti (Farmer 1993, pp. 63–75; Sharifi *et al.* 1997, p. 842); the latter may be due to reduced leaf areas and greater leaf specific masses with corresponding decreased water use efficiency and reduced photosynthesis (Sharifi *et al.* 1997, p. 843). Construction and operation of roads and well pads increase dust occurrence substantially (BLM 2005b, pp. 2–4, 2–5, 4.1–8).

Increased road access results in direct loss of individual plants due to increased illegal collection of the species (BLM 2005b, p. 5–18; USFWS 1990, p .9). Illegal collection is a continuing and an ongoing threat to *Sclerocactus brevispinus* (see discussion under Factor B below).

Increases in ORV use result from access provided by increased road densities connected with well-field development. Developed roads provide access to vehicles that carry ORVs into areas that are otherwise not accessible, allowing for off-loading of ORVs and off-road access within a much wider range of unroaded habitat. ORV use results in crushing of cacti, and increased erosion, soil compaction, and sedimentation (BLM 2005a, pp. 4–246, 4–265 to 4–271; USFWS 1990, pp. 8, 10).

Increased surface disturbance from wells, pipelines, and roads facilitates the proliferation of noxious weeds (BLM 2005b, p. 4.1–9 to 4.1–11, 5–18). Noxious weeds alter the ecological characteristics of hookless cactus habitat, making it less suitable (USFWS 1990, pp. 9, 11; BLM 2005a, p. 3–112). Within the range of *Sclerocactus brevispinus*, a comparison of habitat on BLM land with habitat on adjacent Ute Tribal land shows that habitat on Tribal lands, which is less heavily grazed and lacks oil and gas developments, has fewer noxious weeds (O'Hearn 2007; England 2007).

The combined effects of roads (including increased erosion, soil compaction, and sedimentation; overall access; ORV use; illegal cacti collection; and spread of noxious weeds) result in direct mortality of cacti and habitat fragmentation (BLM 2005b, pp. 4.1–26, 4.2–22, 4.3–14, 5–27), which decreases the ability of *Sclerocactus brevispinus* to reproduce, maintain genetic viability, and persist as a species.

Rehabilitation of soils and vegetation following surface disturbance is expected to be difficult, because

approximately 73 percent of soils in the Castle Peak/Eightmile Flat Project area have moderate to high revegetation constraints (BLM 2005a, p. 4.2–11). BLM estimates that successful revegetation would be expected to occur in desert shrub and sagebrush communities, but only over the long term (up to 50 years) (BLM 2005b, pp. 4.3–7, 4.2–12). Drought conditions could further extend the recovery period, and noxious weeds would persist regardless of control efforts (BLM 2005b, p. 4.3–7). Noxious weeds are difficult to eradicate and tend to out-compete native vegetation. Revegetation with native species is difficult due to the harsh environment of the lowest elevations of the Uinta Basin, which receive less than 15 centimeters (6 inches) of rainfall per year, and reach extreme hot and cold temperatures (BLM 2005a, p. 3–112; BLM 2005b, pp. 3.5–1, 3.5–5, 4.1–11; USFWS 1990, p. 11).

BLM has developed and implemented conservation measures to minimize the loss of individual cactus from oil and gas activities (BLM 2005a, pp. 1–14, 2–2, 2–29, 2–30; BLM 2005b; ROD pp. 5, 18–20). These measures include preconstruction cactus surveys and application of spatial avoidance buffers. BLM maintains the 4,664 ha (11,660 ac) Pariette Wetlands Area of Critical Environmental Concern (ACEC), which emphasizes protection of *Sclerocactus brevispinus* (BLM 1994, pp. 3–20 to 3–23). Approximately 31 percent of the ACEC (1,434 ha (3,584 ac)) is within the range of *S. brevispinus*. BLM defers approval of new wells and ancillary facilities located on BLM land within the Pariette Wetlands ACEC until a comprehensive population survey for *S. brevispinus* has been completed; however, conservation measures do not preclude development over the long term (BLM 2005b; ROD p. 5). Citing valid existing lease rights and current management prescriptions in the Diamond Mountain Resource Management Plan, BLM did not stipulate a blanket ''no surface occupancy'' requirement for oil and gas development within the Pariette Wetlands ACEC, or within the range of *S. brevispinus* (BLM 2005b; ROD p. 5). Following cactus surveys, the leasee will expand operations of the Castle Peak/Eightmile Flat Project into the ACEC.

