CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this *NPRM,* contact Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov.* If you would like to obtain or view a copy of this revised information collection, OMB Control Number 3060–0980, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION: In FR Doc. 05–9290 on page 24350 published in the **Federal Register** on Monday, May 9, 2005 make the following corrections: On page 24350 in the second column, in the **DATES** section, the first sentence is corrected to read as follows: Comments for this proceeding are due on or before June 6, 2005; reply comments are due on or before June 20, 2005.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10227 Filed 5–19–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Pygmy Rabbit as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the pygmy rabbit (*Brachylagus idahoensis*) as threatened or endangered under the Endangered Species Act of 1973, as amended. We find the petition does not provide substantial information indicating that listing the pygmy rabbit may be warranted. Therefore, we will not be initiating a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of the species or threats to it.

DATES: The finding announced in this document was made May 20, 2005. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502. Submit new information, materials, comments, or questions concerning this species to us at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) (telephone 775/861–6300; facsimile 775/861–6301).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated under our internal candidate assessment process.

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

On April 21, 2003, we received a formal petition, dated April 1, 2003, from the Committee for the High Desert, Western Watersheds Project, American Lands Alliance, Oregon Natural Desert Association, Biodiversity Conservation Alliance, Center for Native Ecosystems, and Mr. Craig Criddle, requesting that the pygmy rabbit (*Brachylagus idahoensis*) found in California, Idaho, Montana, Nevada, Oregon, Utah, and Wyoming be listed as threatened or endangered in accordance with section 4 of the Act.

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2003. On May 3, 2004, we received a 60-day notice of intent to sue, and on September 1, 2004, we received a complaint regarding our failure to carry out the 90-day and 12-month findings on the status of the pygmy rabbit. On March 2, 2005, we reached an agreement with the plaintiffs to submit to the **Federal Register** a completed 90-day finding by May 16, 2005, and to complete, if applicable, a 12-month finding by February 15, 2006 (*Western Watersheds Project et al.* v. *U.S. Fish and Wildlife Service* (CV–04–0440–N–BLW)).

This finding does not address our prior listing of the Columbia Basin distinct population segment (DPS) of the pygmy rabbit. On November 30, 2001, we published an emergency listing and concurrent proposed rule to list this DPS of the pygmy rabbit as endangered (66 FR 59734 and 66 FR 59769, respectively). We listed the Columbia Basin DPS of the pygmy rabbit as endangered in our final rule dated March 5, 2003 (68 FR 10388).

Species Information

The pygmy rabbit is a member of the family Leporidae, which includes rabbits and hares. This species has been placed in various genera since its type specimen was described in 1891 by Merriam (1891), who classified the ''Idaho pygmy rabbit'' as *Lepus idahoensis*. Currently, the pygmy rabbit is generally placed within the monotypic genus *Brachylagus* and classified as *B. idahoensis* (Green and Flinders 1980a; WDFW 1995); this is the taxonomy accepted by the Service. The analysis of blood proteins (Johnson 1968, cited in Washington Department of Fish and Wildlife (WDFW) 1995) suggests that the pygmy rabbit differs greatly from species within both the *Lepus* or *Sylvilagus* genera. Halanych and Robinson (1997) supported the

separate generic status as *Brachylagus* for the pygmy rabbit based on phylogenetic position and sequence divergence values. The pygmy rabbit has no recognized subspecies (Grinnell *et al.* 1930; Davis 1939; Larrison 1967; Green and Flinders 1980a; Janson 2002).

The pygmy rabbit is the smallest North American rabbit. Adult weights range from 0.54 to 1.2 pounds (245 to 553 grams); adult lengths range from 9.1 to 12.1 inches (in) (23.1 to 30.7 centimeters) (Dice 1926; Grinnell *et al.* 1930; Bailey 1936; Orr 1940; Janson 1946; Durrant 1952; Ingles 1965; Bradfield 1974; Holt 1975; Campbell *et al.* 1982). Adult females are generally larger than adult males. The species can be distinguished from other rabbits by its small size, gray color, short rounded ears, small hind legs, and the absence of white on the tail (66 FR 59734).

Pygmy rabbits typically occur in areas of tall, dense sagebrush (*Artemisia* spp.) cover, and are highly dependent on sagebrush to provide both food and shelter throughout the year (Dice 1926, Grinnell *et al.* 1930; Orr 1940; Green and Flinders 1980a, b; Janson 1946; Wilde 1978; Katzner *et al.* 1997). The winter diet of pygmy rabbits is comprised of up to 99 percent sagebrush (Wilde 1978; Green and Flinders 1980b), which is unique among rabbits (White *et al.* 1982). During spring and summer in Idaho, their diet consists of roughly 51 percent sagebrush, 39 percent grasses (particularly native bunch-grasses, such as *Agropyron* spp. and *Poa* spp.), and 10 percent forbs (Green and Flinders 1980b). There is evidence that pygmy rabbits preferentially select native grasses as forage over other available foods during this period. In addition, total grass cover relative to forbs and shrubs may be reduced within the immediate areas occupied by pygmy rabbits as a result of its use during spring and summer (Green and Flinders 1980b). The specific diets of pygmy rabbit likely vary by region (68 FR 10388).

The pygmy rabbit is one of only two rabbits in North America that digs its own burrows (Nelson 1909; Bailey 1936; Janson 1946; Bradfield 1974; Wilde 1978). Pygmy rabbit burrows are typically found in relatively deep, loose soils of wind-borne or water-borne (*e.g.*, alluvial fan) origin. Pygmy rabbits, especially juveniles, likely use their burrows as protection from predators and inclement weather (Bailey 1936; Bradfield 1974). The burrows frequently have multiple entrances, some of which are concealed at the base of larger sagebrush plants (Dice 1926). Burrows are relatively simple and shallow, often no more than 6.6 feet (ft) (2 meters (m)) in length and usually less than 3.3 ft (1 m) deep with no distinct chambers (Bailey 1936; Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Burrows are typically dug into gentle slopes or mound/inter-mound areas of more level or dissected topography (Wilde 1978; Gahr 1993). In general, the number of active burrows in a colony increases over the summer as the number of juveniles increases. However, the number of active burrows may not be directly related to the number of individuals in a given area because some individual pygmy rabbits appear to maintain multiple burrows, while some individual burrows are used by multiple individuals (Janson 1946; Gahr 1993; Heady 1998).

Pygmy rabbits occasionally make use of burrows abandoned by other species, such as the yellow-bellied marmot (*Marmota flaviventris*) or badger (*Taxida taxus*) (Borell and Ellis 1934; Bradfield 1974; Wilde 1978; Green and Flinders 1980a). As a result, they may occur in areas of shallower or more compact soils that support sufficient shrub cover (Bradfield 1974). Natural cavities (such as holes in volcanic rock), rock piles, stone walls and around abandoned buildings may also be used (Janson 1946). During winter pygmy rabbits make extensive use of snow burrows, possibly as access to sagebrush forage (Bradfield 1974; Katzner and Parker 1997), as travel corridors among their underground burrows, for protection from predators, and/or as thermal cover (Katzner and Parker 1997).

Pygmy rabbits begin breeding their second year (Wilde 1978; Fisher 1979). In some parts of the species' range, females may have up to three litters per year and average six young per litter (Davis 1939; Janson 1946; Green 1978; Wilde 1978). Breeding appears to be highly synchronous in a given area and juveniles are often identifiable to cohorts (Wilde 1978). No evidence of nests, nesting material, or lactating females with young has been found in burrows (Janson 1946; Bradfield 1974; Gahr 1993). Individual juveniles have been found under clumps of sagebrush, although it is not known precisely where the young are born in the wild, nor is it known if they may be routinely hidden at the bases of scattered shrubs or within burrows (Wilde 1978). Current information on captive pygmy rabbits indicates females may excavate specialized natal burrows for their litters in the vicinity of their regular burrows (68 FR 10388).

Pygmy rabbits may be active at any time of the day or night, and appear to be most active during mid-morning (Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Pygmy rabbits maintain a low stance, have a deliberate gait, and are relatively slow and vulnerable in more open areas. They can evade predators by maneuvering through the dense shrub cover of their preferred habitats, often along established trails, or by escaping among their burrows (Bailey 1936; Severaid 1950; Bradfield 1974).

Pygmy rabbits tend to have relatively small home ranges during winter, remaining within 98 ft (30 m) of their burrows (Janson 1946). Bradfield (1974), Katzner and Parker (1997), and Flath and Rauscher (1995) found pygmy rabbit tracks in snow indicating movements of 262 to 328 ft (80 to 100 m) or more from their burrows. They have larger home ranges during spring and summer (Janson 1946; Gahr 1993). During the breeding season in Washington, females tend to make relatively short movements within a small core area and have home ranges covering roughly 6.7 acres (ac) (2.7 hectares (ha)). Males tend to make longer movements, traveling among a number of females, resulting in home ranges covering roughly 49.9 ac (20.2 ha) (Gahr 1993). These home range estimates in Washington are considerably larger than for pygmy rabbit populations in other areas of their historic range (Katzner and Parker 1997). Pygmy rabbits are known to travel up to 0.75 mile (mi) (1.2 kilometers (km)) from their burrows (Gahr 1993), and there are a few records of individuals moving up to 2.2 mi (3.5 km) (Green and Flinders 1979; Katzner and Parker 1998).

A wide range of pygmy rabbit population densities has been reported. Janson (1946) reported an estimated pygmy rabbit density of 0.75 to 1.75 per ac (1.9 and 4.3 per ha) in Utah. In another area in Utah, he estimated 3.5 pygmy rabbits per ac (8.6 per ha). Green (1978) reported an estimate of 18.2 pygmy rabbits per ac (45 per ha) in Idaho. Gahr (1993) estimated 0.09 pygmy rabbits per ac (0.22 per ha) in a grazed area and 0.11 per ac (0.27 per ha) in an ungrazed area in Sagebrush Flat, Washington. In Montana, Rauscher (1997) estimated pygmy rabbit density as 1.2 per ac (3.0 per ha).

The annual mortality rate of adult pygmy rabbits may be as high as 88 percent, and more than 50 percent of juveniles can die within roughly 5 weeks of their emergence (Wilde 1978). However, the mortality rates of adult and juvenile pygmy rabbits can vary considerably between years, and even between juvenile cohorts within years (Wilde 1978). Predation is the main cause of pygmy rabbit mortality (Green

1979). Predators of the pygmy rabbit include badgers, long-tailed weasels (*Mustela frenata*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), great horned owls (*Bubo virginianus*), long-eared owls (*Asio otus*), ferruginous hawks (*Buteo regalis*), northern harriers (*Circus cyaneus*), and common ravens (*Corvus corax*) (Borell and Ellis 1934; Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978; Johnson and Hanson 1979; WDFW 1995).

Population cycles are not known in pygmy rabbits, although local, relatively rapid population declines have been noted in some States (Janson 1946; Bradfield 1974; Weiss and Verts 1984). After initial declines, pygmy rabbit populations may not have the same capacity for rapid increases in numbers in response to favorable environmental conditions as compared to other rabbit species. This may be due to their close association with specific components of sagebrush ecosystems, and the relatively limited availability of their preferred habitats (Wilde 1978; Green and Flinders 1980b; WDFW 1995). No study has documented rapid increases in pygmy rabbit numbers in response to environmental conditions (Gabler 1997).

The pygmy rabbit's current geographic range, excluding the Columbia Basin DPS, includes most of the Great Basin and some of the adjacent intermountain areas of the western United States (Green and Flinders 1980a). The northern boundary extends into southeastern Oregon and southern Idaho. The eastern boundary extends into southwestern Montana and southwestern Wyoming. The southeastern boundary extends into southwestern Utah. Central Nevada and eastern California provide the southern and western boundaries (Merriam 1891; Nelson 1909; Grinnell *et al.* 1930; Bailey 1936; Janson 1946; Campbell *et al.* 1982; WDFW 1995).

Literature indicates that pygmy rabbits were never evenly distributed across their range. Rather, they are found in areas within their broader distribution where sagebrush cover is sufficiently tall and dense, and where soils are sufficiently deep and loose to allow burrowing (Bailey 1936; Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995). In the past, dense vegetation along permanent and intermittent stream corridors, alluvial fans, and sagebrush plains probably provided travel corridors and dispersal habitat for pygmy rabbits between appropriate use areas (Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995). Since European settlement of the western United States, dense vegetation associated with human activities (*e.g.*, fence rows, roadway shoulders, crop margins, abandoned fields) may have also acted as avenues of dispersal between local populations of pygmy rabbits (Green and Flinders 1980a; Pritchett *et al.* 1987).

Previous Federal Action

We added the pygmy rabbit to our list of candidate species on November 21, 1991, as a category 2 candidate species (56 FR 58804). A category 2 candidate species was a species for which we had information indicating that a proposal to list it as threatened or endangered under the Act may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply ''candidates'' for listing purposes. The pygmy rabbit was removed from the candidate list at that time. This species has no Federal regulatory status.

As stated above, this finding does not address our prior listing with regard to the Columbia Basin DPS of the pygmy rabbit that was listed as endangered on March 5, 2003 (68 FR 10388).

Threats Analysis

Pursuant to section (4) of the Act, we may list a species, subspecies, or DPS of vertebrate taxa on the basis of any of the following five factors: (A) present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the pygmy rabbit presented in the petition and other information may pose a concern with respect to its survival. The Act identifies the five factors to be considered, either singly or in combination, to determine whether a species may be threatened or endangered. Our evaluation of these threats, based on information provided in the petition and available in our files, is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Geographic Range

The petition estimates that the historic range of the pygmy rabbit encompassed 100 million ac (40 million ha) or more of sagebrush habitat in the Great Basin and Intermountain West, and that populations may currently exist in portions of 7 to 8 million ac (2.8 to 3.2 million ha) (Committee for the High Desert *et al.* 2003). It appears these estimates were determined by visually comparing the historic geographic range map presented in previous Service **Federal Register** documents (66 FR 59734, 68 FR 10388), and a current range map presented in White and Bartels (2002). However beyond apparently making a visual comparison of these two maps to reach their conclusion the petitioners did not provide any data to substantiate this supposed reduction in pygmy rabbit range. We are unaware of any estimates from the scientific literature in our files regarding a reduction in range for the species. Therefore, we conclude that this map comparison is not substantial information demonstrating a significant reduction in the range of the pygmy rabbit.

The petition states that there have been rangewide declines in pygmy rabbit populations and provides the following State-by-State information to support this claim.

Idaho. According to the petition, Bradfield (1974) speculated that the pygmy rabbit population was declining in his study area in Bingham County, Idaho, because of the number of abandoned burrows, number of skulls indicating death by predation or other means, and fewer observed rabbits. In her Idaho study area, Gabler (1997) found 101 burrow sites, of which 26 were active. Gabler also revisited Wilde's (1978) three study areas, and found two collapsed burrows with no sign of occupancy, four active burrows that were abandoned 10 months later, and 34 abandoned burrows, respectively. Roberts (2001) covered 583,600 ac (236,175 ha) in three main river drainages during his 1997–98 survey in Idaho and found pygmy rabbits widely scattered in all three of these areas. Occupied habitat areas were interrupted by cultivation and burn areas. He classified habitat value in his study area as being high (2,000 ac (809 ha)), medium (365,200 ac (147,792 ha)), low (175,400 ac (70,982 ha)), and nonuse (41,000 ac (16,592 ha)) for pygmy rabbits. All of the high-value habitat was located in one of the drainages.