In summary, despite its current listed status as threatened under the Act, *Sclerocactus brevispinus* and its habitat continue to be impacted by additional oil and gas development, including wells and supporting road and pipeline facilities. Losses of habitat and individual plants have occurred despite conservation efforts implemented by BLM and the oil field operator. Energy development is occurring in *S. brevispinus* habitat at a rate much greater than existed at the time of the original listing of *S. glaucus* in 1979. Due to the extent of current and pending energy development across the cactus' entire range, and the resulting direct and indirect effects to the species, *S. brevispinus* is in danger of extinction throughout its range or likely to become in danger of extinction in the foreseeable future.

**Habitat Fragmentation**

Regardless of conservation efforts related to oil and gas activities, adverse indirect effects are expected due to the loss and fragmentation of suitable habitat (BLM 2005a, pp. 4–240, 4–243, 4–244, 4–246, 4–252; BLM 2005b, pp. 3–35, 4.1–26, 4.2–22, 4.3–20, 5–27). A recent review of habitat fragmentation experiments concluded that fragmentation effects cascade through a plant community by modifying inter-specific interactions, exacerbating edge effects, and potentially affecting the genetic composition of local populations (Debinski and Holt 2002, p. 353). Low population numbers, combined with habitat fragmentation, pose a threat to rare plant species' ability to adapt genetically to changing environmental conditions (Lienert 2004, pp. 62, 63, 66; Matthies et al. 2004, pp. 481, 486).

BLM has initiated monitoring of *Sclerocactus brevispinus* populations, including monitoring of impacts associated with oil and gas development. Results are preliminary, because the study was initiated in 2005. However, initial results show potential effects of oil and gas development (*i.e.*, roads and well pads) on the survival and reproductive success of *S. brevispinus* (Ulloa 2006). For example, survival of *S. brevispinus* in plots within 100 m (328 ft) of roads associated with energy development was 17 percent, compared to 47 percent survival in plots farther than 100 m (328 ft) from a road. On plots within 100 m (328 ft) of roads, 13.8 percent of cacti reproduced, compared to 22 percent of cacti farther than 100 m (328 ft) from roads. More information is needed to determine if these effects are the result of energy development or other environmental factors (Ulloa 2006).

Direct *Sclerocactus brevispinus* mortality and habitat destruction have been caused by livestock trampling and ORV use (Utah Natural Heritage Program 2006, p. 3; BLM 2005a, pp. 4–231 to 4–235, 4–238; USFWS 1990, p. 11; England 2005; Sinclear 2005; Specht 2005). Recent observations show a significant decrease in *S. brevispinus* plant density on the more heavily grazed and roaded BLM lands in the Pariette Draw drainage than on adjacent Ute Tribal lands in the same drainage (O'Hearn 2007; England 2007). As previously mentioned, invasive weeds (*Bromus tectorum* (cheat grass) and *Halogeton glomeratus*) are much more prevalent on the more heavily grazed BLM lands at the boundary between the two land ownerships in the range of *S. brevispinus* (O'Hearn 2007; England 2007).

**Conclusion for Factor A**

Threats from existing and planned oil and gas development occur within the entire known range of *Sclerocactus brevispinus*. These threats include direct mortality, erosion, soil compaction, sedimentation, increased road access, ORV use, surface disturbance, and habitat fragmentation. In addition, these combined effects could decrease the reproductive rate of *S. brevispinus*. Rehabilitation of habitat areas following oil and gas projects is especially difficult due to the habitat conditions and climate of the desert plant community, and is expected to meet with limited success. The same is true for conservation measures implemented to minimize the loss of individual cacti due to oil and gas activities. Due to the magnitude and extent of the combined effects of ongoing and planned oil and gas development, we find that *S. brevispinus* is in danger of extinction throughout all of its range or likely to become in danger of extinction in the foreseeable future due to destruction, modification, and curtailment of its habitat and range.

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

The original listing of *Sclerocactus glaucus* concluded that the cactus will continue to be prized among collectors and, therefore, is threatened by unregulated commercial trade (44 FR 58869, October 11, 1979). This remains true for *S. brevispinus*. Illegal collecting continues, is often documented, and negatively affects the species by fragmenting plant populations and reducing population sizes which can result in limiting reproduction (USFWS 1990, p. 9). BLM recognized that additional energy development and ensuing road development in the Castle Peak/Eightmile Flat Project would result in increased potential for illegal collecting (BLM 2005b, p. 4.1–26).