As included in the petition, Austin (2002) reported that all nine of his study areas in Idaho showed past presence of pygmy rabbit use. Recent or current signs of occupancy were found at five individual sites within three of the nine study areas in 2001 and 2002. Austin (2002) states that though it is recognized

that pygmy rabbits occur in widely scattered and/or isolated clumps across the landscape, the large unoccupied areas of lands historically used by pygmy rabbits within research areas of Idaho appear to indicate a decline in populations and numbers. He reported some level of current land use and disturbance in all of his study areas from the following: grazing, fire, crested wheatgrass (*Agropyron cristatum*) seedings, weed infestation, residential construction, communication sites, agriculture and pasture conversion, fragmentation, gas pipelines, water impoundments, off-highway-vehicle (OHV)/off-road vehicle (ORV) use, trails, hunting, gravel pit, utility lines, dumping activities, and other human influences.

The petition states that White and Bartels (2002) attempted to check 31 historic locations for pygmy rabbits in Cassia, Minidoka, Blaine, Power, and Oneida Counties, Idaho. Eighteen sites were too vague to relocate, eight were disturbed due to agriculture, urban development, wildfire and reseeding efforts, and five were potentially suitable habitat. No active pygmy rabbit burrows were found on any of the 13 sites visited. Roberts (2003) investigated 42,000 square mi (108,800 square km) of southern Idaho, including lands drained by the Snake River (southern Idaho) and Bear River (southeastern Idaho). He found only nine currently active pygmy rabbit burrow systems. Roberts (2003) states that the pygmy rabbit in Idaho are slowly declining based solely on the annual loss of habitat.

Montana. The petition states that in Montana, Rauscher (1997) reported that several previously occupied sites west of Dillon (near Dutchman, Montana; Frying Pan Basin) were now vacant. He stated that there was no evidence to indicate a significant range decrease had occurred. Janson (2002) wrote that the historical range in Montana continues to support pygmy rabbits, with some exceptions based on limited observations in Beaverhead County, Montana, in 2001.

Oregon. The petitioners cite Olterman and Verts (1972) as stating that pygmy rabbits appeared to occur over the same area in Oregon as they did in past collections. However, Weiss and Verts (1984) found that of 211 sites suspected of supporting pygmy rabbits in eastern Oregon based on records, aerial photographs, soil maps, and interviews, only 51 sites showed evidence of occupancy in 1982. In 1983, only 5 of 15 sites showed recent pygmy rabbit activity. Of 51 burrows found at 5 sites in 1982, 19 burrows were found open in 1983 and only 8 had fresh signs of occupancy (Weiss and Verts 1984). Bradfield (1974) also spent time at Ironside, in Malheur County, Oregon. He found evidence of previous pygmy rabbit use, but no fresh signs of use or rabbits, supporting his belief that they were in decline on a larger geographic scale. Bartels (2003) visited 54 previously known pygmy rabbit sites in 2000 and 2001 in Harney, Malheur, Lake, and Deschutes Counties, Oregon. Results from these visits were: Pygmy rabbit occupancy at 12 sites, no occupancy at 34 sites, and undetermined presence at 8 sites (Bartels 2003). Impacts to unoccupied sites included fire, grazing, flooding, agriculture, development, and seeding. Of the 69,945 ac (28,306 ha) surveyed, 57,485 ac (23,263 ha) were classified as unoccupied. A total of 9,589 ac (3,881 ha) were classified as occupied and 2,871 ac (1,162 ha) were classified as undetermined presence (Bartels 2003). Some of these sites included those visited by Weiss and Verts (1984).

Utah. Janson (1946) reported that in the winter of 1946, pygmy rabbits appeared more scarce than in 1941 based on two study areas in Utah (near Cedar City, Iron County; near Tremonton, Box Elder County). Areas where he considered pygmy rabbits common in Utah in 1941 were found to have no pygmy rabbits occupying them in 1946. Based on the two previous study areas in Utah between 1938 and 1946, and limited observations in Utah (near Clarkston, Cache County; near Snowville and Grouse Creek, Box Elder County) in 2001, Janson (2002) wrote that recent information indicated pygmy rabbit populations had declined in some areas where they were previously more abundant, mostly as a result of human actions. He states that residential and commercial development, farming, and range improvements for grazing, especially near Cedar City, had impacted the sagebrush habitat. He found no recent sign of occupancy near Cedar City, Utah. Pritchett *et al.* (1987) were unable to locate a population studied by Holt (1975) near Otter Creek Reservoir.

Other States. The petition does not provide specific information on population declines for pygmy rabbits in California, Nevada, or Wyoming.

Evaluation of Information in the Petition

The data and information presented in the petition has limited use in determining rangewide distribution and abundance of the species. Little detail is available from records prior to 1950. These records may not accurately reflect the species' historic distribution because they were not collected in a systematic, comprehensive manner with the goal of determining species distribution and abundance. They represent a collection of sightings documented through various methods by different individuals over time. Recent surveys (post-1950) have not been comprehensive in any State within the pygmy rabbit's range. Consistent methodologies were not used for those previous surveys. Definitions for historic sites versus previously known sites, methods for determining occupancy, and definitions that would clearly distinguish occupied from unoccupied areas, unoccupied suitable habitat, and the extent of occupied or formerly occupied population sites, are inconsistent.

Surveys identified in the petition have reported occupancy at different landscape scales, ranging from the individual burrow to the broader population level. In many cases, survey areas were not clearly identified, and there is a lack of information on the distances between adjacent populations, and therefore, on what defines a population. The petition does not provide substantial scientific information to document the historic or current range of pygmy rabbits within sagebrush ecosystems. Although limited data are provided on local population declines, particularly in Idaho, the petition does not present substantial scientific information that there is a downward trend in geographic range or abundance to a level that threatens the survival of the pygmy rabbit across all or a significant portion of its range. Nor does the petition present substantial information to correlate the changes in geographic range and abundance of the species to the actual threats to the survival of the species.

The Service has worked with the States, other Federal agencies, and research institutions involved with pygmy rabbit work to create a rangewide communication network to coordinate information and activities relating to this species. We are aware of continuing survey efforts to improve the current knowledge of pygmy rabbit distribution across its range, as well as the development of draft survey guidelines (Ulmschneider 2004). However, we are unaware of any accurate, comprehensive inventories of currently occupied pygmy rabbit habitat for any State within the range of the species. Such information is critical to any analysis of range and/or population reductions. Consequently, we conclude that the petitioners do not present substantial information indicating that a reduction in the species' numbers or range warrants a status review.

Habitat

The petition claims the pygmy rabbit has been subject to population losses and declines due to various land management practices such as conversion of sagebrush habitat to agricultural purposes, sagebrush eradication to increase forage for livestock, livestock grazing, weed invasions, prescribed burns and wildfires, urban and rural development, mining and energy exploration and development, power lines, fences and roads, military facilities, and recreational activities. The petition states that sagebrush once covered approximately 270 million ac (109 million ha) in western North America. Today, because of various land uses, about 150 million ac (61 million ha) of sagebrush habitat remain (American Lands Alliance 2001). However, pygmy rabbits do not occur in Arizona, Colorado, North or South Dakota, or New Mexico, and only in the southwest portions of Montana and Wyoming. So the amount of suitable sagebrush habitat for pygmy rabbits is considerably less than the 150 million ac (61 million ha) of sagebrush currently distributed across western North America. The petitioners claim that pygmy rabbit populations may occur over 7 to 8 million acres within the sagebrush ecosystem but do not present substantial information to substantiate this estimate, nor are we aware of any such estimates in the scientific literature.

Agriculture

The petition cites the following general information on threats of agriculture to sagebrush habitat. Large-scale conversions of western rangelands to agricultural lands began under the Homestead Acts of the 1800s (Todd and Elmore 1997, cited in Braun 1998). More than 70 percent of the sagebrush shrub-steppe habitat has been converted to agricultural crops in some States (Braun 1998). Across the Interior Columbia Basin of southern Idaho, northern Utah, northern Nevada, eastern Oregon and Washington, about 15 million ac (6 million ha) of shrub-steppe habitat has been converted to agricultural cropland (Quigley and Arbelbide 1997, cited in Committee for the High Desert *et al.* 2003). Development of irrigation projects to support agricultural production also resulted in sagebrush habitat loss (Braun 1998). Reservoirs have been constructed to facilitate these irrigation projects, impacting native shrub-steppe habitat adjacent to rivers, as well as supporting the conversion of more upland shrub-steppe to agriculture. As irrigation techniques have improved, additional land has been irrigated, and more big sagebrush (*Artemisia tridentata*) cleared. Shrub-steppe habitat continues to be converted to dry land and irrigated cropland but at a much lower rate (Braun 1998).

Pritchett *et al.* (1987) reported that a portion of the Sevier River Valley between Kingston and Otter Creek, Utah, containing one of the last large patches of sagebrush, had been plowed. The authors speculated this may have been a dispersal route for pygmy rabbits from Iron County to Wayne County, Utah. Rauscher (1997) thought conversion of sagebrush to agriculture was minimal in southwest Montana because of the large expanses of public land. He documented that the suspected location for one historic record had been converted to irrigated farmland. Williams (1986) indicated that loss of sagebrush habitat in California to agriculture was less of a concern than loss of habitat from overgrazing. Bartels and Hays (2001) indicated that large portions of the pygmy rabbit range in Oregon and Idaho had been converted to agricultural use; they found that burning, plowing, and other undetermined causes continue to result in loss of pygmy rabbit habitat. White and Bartels (2002) believe that the pygmy rabbit historically was impacted by sagebrush removal for agricultural purposes in Idaho; they found that 8 of 13 locatable historic pygmy rabbit sites in Twin Falls and Cassio Counties, Idaho, were disturbed due to agriculture, urban development, wildfire, and seeding efforts. Of the 583,600 ac (236,175 ha) Roberts (1998) inventoried in Idaho for pygmy rabbit occupancy, 122,300 ac (49,493 ha) had been permanently removed due to agriculture conversion.

Evaluation of Information in the Petition

The information in the petition suggests that agricultural production has been responsible for a loss of sagebrush habitat, including some used by pygmy rabbits, particularly in certain areas and in Idaho. However pygmy rabbits are not distributed uniformly across the full range of the sagebrush ecosystem in western North America. In large areas of the sagebrush ecosystem, the pygmy rabbit does not occur at all, and in those areas where it does occur it is patchily distributed (Green and Flinders 1980a; Weiss and Verts 1984). The species only occurs in areas of the sagebrush ecosystem where, at a minimum, the habitat has sufficiently dense sagebrush and deep, loose soils (Green and Flinders 1980a; Weiss and Verts 1984). The petitioners only provide general characterizations of sagebrush habitat loss, or cite specific examples of losses in specific areas, particularly in Idaho and Oregon. However, they do not provide substantial information that clearly documents that the areas where these habitat losses have occurred are also the areas where pygmy rabbits are found. Also, the petition does not present substantial information on the magnitude and the extent of degradation and loss of habitat to agriculture such that we can conclude that the continued existence of the pygmy rabbit throughout all or a significant portion of its range may be threatened.

Conversion of Sagebrush

The petition identifies the conversion of sagebrush by mechanical and chemical methods (herbicide) primarily for rangeland improvement and grazing management as a negative impact to pygmy rabbit habitat, and cites the following information to support this claim. Large expanses of sagebrush have been removed and seeded with nonnative grasses, such as crested wheatgrass, to increase forage production for domestic and wild ungulates. This practice results in the elimination of many native grasses and forbs that were present before the seedings. Olterman and Verts (1972) and Wilde (1978) cautioned that the practice of sagebrush removal from some livestock ranges in Oregon and Idaho, respectively, could be a threat to the pygmy rabbit in the future. They note that land changes should be closely monitored and adequate ''safeguards'' implemented to reduce excessive clearing of large areas.

Roberts (1998) calculated that of the 583,600 ac (236,175 ha) he inventoried for pygmy rabbit occupancy in Idaho, 49,000 ac (19,830 ha) were lost due to sagebrush eradication. Rauscher (1997) reported that sagebrush removal was a ''popular'' rangeland improvement practice in southwestern Montana. Sagebrush in the Coyote Creek area of the Big Sheep Creek basin has been extensively treated, and only one active burrow was located. In lower Badger Gulch, Bureau of Land Management (BLM) lands border private lands. Pygmy rabbits are found on public lands but absent on private lands where sagebrush had been removed.

Evaluation of Information in the Petition

Information in the petition indicates that some pygmy rabbit habitat has been lost to sagebrush eradication for rangeland and grazing management. However, as mentioned under agriculture in the previous section, the pygmy rabbit is not distributed uniformly across the full range of the

sagebrush ecosystem in western North America. It is absent from large areas of the sagebrush ecosystem, and in those areas of the sagebrush ecosystem where it does occur it is patchily distributed (Green and Flinders 1980a; Weiss and Verts 1984), in areas where, at a minimum, there is sufficiently dense sagebrush and deep, loose soils. The petitioners only provide general characterizations of sagebrush habitat loss due to conversion, or cite examples of losses in specific areas. They do not provide substantial information that clearly documents that the areas where these habitat losses have occurred are also the areas where pygmy rabbits are found. Also, the petition does not present substantial information on the magnitude and the extent of loss of habitat due to sagebrush conversion such that we can conclude that the continued existence of the pygmy rabbit throughout all or a significant portion of its range may be threatened.

Livestock Grazing

The petition identifies livestock grazing as an important factor in sagebrush habitat destruction and alteration in pygmy rabbit habitat. The petition mentions not only the direct loss of vegetation, but habitat degradation due to associated facilities or actions such as the construction of fences, wells, water tanks, and pipelines which can concentrate livestock or redistribute livestock and predators; seeding of crested wheatgrass to increase livestock forage; and weed infestations. The petition also claims that grazing disturbs pygmy rabbits, increases their vulnerability to predation, and increases stress during winter or harsh weather periods. In addition, the petition claims trampling of burrows may cause injury or death of pygmy rabbits. The petition cites the following information to support these claims.

The pygmy rabbit likely did not evolve with intensive grazing by large native herbivores such as bison (*Bison bison*), elk (*Cervus canadensis*), pronghorn (*Antilocapra americana*), and mule deer (*Odocoileus hemionus*) (Mack and Thompson 1982, cited in Connelly *et al.* 2000; Belsky and Gelbard 2000). Belsky and Gelbard (2000) and Paige and Ritter (1999) discuss impacts of livestock grazing on the arid west. These impacts can include selective grazing for native species, trampling of plants and soil, damage to soil crusts, reduction of mycorrhizal fungi, increases in soil nitrogen, increases in fire frequency, and contribution to nonnative plant introductions. When the sagebrush-grass vegetation is overgrazed, native perennial grasses can be eliminated, and shrubs, such as big sagebrush, tend to form dense monotypic (single species) stands when the sagebrush-grass vegetation is overgrazed (Blaisdell 1949, cited in Yensen 1982; Tisdale and Hironaka 1981, cited in Paige and Ritter 1999). In addition, the understory becomes sparse with unpalatable perennials (Tisdale and Hironaka 1981, cited in Paige and Ritter 1999), and invasions of annual species like cheatgrass (*Bromus tectorum*) can occur (Gabler 1997; Rauscher 1997).