Approximately 56 percent of the known plant locations (40 percent of the species' range) are within 100 m (328 ft) of project-related roads or well pads in the project area (USFWS 2006, p. 4), and close proximity to a road facilitates this cactus' discovery by illegal collectors (Ulloa 2006).

In 2006, BLM documented that at least 60 *Sclerocactus brevispinus* plants were illegally collected, many from existing monitoring plots within the Castle Peak/Eight Mile Flat Project area (Ulloa 2006). Illegal collection areas were all within 100 m (382 ft) of roads associated with oil and gas development (Ulloa 2006). Additional plants were lost in 2007; however, the actual number of documented plant losses has not yet been determined.

**Conclusion for Factor B**

In conclusion, we have determined that illegal collection continues to be a threat to *Sclerocactus brevispinus* throughout all of its range. The magnitude of this threat is increasing due to development, and combined with other threats to the species, contributes to its likelihood of becoming extirpated. Collection alone, however, may not cause the species to become in danger of extinction throughout all of its range or likely to become in danger of extinction in the foreseeable future.

*C. Disease or Predation*

Parasitism by the cactus-borer beetle (*Moneilema semipunctatum*) is a significant source of mortality to all *Sclerocactus* species on the Colorado Plateau, especially in larger, mature, reproducing individuals (USFWS 1990, p. 11; Ulloa 2006; Sinclear 2005; Specht 2005). However, additional studies are needed in order to determine the long-term, population-level effects of the cactus borer beetle to *S. brevispinus*.

**Conclusion for Factor C**

Parasitism is identified as a threat to *Sclerocactus* species, however the significance to *S. brevispinus* is not currently known. Therefore, we can draw no conclusions about the contribution of this threat to the population status of the species.

*D. Inadequacy of Existing Regulatory Mechanisms*

BLM policy regarding federally listed species includes measures to implement management plans and programs that will conserve listed species and their habitats, and to comply with the Act (BLM 2001, pp. 5–6). However, complying with the Act requires incorporating measures that minimize adverse impacts to federally listed species within reasonable and prudent guidelines. This threshold does not eliminate adverse impacts, and the policy is implemented under BLM's broader mandate for land use planning and policy that requires technologically and economically feasible implementation of existing lease rights.

BLM's Diamond Mountain Resource Management Plan, approved in 1994, includes objectives and management prescriptions for the Pariette Wetlands ACEC (BLM 1994, pp. 3–20 to 3–23). The Pariette Wetlands ACEC provides protection for part of the Uinta Basin hookless cactus complex, which includes *S. brevispinus* and *S. wetlandicus*. The stated objective of the ACEC includes a goal to ''enhance and protect the wetlands community and associated habitat adjacent to Pariette and Castle Peak Washes * * * while meeting the management objectives of the final recovery plans for the special status species associated with the area'' (BLM 1994, p. 3–20). The Pariette Wetlands ACEC management prescriptions also state that BLM will authorize no action in suitable habitat for threatened and endangered species if it would jeopardize the continued existence of the species or result in severe modification of the habitat. However, much of the ACEC is leased for oil and gas exploration, development, and production. Of BLM's 4,664 ha (11,660 ac) in the Pariette Wetlands ACEC, about 8 ha (20 ac) are open with standard lease terms and conditions for leasable minerals; 3,152 ha (7,880 ac) are leased with stipulations; and 1,480 ha (3,700 ac) are leased with highly restricted measures, but do not include a ''no surface occupancy'' stipulation (BLM 1994, p. 3–21).

Conservation needs of *Sclerocactus brevispinus*, as part of the Uinta Basin hookless cactus complex, are addressed through interagency consultation (section 7 requirements) between the Service and BLM. BLM maintains *S. brevispinus* as a special status species, because it is not specifically included on the Federal List of Endangered and Threatened Plants. Currently, *S. brevispinus* is federally listed as threatened as part of the greater habitat range of the Uinta Basin hookless cactus complex. Therefore, BLM is required to consult on projects that affect *S. brevispinus*. The Service is required to provide reasonable and prudent measures to be included in projects that could adversely affect a listed species. The Castle Peak/Eightmile Flat Oil and Gas Expansion Project FEIS included conservation measures to specifically protect *S. brevispinus* and its habitat (BLM 2005b, pp. 4.1–26 to 28, 4.2–22, 4.3–14, 5–7, 5–18; ROD pp. 5, 18 to 20; Appendix B pp. 2, 27, 34, 39–41). For example, BLM and the leasee have agreed to a moratorium on new oil field developments within the Pariette Wetlands ACEC until a complete re-inventory of *S. brevispinus* is completed. The Pariette Wetlands ACEC contains approximately 1,249 ha (3,086 ac) (17 percent) of the known range of *S. brevispinus*. Approximately 75 percent of the inventory was completed during the species' flowering period in spring 2007. The remainder of the inventory is tentatively scheduled for completion in 2008 (Gerbig 2007).