The magnitude of grazing effects is determined by season, timing, duration, and intensity of the event, in addition to other factors. Overgrazing can break down individual sagebrush plants, which opens up interstitial (small, narrow) spaces, allowing invasion of annual grasses and forbs (Daubenmire 1970, cited in Rauscher 1997). Livestock grazing can result in sagebrush seedling trampling and mortality (Connelly *et al.* 2000). Water developments also influence livestock distribution in sagebrush habitat that would otherwise not be used. While water developments may provide a more uniform livestock distribution over the landscape, they may also distribute habitat impacts over a larger area. The associated facilities (tanks, pipelines, roads) may also allow predators (Braun 1998), OHV/ORV users, and hunters to access new terrain.

Livestock can physically damage sagebrush by rubbing, battering, breaking, and trampling seedlings. Katzner and Parker (1997) state that the apparent dependence of pygmy rabbits on a dense understory, provided in part by dead shrubs and extensive canopies, may explain population declines in the pygmy rabbit in grazed sagebrush-steppe habitat in the western United States. Lands grazed intensively by domestic herbivores often have relatively low plant structural complexity and may not support pygmy rabbit populations adequately. For a species that eludes predators in sagebrush habitat, a reduction in canopy cover would increase the vulnerability of pygmy rabbits to predation (Bailey 1936; Orr 1940; Wilde 1978; Katzner 1994; Siegel 2002).

The physical destruction of dense, structurally-diverse patches of sagebrush, and the corridors that connect them, result in fragmented, unsuitable big sagebrush habitat for pygmy rabbits (Katzner and Parker 1997). Siegel (2002) found more active burrows in ungrazed areas than grazed areas. Gahr (1993) found male pygmy rabbits had longer movements in a grazed area in Washington during the breeding season compared with an ungrazed area. Rauscher (1997) and Janson (2002) found that areas of tall, dense sagebrush inhabited by pygmy rabbits were typically located along streams. Livestock can impact these areas disproportionately by concentrating in riparian areas where trampling and vegetation removal can occur (Austin 2002).

Trampling of burrows by livestock has been reported in Montana by Rauscher (1997), in Idaho by Austin (2002), and in Washington by Siegel (2002) and Herman (2002). This could cause the death of young rabbits in natal burrows or injury or mortality of adults. Austin (2002) reported a burrow system in Idaho that was subjected to cattle trailing on at least two separate occasions within a period of 2 months or less. After the initial event, only 2 of 10 active burrows were still open. A second visit showed additional trailing activities, and no open burrows or recent sign were found, indicating ''that domestic livestock can have an immediate and detrimental effect upon burrow systems'' (Austin 2002).

Evaluation of Information in the Petition

The petition describes various impacts associated with livestock and grazing management that could affect pygmy rabbits, and cite specific cases in isolated areas where impacts to the species have resulted from these practices. However, the petitioners did not provide substantial information that clearly documents that areas impacted by grazing management practices are regularly also the areas where pygmy rabbits are found. Also, the petition does not present substantial information on the magnitude and the extent of degradation and loss of habitat to livestock grazing such that we could conclude that the continued existence of the pygmy rabbit throughout all or a significant portion of its range may be threatened.

Invasive Plants

The petition claims weed invasions pose a threat to pygmy rabbits throughout their range and provides the following information to support this claim. The spread of weeds by several factors (recreationists, ORV/OHV users, trucks, logging, road construction, wildfire, wild animals, wind, and floods, livestock and associated facilities, among others) (Belsky and Gelbard 2000) across the range of the pygmy rabbit results in nonnative plants replacing native grasses and shrubs used by pygmy rabbits. Weed infestations can also hinder pygmy rabbit movement and increase predator detection. Quigley and

Arbelbide (1997, cited in Committee for the High Desert *et al.* 2003) describe the effects of weeds in the Interior Columbia River Basin as able to alter ecosystem processes, including productivity, nutrient cycling, decomposition, and natural disturbance patterns such as frequency and intensity of wild fires. Altering these processes can result in the displacement of native plant species, eventually impacting wildlife and native plant habitats.

Paige and Ritter (1999) suggest that the most harmful change to sagebrush shrub lands has been the invasion of the nonnative grasses and forbs, especially cheatgrass. Cheatgrass is a rapid colonizer of disturbed areas and persistent in replacing native species (Mack 1981, Yensen 1981, and Whisenant 1990, cited in Paige and Ritter 1999). Cheatgrass alters fire and vegetation patterns in sagebrush habitats as it creates a continuous fine fuel that easily carries fire (Paige and Ritter 1999). Where it dominates, it can carry fires over large distances, and burns more frequently than native vegetation (Paige and Ritter 1999). It also matures and dries earlier than native vegetation, increasing the likelihood of a fire earlier in the season (Young and Evans 1978, Whisenant 1990, and Knick and Rotenberry 1997, cited in Paige and Ritter 1999). Pellant and Hall (1994) reported on the 1992 distribution of cheatgrass and medusahead wild rye (*Taeniatherum asperum*), the primary alien grass invaders of disturbed and fire-altered rangelands in the Intermountain area of the western United States. Data indicated that 3.3 million ac (1.3 million ha) of rangeland administered by the BLM in Nevada, Oregon, Utah, Washington, and Idaho were dominated by these two species. Another 76.1 million ac (30.8 million ha) of public rangeland were classified as infested or susceptible to infestation by these two species. The petition states that this distribution corresponds to areas of the pygmy rabbit's range.

The petition provides the following specific information on the threat of invasive weeds to pygmy rabbits and their habitat. In Oregon, 2 of 51 sites occupied by pygmy rabbits in 1982 contained appreciable stands of cheatgrass (Weiss and Verts 1984). This led the authors to suspect that pygmy rabbits avoid areas containing annual grasses because it can restrict their movements or vision, especially when they are attempting to escape predators. Weeds were reported for all nine study areas investigated by Austin (2002) in Idaho. Gabler (1997) predicted 10 sites on Idaho National Environmental Engineering Laboratory (INEEL) lands would be used by pygmy rabbits, but later found large patches of invasive cheatgrass on 8 of those sites, and that the species did not use these sites. Other factors, such as large amounts of dead sagebrush, and/or sparse, short sagebrush, and thick grass cover, may have contributed to their nonuse.

Evaluation of Information in the Petition

The petitioners provide information about weed invasions within the sagebrush ecosystem in general, and provide a few specific cases where the presence of weeds may have been the reason why pygmy rabbits were absent from an area. However, petitioners did not provide substantial information that clearly documents that areas impacted by invasive species are regularly also the areas where pygmy rabbits are found. Furthermore, the petitioners do not provide substantial information on the magnitude and the extent of habitat impacts by invasive weeds such that we might conclude that they may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of its range.

Fire

The petition contends that fire, either wild or prescribed, can result in long-term habitat loss and fragmentation of pygmy rabbit habitat across its range. Fire can result in death, increased predation, or home range abandonment. The petition cites the following information to support this claim.

Fire intervals during presettlement times have been estimated at 20 to 25 years in wetter regions, where fuels (vegetation) are more abundant. In the arid sagebrush steppe of Idaho, intervals have been estimated at 60 to 110 years because fuels are less abundant (Tisdale and Hironaka 1981 and Whisenant 1990, cited in Paige and Ritter 1999). Burning typically kills big sagebrush (*Artemisia tridentata tridentata, A. t. vaseyana, A. t. wyomingensis*) (Pechanec *et al.* 1954, cited in Yensen 1982), fire it and does not resprout after burning (Wright *et al.* 1979, cited in Braun 1998; Paige and Ritter 1999). As a result, big sagebrush habitat takes a long time to recover following burns. Depending on the species, sagebrush can reestablish itself within 5 years of a burn, but it may take 15 to 30 years to return to preburn densities (Bunting 1984; Britton and Clark 1984, cited in Paige and Ritter 1999). Billings (1994) documented slow shrub succession following a burn in western Nevada, with little sagebrush recovery after 45 years.

Burning can also damage perennial grasses, allowing cheatgrass to increase (Stewart and Hull 1949; Wright and Britton 1976, cited in Yensen 1982). The presence of cheatgrass extends the fire season and can carry a fire into areas where burning would not normally occur (Yensen 1982; Billings 1994). Though it is not known when cheatgrass became so abundant in the sagebrush ecosystem as to allow extensive fires in the western Great Basin, these fires were common as early as the mid-1930s (Billings 1994). Range fire intervals on the Snake River Plain in Idaho may have been 50 to 100 years (Whisenant 1990, cited in Gabler 1997). Whisenant (1990, cited in Gabler 1997) indicates this interval currently occurs at 3 to 5 years, and that the burns are more extensive and leave fewer patches of unburned habitat within the burned areas. With cheatgrass cover, fire frequency increases and sagebrush are unable to reestablish (Whisenant 1990, cited in Gabler 1997).

The petition states that numerous and extensive fires have occurred in States where pygmy rabbits occur. Wildfires have reduced more than 50 percent of sagebrush acreage in some areas in Idaho and Nevada (BLM 2000). In Idaho a number of fires have occurred during the last decade that have exceeded 100,000 ac (40,469 ha) (Roberts 2003). In Nevada, 1,277 fires in 2001, impacted 654,253 ac (264,768 ha) on public and private lands (BLM 2001a). In 2002, BLM reported 771 fires that impacted 77,551 ac (31,384 ha) on public and private lands in Nevada (BLM 2002).

According to Gabler (1997), range fires may be a more serious threat to pygmy rabbit populations now than in the past. Roberts (1998) stated that of the 583,600 ac (236,175 ha) he inventoried in Idaho, about 2,500 ac (1,012 ha) had been temporarily removed due to fire (a loss of 0.4 percent). White and Bartels (2002) indicated that of the 133,067 ac (53,851 ha) surveyed, 23,660 ac (9,575 ha) had been affected by wildfire within the last 15 years. Gabler (1997) mentions that 12.5 percent of her predicted pygmy rabbit habitat in Idaho was destroyed by fires during 1994–1996.

The petition cites several instances of fire impacting pygmy rabbit populations locally across its range. In Idaho, Austin (2002) indicated a burrow system was no longer occupied by pygmy rabbits following an escaped BLM controlled burn. White and Bartels (2002) discuss that wildfires in the 1990s at INEEL severely affected the pygmy rabbit population, though some individuals remained. Gates and Eng (1984, cited in Tesky 1994) reported that 2 months following a fire in big sagebrush-grassland community in Idaho, only 3 of

11 located radio-collared pygmy rabbits were alive. Of the eight lost, seven were due to predation. They speculated that the loss of big sagebrush from their home ranges probably increased vulnerability to predation. Some of the surviving pygmy rabbits abandoned their home ranges and moved to new home ranges in adjacent unburned sites. Of the six rabbits remaining on the burn site, only one survived the winter. Pygmy rabbit habitat in Benton County, Washington, was destroyed by fire soon after its discovery in 1979 (WDFW 1995). The population at the Coyote Canyon site in Washington showed a dramatic decline in 1999 following a fire (WDFW 2001).

Roberts (2003) suggests that sagebrush habitat can be regenerated within 30 to 50 years but how long it takes for pygmy rabbits to recolonize is unknown. Roberts (2001) mentions a 1966 burn near Gilmore Summit, Idaho, that has not regenerated to suitable habitat and which pygmy rabbits have not recolonized. White and Bartels (2002) state that after the removal of sagebrush habitat along the Snake River Plain, the area from Jerome to Idaho Falls, Idaho, became important pygmy rabbit habitat. This area was recently burned and reseeded with crested wheatgrass. Rauscher (1997) reported that a prescribed burn in 1980 near Badger Pass, Montana, had been recolonized by pygmy rabbits. He did not know how long this process had taken or if pygmy rabbit densities had reached pre-burn levels. White and Bartels (2002) suggest that the current low abundance and populations of the species is likely due to recent wildfires and slow rate of habitat recovery.

Evaluation of Information in the Petition

The information in the petition indicates that fire has impacted sagebrush ecosystems, that there have been increased numbers of fires in this system, and that pygmy rabbits have been negatively affected in some local areas within their range due to fire. But pygmy rabbits are not distributed uniformly across the full range of the sagebrush ecosystem in the western United States, and only occur in areas where, at a minimum, dense sagebrush and deep, loose soils are found (Green and Flinders 1980a; Weiss and Verts 1984). The petitioners did not provide substantial information that demonstrates that the areas of the sagebrush ecosystem impacted by fires, and those subject to increased fire frequency, are also the areas occupied by pygmy rabbits, with the exception of a limited number of cases, mostly from Idaho. Also, the petition does not provide substantial information to document how much of the sagebrush ecosystem where pygmy rabbits occur has been impacted by fire. Therefore, we conclude that the petition has not presented substantial information that fire in the sagebrush ecosystem is a factor that may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of its range.

Urban and Suburban Development

The petition identifies habitat loss from rural and urban development as a negative impact to pygmy rabbits and their habitat. This includes the infrastructure that accompanies such development. (*i.e.*, roads, powerlines, pipelines). Historic destruction of sagebrush habitat for urban development has occurred (Braun 1998). More recent expansion into rural areas is resulting in additional sagebrush habitat loss (Braun 1998), as well as introducing nonnative predators such as domestic pets to these areas (Connelly *et al.* 2000). Janson (2002) discovered that one of his 1940s pygmy rabbit study areas was impacted by residential and commercial development near Cedar City, Utah, when revisited in 2001. White and Bartels (2002) also found that urban development had impacted historic pygmy rabbit locations in Idaho.

Evaluation of Information in the Petition

The petition indicates that some sagebrush habitat has been lost due to development, and that in some specific instances pygmy rabbits have been impacted locally. With the exception of these few local examples, the petitioners do not provide substantial information to document that the areas impacted by development are the same as those where the pygmy rabbit occurs, nor do they provide any documentation that indicates how much pygmy rabbit habitat has been lost to urban and suburban development across its range. Therefore, we conclude that the petition has not presented substantial information that urban and suburban development in the sagebrush ecosystem is a factor that may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of its range.

Mining

The petition contends that mining and associated facilities threaten sagebrush habitats, thereby negatively impacting pygmy rabbits. The petition provides the following information to support this claim. Sagebrush habitat throughout the west has been impacted by gold, coal, and uranium mining (Braun 1998). Immediate impacts include direct loss from mining and construction of associated facilities, roads, and power lines (Braun 1998). In western North America, development of mines and energy resources began before 1900 (Robbins and Wolf 1994, cited in Braun 1998). Mining occurs across large areas in northern Nevada where pygmy rabbits are known to occur (Nevada Natural Heritage Program 2002). In California, pygmy rabbits have been observed in the area around Bodie, a mining town that was abandoned in the mid-1930s (Severaid 1950).

Evaluation of Information in the Petition

Though the petition provides general information on mining activities where pygmy rabbit habitat may occur, it does not present substantial information that correlates mining activities with the direct loss of pygmy rabbits or their habitat, nor does it quantify the extent of this effect across the range of the species.