Because of valid existing lease rights and management prescriptions, the Diamond Mountain Resource Management Plan Record of Decision did not stipulate a blanket ''no surface occupancy'' requirement for oil and gas development within the Pariette Wetlands ACEC (BLM 1994, p. 5). After cactus surveys are completed, the leasee will expand operations, subject to the Service's reasonable and prudent measures developed during the consultation process, of the Castle Peak/Eightmile Flat Project into the Pariette Wetlands ACEC.

BLM has recently established a population monitoring program for *Sclerocactus brevispinus* to track population changes, impacts from developments within the species' habitat, and direct threats such as grazing, parasitism, and unauthorized collection (Ulloa 2006), and 3 years of monitoring data have been collected. Initial results include documentation of illegal collection, and greater population declines nearer disturbances. Correlations of declines to specific threat factors, such as dust or soil compaction, have not yet been determined. Despite this monitoring, the extent of oil and gas development projects, and resulting documented direct and indirect impacts, throughout the range of *Sclerocactus brevispinus*, indicate that existing regulatory mechanisms are insufficient to conserve *the species*.

Despite implementation of conservation measures, *Sclerocactus brevispinus* is not adequately protected by the current designation (as part of the Uinta Basin hookless cactus complex) as threatened. Evaluation of impacts to *S. brevispinus* under section 7 of the Act is diluted by the fact that it is currently listed as part of the much larger distribution of the entire Uinta Basin hookless cactus complex. Therefore, actions included in determinations under section 7 of the Act are evaluated on whether they would jeopardize the

continued existence of the larger listed entity rather than whether they would jeopardize the continued existence of *S. brevispinus*. *S. brevispinus*, in accordance with the best taxonomic information available, warrants evaluation of effects of proposed actions at a smaller scale, specific to it as a separate species. For example, if a project impacts 3,795 plants (last population count for *S. brevispinus* (BLM 1985, p. 4)) out of a total 10,000 plants (i.e., Uinta Basin hookless cactus complex as currently listed), it impacts 30 percent of the total population. However, if the same project occurs entirely within *S. brevispinus* habitat, it could theoretically directly or indirectly impact 100 percent of the total known population. The FEIS for the Castle Peak/Eightmile Flat Oil and Gas Expansion Project includes discussion of these concerns in its cumulative effects evaluation based in part on the overall population and distribution of the Uinta Basin hookless cactus complex (BLM 2005b, pp. 4.2–22, 5–18). The Service provided reasonable and prudent measures related to conserving *S. brevispinus*; however, these measures result in protecting individual plants, and tend to not limit the extent of drilling within the range of the species.

Oil and gas development has not yet been implemented on Ute Tribal land; however, the Tribe has leased occupied *S. brevispinus* habitat that will disturb 15.6 ha (39 ac) of habitat. These lands are not covered by regulations that apply to Federal lands; no protection under the Act is afforded plants on Tribal land.

**Conclusion for Factor D**

Despite BLM policy regarding federally listed species, existing oil and gas leases continue to directly and indirectly impact *Sclerocactus brevispinus* and its habitats. In addition, Tribal lands are not subject to regulations that restrict energy development, and are only subject to section 7 consultation for projects that have a Federal nexus, such as Federal grant money or Bureau of Indian Affairs involvement. Specifically, neither BLM nor the Tribe have regulations or policies that include ''no surface occupancy'' stipulations; this deficiency allows for the ongoing and planned expansion of energy developments that endanger the continued existence of *Sclerocactus brevispinus* and its habitat. The extent and magnitude of oil and gas-related threats demonstrate that existing regulatory mechanisms are not adequate to protect remaining occupied and essential *S. brevispinus* habitat. Therefore, we find *Sclerocactus brevispinus* to be in danger of extinction throughout all of its range or likely to become in danger of extinction in the foreseeable future due to the inadequacy of existing regulatory mechanisms.

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

Potential threats to *Sclerocactus brevispinus* from drought are well documented (USFWS 1990, p. 11; Specht 2005; Heil 2005). In addition to plant mortality due to lack of precipitation, drought causes streams to dry up, thereby removing additional moisture from the environment. In addition, noxious weeds are often able to out-compete native species under drought conditions. Many dead *S. brevispinus* individuals were observed in the Uinta Basin after the severe drought of 1976 to 1977 (USFWS 1990, p. 11). The specific effects of climate change on *S. brevispinus* are unknown, but climate changes that lead to longer or more frequent drought in the future could potentially affect the species.

*Sclerocactus brevispinus* exists in and adjacent to areas that receive pesticide treatments to remove undesirable species, such as noxious weeds and insect pests (USFWS 1990, pp. 10–11). Individual cactus are likely directly affected by use of herbicides, and indirectly by pesticides that affect pollinators (USFWS 1990, pp. 10–11). However, specifics of the species' pollination biology are currently unquantified.

The inherent vulnerability of *Sclerocactus brevispinus* due to its small population size is a concern (Ellestrand and Ellam 1993, p. 228). However, no information exists to indicate that the species' range and population numbers have been significantly larger than they are currently, except for recent documented losses due to oil and gas development and illegal collection. The species' small population size, in combination with habitat fragmentation and other threat factors discussed herein, may be affecting reproductive success.

**Conclusion for Factor E**

Although several other natural or manmade factors—including drought, herbicide and pesticide application, and small population size—may affect the continued existence of *Sclerocactus brevispinus,* we cannot conclude that any one of these factors alone currently puts the species in danger of extinction throughout all or a significant portion of its range, or makes it likely to become in danger of extinction in the foreseeable future.

**Finding**

We have carefully assessed the best scientific and commercial information available regarding threats to *Sclerocactus brevispinus* (Pariette cactus). We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment period following the publication of our 90-day petition finding. This 12-month finding reflects and incorporates information that we received during the public comment period or that we obtained through consultation, literature research, and field visits. On the basis of this review, we find that reclassifying *S. brevispinus* as endangered is warranted, due to threats associated with habitat loss and degradation due largely to energy development (Factor A), unauthorized collection (Factor B), and the inadequacy of existing regulatory mechanisms (Factor D). However, reclassifying *S. brevispinus* as endangered is precluded at this time by pending proposals for other species with higher listing priorities based on taxonomic uniqueness (i.e., the only species described for the genus), or other species that are not currently listed (see discussion under Preclusion and Expeditious Progress).

We have determined that the magnitude of threats affecting *Sclerocactus brevispinus* to be ''high,'' because there is a single population and 72 percent of its habitat is affected by oil and gas development. The species cannot tolerate the cumulative effects from existing and proposed energy projects, especially due to the extent of roads within *S. brevispinus* habitat. We have also determined that the immediacy of threats is ''imminent,'' because the species'' habitat is already being impacted by oil and gas developments, and the remaining area is currently being proposed for development. Therefore, we assign a listing priority number of 2 to this species.

**Emergency Listing**

We reviewed the available information to determine if existing and foreseeable threats to *Sclerocactus brevispinus* are of sufficient extent and magnitude to require emergency listing as threatened or endangered. We have determined that an emergency listing is not warranted for this species at this time, because it is currently treated as a threatened species as part of the *S. glaucus* (Uinta Basin hookless cactus) complex. It receives protection under the Act through sections 4, 7, and 9,

which provide for recovery actions, and provide some protection from habitat disturbance through interagency consultation and from illegal collection and trade.

**Critical Habitat**

We considered the need to designate critical habitat for this species, and have found that designating critical habitat for commercially-exploited species, such as rare cacti, is not prudent. Designating critical habitat requires that we identify specific and narrowly delineated geographical areas containing populations, which would make the species more vulnerable to increased unauthorized and illegal collection. There is a long and clear record that *Sclerocactus brevispinus* is not only a highly desirable species for collectors, but that significant numbers have been collected illegally. Designating critical habitat for this species would exacerbate this ongoing threat. Therefore, in accordance with the Act and its implementing regulations, we have determined that the designation of critical habitat for *S. brevispinus* is not prudent for the above mentioned reasons and the potential increased degree of threat to this species that may result from such designation.