Energy Development

The petition contends that energy development and associated facilities threaten sagebrush habitats thereby negatively impacting pygmy rabbits. The petition identifies habitat loss from energy development (*i.e.*, oil, gas, and geothermal energy) as a negative impact to the pygmy rabbit. Millions of acres of western lands are in production for oil and gas energy. Other western lands have been developed for geothermal energy, but the number of acres is much lower than for oil and gas. Energy development involves construction of well pads, roads, pipelines, and other associated facilities. The petitioners specifically mention concerns with oil, gas, and coal bed methane development in Wyoming and they cite proposals for energy production in sagebrush habitats in this State. The Jack Morrow Hills Supplemental Draft Environmental Impact Statement (DEIS) (2002, cited in Committee for the High Desert *et al.* 2003) proposes oil, gas, and coalbed methane production in sagebrush habitats north of Rock Springs, Wyoming. The scoping notice for the South Piney Natural Gas Development Project (2002, cited in Committee for the High Desert *et al.* 2003) proposes the possible development of 210 new natural gas wells on 31,000 ac (12,545 ha) in southwestern Wyoming. The Pinedale Anticline DEIS (2002, cited in Committee for the High Desert *et al.* 2003) indicates that large areas of Lincoln, Uinta, Sublette and Sweetwater Counties with existing and potential oil and gas development are planned. The Upper Green River Valley Coalition

(2003, cited in Committee for the High Desert *et al.* 2003) predicts that the Green River Valley will be a major natural gas production region in the United States. In addition, BLM's Kemmerer Field Office contains a log of 100 oil, gas, and other energy related actions, and the Rock Springs Field Office contains a register of over 70 oil, gas, coal, and other energy related actions (Committee for the High Desert *et al.* 2003).

The petition contends that wind energy and geothermal energy development threaten sagebrush habitats and, therefore, pygmy rabbits in Idaho and Nevada. The petition cites a proposed wind power project to be located west of Salmon Falls Reservoir, Idaho (Jarbidge BLM Environmental Assessment (EA) 2003, cited in Committee for the High Desert *et al.* 2003). On adjacent BLM lands, along the Nevada/Idaho border, meteorlogical towers have been installed to determine the feasibility of these areas for wind energy development. Both White and Bartels (2002) and Roberts (2003) found pygmy rabbit populations in this region. The petition cites a Battle Mountain Geothermal environmental assessment (2002, cited in Committee for the High Desert *et al.* 2003) which could authorize geothermal leasing and exploration on 4.3 million (1.7 million ha) of BLM lands in Nevada, including areas of occupied pygmy rabbit habitat. Nielsen *et al.* (2002) indicates geothermal development sites located in big sagebrush habitats in all western states in portions of pygmy rabbit habitat except in Wyoming.

Evaluation of Information in the Petition

While the petition provides some information regarding oil, gas, and coal bed methane production in Wyoming, it does not present substantial information that this development has resulted in losses of large amounts of pygmy rabbit habitat. Much of the information in the petition identifies potential impacts rather than actual impacts. And while information in the petition indicates that wind power and geothermal energy development projects are occurring or planned in areas of pygmy rabbit habitat, the petition does not present substantial information to correlate this development with reductions in pygmy rabbit habitat that may affect their reproduction and survival throughout all or a significant portion of their range. Therefore, we conclude that the petition has not presented substantial information that habitat degradation and loss due to energy development may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of the range.

Power Lines, Fences, and Roads

The petition contends that the construction of power lines, fences, and roads results in direct sagebrush habitat loss, provides raptor perches that facilitate predation, facilitates the spread of weeds, disrupts pygmy rabbit dispersal corridors, and increases human access for recreational activities, all of which impact pygmy rabbits and their habitat. Sagebrush habitat contains power lines, fences, and roads associated with urban and rural development, grazing, mining and energy development, and recreation. Power poles and fences can provide hunting and roosting perches, and nesting support, for many raptor species that can prey upon pygmy rabbits. These power lines and fences are often accompanied by maintenance roads that may serve as travel corridors for predators, spread weeds, and offer access for hunters and recreationists. Power lines occur throughout occupied pygmy rabbit habitat, such as through the Big Lost Valley and INEEL lands in Idaho (Committee for the High Desert *et al.* 2003).

The petition also contends roads disrupt the dispersal capabilities of pygmy rabbits, and it provides the following information to support this claim. Bradfield (1974) suggested that pygmy rabbits were reluctant to cross open areas based on the lack of highway mortality (Gordon 1932, Sperry 1933, Smith 1943, cited in Bradfield 1974). Others (Weiss and Verts 1984; Roberts 2001) have reiterated this comment. Rauscher (1997) reported use of a subnivian (layer between snow and soil surface) tunnel that extended across a back country road near Badger Pass, Montana. Jones (1957) mentions a pygmy rabbit winter road kill in California north of Crowley Lake, Mono County. Rauscher (1997) found pygmy rabbits crossed relatively small open areas (1,500 ft (457 m)) to reach suitable habitat in Montana. Katzner and Parker (1998) report a pygmy rabbit traveling long distance (2.2 mi (3.5 km)) through open habitat likely unsuitable for long-term habitation. This suggests that fragmented populations may not be as isolated as previously suggested and has implications for recolonization of nearby areas.

Evaluation of Information in the Petition

The petition does not provide substantial information that directly relates the actual and potential impacts of power lines, fences, and roads to the significant loss of pygmy rabbits or their habitat. The information in the petition does not directly implicate that activities related to power lines, fences, and roads are threatening pygmy rabbits; the information provided is ''anecdotal'' and/or speculative in nature, and not comprehensive. Therefore, we conclude that the petition has not presented substantial information that power lines, fences, and roads in the sagebrush ecosystem are factors that may threaten the continued existence of the pygmy rabbit throughout all or a significant portion of their range.

Activities on Military Facilities

Military facilities occur within the range of the pygmy rabbit. The petition claims that impacts of military operations could involve direct mortality to pygmy rabbits and cause loss and degradation of sagebrush habitats. The U.S Air Force (USAF) has constructed roads and an electronic training range site and other facilities in Owyhee County, Idaho (USAF 1998, cited in Committee for the High Desert *et al.* 2003). According to the petition, one emitter site and access road is located less than 2.0 mi (3.2 km) from occupied pygmy rabbit habitat reported by Roberts (2003). These facilities increase pygmy rabbit habitat degradation and fragmentation by facilitating weed invasion and increased fire potential. Noise levels due to training exercises may also impact pygmy rabbits.

Evaluation of Information in the Petition

The petition does not provide substantial information that documents the actual loss of pygmy rabbits and their habitat by military activities, and how this may threaten the survival of the species across its range.

Recreational Activities

The petition contends that recreation, especially ORV/OHV and snowmobile use, threatens pygmy rabbit and sagebrush habitats by disturbing individuals, damaging sagebrush, damaging burrows or subnivian tunnels, increasing the spread of weeds, and increasing human presence and pets in the area. Much of the sagebrush habitat occupied by pygmy rabbits is open to recreational use. Bradfield (1974) suggested that the pygmy rabbit depends on its hearing for predator detection, and may be less active during windy periods when predator detection may be reduced. Thus, passing vehicle noise may make the pygmy rabbit more vulnerable to predation. The petition cites a BLM document indicating that a proposed OHV/ORV race in Idaho could

damage pygmy rabbit burrows (Jarbidge Field Office BLM 2003, cited in Committee for the High Desert *et al.* 2003). Austin (2002) found weed infestation highest in areas of greatest disturbance, which included ORV use areas in his Idaho study areas.

Evaluation of Information in the Petition

As presented in the petition, the information on recreational impacts is speculative. We conclude that the petition does not provide substantial information that describes how recreation activities threaten pygmy rabbits and their habitats.