**Significant Portion of the Range**

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. Because this 12-month finding to list the species as threatened or endangered throughout its entire range is warranted but precluded, we do not need to perform a ''significant portion of the range'' analysis for the species at this time. Due to the restricted nature of *Sclerocactus brevispinus'* range, we assessed its entire known range. The species is restricted to one population of an estimated 8,000 individuals, distributed across a relatively small area that is 16 km (10 mi) long by 8 km (5 mi) wide. Threats to the species' survival are similar across its range, with energy development occurring across virtually all of the species' range. Because of its relatively restricted population distribution, the threats described above, and the uniformity of threats across its range, we have determined that *S. brevispinus* should be listed as threatened or endangered throughout its entire range.

**Preclusion and Expeditious Progress**

Preclusion is a function of the listing priority of a species in relation to the resources available and competing demands for them. In any given Fiscal Year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; resubmitted petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to, gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by their complexity, i.e., more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for a species with a restricted range and involving a relatively uncomplicated analysis, to $305,000 for a species that is wide-ranging and involved a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the Act, or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002, and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program. ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002, and each year since then, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat. Consequently, none of the critical habitat subcap funds have been available for other listing activities.

Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted but precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.'' In FY 2007, ''expeditious progress'' is the amount that could be achieved with $5,193,000, which is the Listing Program appropriation that is not within the critical habitat subcap.

Our process is to make determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first, and to allocate our listing budget on a nationwide basis. However, through court orders and court-approved settlements, Federal district courts have

mandated that we must complete certain listing activities for specified species, and have established the schedules for completion of the activities. The species involved in these court-mandated listing activities are not always the ones that we have identified as being most in need of listing. A large majority of the $5,193,000 appropriation available in FY 2007 for new listings of species is being used for court-mandated listing activities; by ordering or sanctioning these actions, the courts determined that they were the highest priority actions to be undertaken with available funding. Copies of the court orders and settlement agreements referred to below are available from the Service and are part of our administrative record.

The FY 2007 appropriation of $5,193,000 for listing activities, not related to critical habitat designations for species that are already listed, is fully allocated to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related and administrative- and program-management functions; and a few high-priority listing actions. The allocations for each specific listing action are included in the Service's FY 2007 Allocation Table. Although more funds are available in FY 2007 than in previous years for work on listing actions that were not the subject of court orders or court-approved settlement agreements, limited FY 2007 funds are available for work on proposed listing determinations for the following high-priority candidate species: Two Oahu plants (*Doryopteris takeuchii, Melicope hiiakae*), seven Kauai plants (*Chamaesyce eleanoriae, Charpentiera densiflora, Melicope degeneri, Myrsine mezii, Pritchardia hardyi, Psychotria grandiflora, Schiedea attenuata*), and four Hawaiian damselflies (*Megalagrion nesiotes, Megalagrion leptodemas, Megalagrion oceanicum, Megalagrion pacificum*). These species have all been assigned a listing priority number (LPN) of 2.

Our decision that a proposed rule to reclassify *Sclerocactus brevispinus* as endangered is warranted but precluded includes consideration of its current listed status as threatened. One of the primary reasons that reclassifying *Sclerocactus brevispinus* as endangered is a lower priority is that it is currently listed as threatened under the Act, and therefore already receives certain protections. The Service promulgated regulations extending take prohibitions for endangered species under section 9 to threatened species (50 CFR 17.31). Protections included under section 7(a)(2) of the Act specify that Federal agencies must ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

We consider the priority for changing the status of *Sclerocactus brevispinus* from threatened to endangered to be lower than for candidate species in need of protection under the Act. In accordance with guidance we published on September 21, 1983, we assign a LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate a LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the listing priority number, the higher the listing priority, i.e., a species with an LPN of 1 would have the highest listing priority. We currently have more than 120 species with an LPN of 2 (see Table 1 of the September 12, 2006, Notice of Review; 71 FR 53756). For the next 2 years, we have funded proposed listings for several species with an LPN of 2. We consider *Sclerocactus brevispinus* to be precluded by these high priority candidate species.

A determination that listing, or changing the status from threatened to endangered, is warranted but precluded also must demonstrate that expeditious progress is being made to add qualified species to, and remove qualified species from, the Lists. Our expeditious progress made in the FY 2007 Listing Program, up to the date of this 12-month finding, included preparing and publishing the following:

FY 2007 COMPLETED LISTING ACTIONS AS OF 06/06/2007

| Publication date | Title/species | Actions | Federal Register pages |
|---|---|---|---|
| 10/11/2006 ..... | Withdrawal of the Proposed Rule to List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered. | Final withdrawal, Threats eliminated. | 71 FR 59700–59711. |
| 10/11/2006 ..... | Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*). | Notice of 12-month petition finding, Not warranted. | 71 FR 59711–59714. |
| 11/14/2006 ..... | 12-Month Finding on a Petition to List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered. | Notice of 12-month petition finding, Not warranted. | 71 FR 66292–66298. |
| 11/14/2006 ..... | 90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf of Maine Distinct Population Segment. | Notice of 90-day petition finding, Substantial. | 71 FR 66298–66301. |
| 11/21/2006 ..... | 90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 71 FR 67318–67325. |
| 12/05/2006 ..... | 90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 71 FR 70483–70492. |
| 12/06/2006 ..... | 12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat. | Notice of 12-month petition finding, Not warranted. | 71 FR 70717–70733. |
| 12/6/2006 ..... | 90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment. | Notice of 90-day petition finding, Not substantial. | 71 FR 70715–70717. |
| 12/14/2006 ..... | 90-Day Finding on a Petition to Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered. | Notice of 5-year Review Initiation. Notice of 90-day petition finding, Not substantial. Notice of 90-day petition finding, Substantial. | 71 FR 75215–75220. |

FY 2007 COMPLETED LISTING ACTIONS AS OF 06/06/2007—Continued

| Publication date | Title/species | Actions | Federal Register pages |
|---|---|---|---|
| 2/19/2006 ..... | Withdrawal of Proposed Rule to List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat. | Notice of withdrawal, More abundant than believed, or diminished threats. | 71 FR 76023–76035. |
| 12/19/2006 ..... | 90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 71 FR 76057–76079. |
| 01/09/2007 ..... | 12-Month Petition Finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule. | Notice of 12-month petition finding, Warranted.<br>Proposed Listing, Threatened .... | 72 FR 1063–1099. |
| 01/10/2007 ..... | Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx. | Clarification of findings ..... | 72 FR 1186–1189. |
| 01/12/2007 ..... | Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass). | Notice of withdrawal, More abundant than believed, or diminished threats. | 72 FR 1621–1644. |
| 02/02/2007 ..... | 12-Month Finding on a Petition To List the American Eel as Threatened or Endangered. | Notice of 12-month petition finding, Not warranted. | 72 FR 4967–4997. |
| 02/08/2007 ..... | Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife. | Final Deferred date .....<br>Final Delisting, Recovered .....<br>Final Listing, Endangered ..... | 72 FR 6051–6103. |
| 02/13/2007 ..... | 90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 6699–6703. |
| 02/13/2007 ..... | 90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 6703–6707. |
| 02/14/2007 ..... | 90-Day Finding on A Petition to List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered. | Notice 90-day petition finding, Not substantial. | 72 FR 6998–7005. |
| 02/21/2007 ..... | 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review. | Notice of 5-year Review Initiation.<br>Notice of 90-day petition finding, Not substantial. | 72 FR 7843–7852. |
| 03/08/2007 ..... | 90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered. | Notice of 90-day petition finding, Not substantial. | 72 FR 10477–10480. |
| 03/29/2007 ..... | Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List as Endangered the Yellowstone Distinct Population Segment of Grizzly Bears. | Final delisting, Recovered Final listing, Threatened. | 72 FR 14865–14938. |
| 03/29/2007 ..... | 90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered. | Notice 90-day petition finding, Substantial. | 72 FR 14750–14759. |
| 04/24/2007 ..... | Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling. | Notice of 12-month petition finding, Not warranted. | 72 FR 20305–20314. |
| 05/02/2007 ..... | 12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat. | Notice of 12-month petition finding, Not warranted. | 72 FR 24253–24263. |
| 05/30/2007 ..... | 90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 29933–29941. |
| 06/05/2007 ..... | Initiation of 12-Month Status Review and Request for Information on the Wolverine. | Initiation of status review ..... | 72 FR 31048–31049. |
| 06/06/2007 ..... | 90-Day Finding on a Petition to List the Yellow-billed Loon as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 31256–31264. |
| 06/13/2007 ..... | 12-Month Finding on a Petition to List the Colorado River Cutthroat Trout as Threatened or Endangered. | Notice of 12-month petition finding, Not warranted. | 72 FR 32589–32605. |
| 06/25/2007 ..... | Amended 12-Month Finding on a Petition to List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-Legged Frog as Threatened or Endangered. | Notice of amended 12-month petition finding, Warranted but precluded. | 72 FR 34657–34661. |
| 07/05/2007 ..... | 12-Month Finding on a Petition to List the Casey's June Beetle as Endangered with Critical Habitat. | Notice of 12-month petition finding, Warranted but precluded. | 72 FR 36635–36646. |
| 08/15/2007 ..... | 90-Day Finding on a Petition to List the Yellowstone National Bison Herd as Endangered. | Notice of 90-day petition finding, Not-substantial. | 72 FR 45717–45722. |
| 08/16/2007 ..... | 90-Day Finding on a Petition to List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered. | Notice of 90-day petition finding, Substantial. | 72 FR 46023–46030. |

Our expeditious progress also includes work on listing actions (listed below) for 40 species that have not been completed as of the date we made this 12-month finding for *Sclerocactus brevispinus.* We are working on the actions in the top section of the table under a deadline set by a court, and on

all other actions to meet statutory timelines (required under the Act).

LISTING ACTIONS FUNDED BUT NOT YET COMPLETED IN FY 2007

| Species | Action |
|---|---|
| **Actions Subject to Court Order/Settlement Agreement** | |
| Wolverine | 12-month petition finding (remand). |
| Western sage grouse | 90-day petition finding (remand). |
| Queen Charlotte goshawk | Final listing determination. |
| Rio Grande cutthroat trout | 12-month petition finding (remand). |
| **Statutory Listing Actions** | |
| Polar bear | Final listing determination. |
| Ozark chinquapin | 90-day petition finding. |
| Kokanee | 90-day petition finding. |
| Utah prairie dog | 90-day petition finding. |
| Black-footed albatross | 90-day petition finding. |
| Tucson shovel-nosed snake | 90-day petition finding. |
| Gopher tortoise—Florida population | 90-day petition finding. |
| Sacramento valley tiger beetle | 90-day petition finding. |
| Eagle lake trout | 90-day petition finding. |
| Smooth billed ani | 90-day petition finding. |
| Mojave ground squirrel | 90-day petition finding. |
| Gopher Tortoise—eastern population | 90-day petition finding. |
| Bay Springs salamander | 90-day petition finding. |
| Tehachapi slender salamander | 90-day petition finding. |
| Coaster brook trout | 90-day petition finding. |
| Mojave fringe-toed lizard | 90-day petition finding. |
| Evening primrose | 90-day petition finding. |
| Palm Springs pocket mouse | 90-day petition finding. |
| Northern leopard frog | 90-day petition finding. |
| Mountain whitefish—Big Lost River population | 90-day petition finding. |
| Giant Palouse earthworm | 90-day petition finding. |
| Shrike, Island loggerhead | 90-day petition finding. |
| Cactus ferruginous pygmy owl | 90-day petition finding. |
| **High Priority** | |
| 2 Oahu plants | Proposed listing. |
| 7 Kauai plants | Proposed listing. |
| 4 Hawaiian damselflies | Proposed listing. |

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant laws and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

## Conclusion

We will list *Sclerocactus brevispinus* as threatened or endangered when funding is available for discretionary listing actions. We intend any listing action for *Sclerocactus brevispinus* to be as accurate as possible. Therefore, we will continue to accept additional information and comments on the status of and threats to this species from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If an emergency situation develops with this species that warrants an emergency listing, we will act immediately to provide additional protection.

## References Cited

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

## Author

The primary author of this document is Larry England of the Utah Field Office (see **ADDRESSES**).

## List of Subjects in 50 CFR Part 17

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

## Proposed Regulation Promulgation of Taxonomic Change

## Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

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 revising the entry for ''*Sclerocactus glaucus*'' and by adding entries for ''*Sclerocactus brevispinus*'' and ''*Sclerocactus wetlandicus,*'' in alphabetical order under FLOWERING PLANTS, to the List of Threatened and Endangered 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 | | | | | | | |
| * | * | * | * | * | * | * | |
| *Sclerocactus brevispinus.* | Pariette cactus ..... | U.S.A. (UT) ..... | Cactaceae ..... | T | 59 | NA | NA |
| *Sclerocactus glaucus* | Colorado hookless cactus. | U.S.A. (CO) ..... | Cactaceae ..... | T | 59 | NA | NA |
| * | * | * | * | * | * | * | |
| *Sclerocactus wetlandicus.* | Uinta Basin hookless cactus. | U.S.A. (UT) ..... | Cactaceae ..... | T | 59 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: August 31, 2007.

**Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

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