Habitat Manipulations for Other Species

Connelly *et al.* (2000) recommend managing sagebrush canopy cover for sage grouse habitat at 10 to 25 percent for brood-rearing, 15 to 25 percent for breeding habitat and 10 to 30 percent for winter habitat. Pygmy rabbits, in general, prefer taller, denser sagebrush cover relative to the surrounding landscape, which can be greater than the 10 to 30 percent range (Green and Flinders 1980b; Weiss and Verts 1984) suggested for various sage grouse habitats. Reducing dense sagebrush cover to benefit sage grouse may be in conflict with the needs of pygmy rabbits.

Evaluation of Information in the Petition

While we share a concern that large scale vegetation manipulations to benefit sage grouse may negatively impact pygmy rabbit habitat, the petition does not provide substantial information to document the magnitude and extent of this concern for pygmy rabbits throughout their range.

Summary of Habitat Threats

While a variety of anthropogenic activities that affect sagebrush (*e.g.*, agriculture, grazing, mining) are occurring across the range of the pygmy rabbit, the petition does not provide substantial information that these activities, either singly or in combination with one another, are destroying or modifying pygmy rabbit habitat over all or a significant portion of the species' range. Also, with limited exceptions, the petition fails to provide scientific documentation to demonstrate that the areas where sagebrush habitat loss and degradation are occurring are also the areas where pygmy rabbit populations occur. Additionally, the petition does not provide substantial information to document what the effects of these anthropogenic changes are on pygmy rabbit population numbers across the range of the species. Based on the preceding discussion, we do not believe that substantial information is available indicating that the present or threatened destruction, modification, or curtailment of habitat or range may, either singularly or in combination with other factors, rise to the level of a threat to the continued existence of the species throughout all or a significant portion of the species' range.

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

Hunting

The petition contends that pygmy rabbit populations at low levels could be harmed due to hunting mortality and research activities. The petition also notes the difficulty in distinguishing pygmy rabbits from other rabbit species, especially cottontails (*Sylvilagus* spp.) (Garber and Beauchaine 1993), and claims that this difficulty could lead to accidental shootings. The petition contends that road networks associated with energy, pipeline, powerline, mining, and development provide travel corridors for hunters, increasing the likelihood of pygmy rabbit mortality.

The following information from the petition summarizes potential impacts to the species from hunting. Williams (1986) stated that although hunting impacts were not known in California, he thought that hunters probably did not kill many because the species was quite secretive and rarely left dense brush. Rauscher (1997) reported pygmy rabbit hunting in southwestern Montana, but stated that hunting did not appear to be a significant mortality factor. Fisher (1979) recommended that bag limits be monitored in Idaho, especially where habitat was declining, because with the pygmy rabbit's lower reproductive potential as compared to other rabbits, fewer surplus animals may be available to hunters. Pritchett *et al.* (1987) reported that, according to locals near Loa, in Wayne County, Utah, pygmy rabbits have been ''extensively hunted'' along with black-tailed jackrabbits (*Lepus californicus*) and cottontails. Where he was able to access portions of his previous study area outside Cedar City, Utah, Janson (2002) found spent shotgun shells. He thought it was probable that some pygmy rabbits were shot because most hunters do not distinguish between pygmy rabbits and cottontails.

The petition also contends that shooting or poisoning likely caused pygmy rabbit population declines in the past even though jackrabbits were primarily taken. While we are aware that rabbit drives occurred (Bacon *et al.* 1959; Jackman and Long 1965), there is little documentation on the impacts to pygmy rabbits. Bacon *et al.* (1959) collected rabbits, mostly by organized drives of hunters who shot them, to gather ectoparasitic (parasite on outer surface of an animal) information on wild rabbits and rodents in eastern and central Washington between 1951 and 1956. Of the 1,040 rabbits collected, representing four species, only one was a pygmy rabbit. It is unknown if the single collection indicates pygmy rabbits are less vulnerable to drives, or if numbers were reduced in that area at the time.

Currently, only three (California, Montana, and Nevada) of the eight States where the pygmy rabbit occurs allow hunting. For those States that allow hunting of pygmy rabbits, the State Wildlife Boards of Commissioners set hunting regulations yearly. In California the hunting season extends from July 1 to the last Sunday in January with a bag limit of 5 per day and 10 in possession (Pat Lauridson, California Department of Fish and Game, pers. comm. 2005). The 2004 pygmy rabbit hunting season in Nevada opened October 9 and closed February 28 with a daily limit of 10 and a possession limit of 20 (Sandy Canning, Nevada Department of Wildlife, pers. comm. 2005). For Montana, information on hunting seasons is more limited. Based on the Montana Fish, Wildlife and Parks webpage pygmy rabbits can be hunted year round and there is no bag limit. For the three States that allow hunting of this species, harvest data are collected through hunter surveys but the various rabbit species are not distinguished from one another so the number of pygmy rabbits harvested in these States per year is not known.

Evaluation of Information in the Petition

The petition did not provide, nor are we aware of, any long-term historic or recent hunting data that would clarify past or current hunting pressure on the pygmy rabbit across its range. This includes a lack of information related to poaching and accidental shootings. The petition does not provide substantial information indicating that hunting may threaten the continued existence of the species across all or a significant portion of its range.

Research

The petition presents the following information on the threat of research activities to pygmy rabbits. Research activities on the species that involve trapping, handling, and holding them for a period of time can result in mortality from exposure, injury, trap

predation, intraspecific fighting, and capture stress (Wilde 1978; Gahr 1993; Rauscher 1997). Mortality rates reported for captured pygmy rabbits have been 3 percent (Gahr 1993), 5 percent (Wilde 1978), and 19 percent (Rauscher 1997). Investigations may also involve digging out of burrows, stepping on burrows accidentally, measuring vegetation and other site characteristics near burrows, and other general disturbance in the study area (Janson 1946; Bradfield 1974; Green 1978; Wilde 1978; Gahr 1993; Katzner 1994; Gabler 1997; Rauscher 1997). Katzner (1994) reported that all of his radio-collared rabbits (10) died. He suggested the weight of the radiocollars, and increased grooming as a result of their presence, may have increased a rabbits' vulnerability to predation.

Evaluation of Information in the Petition

While these actions can be of concern for small populations such as in Washington (66 FR 59734, 68 FR 10388), the petition did not adequately describe how conducting research activities within pygmy rabbit habitats may threaten the continued existence of the species. Therefore, we conclude that the petition does not present substantial information to indicate that conducting research activities within pygmy rabbit habitat threatens the existence of pygmy rabbits throughout all of a significant portion of their range.

C. Disease or Predation

The petition contends that disease likely poses a serious threat to remaining pygmy rabbit populations. A lack of adequate food or an increase in stress associated with altered sagebrush habitat throughout its range, could increase the species' susceptibility to disease. It also states predation may not represent a significant threat to relatively large well-distributed populations, but may have an impact on small pygmy rabbit populations in degraded habitats. The petition also mentions West Nile Virus as a growing concern for all native wildlife including pygmy rabbits. The petition cites the following information to support these claims.

Pygmy rabbits can harbor high parasite loads (Janson 1946; Wilde 1978; Gahr 1993; WDFW 1995; 66 FR 59734). These parasites include ticks, fleas, lice, and bot flies (Dice 1926; Janson 1946; Larrison 1967; Wilde 1978; Gahr 1993; Rauscher 1997), which can be vectors of disease. Reports of episodes of plague and tularemia from these vectors in populations of other leporid species indicate they often spread rapidly and can be fatal (Quan 1993, cited in 68 FR 10388). There have been no reports of severe disease epidemics occurring in pygmy rabbits (68 FR 10388). Parasites and disease have not been regarded as a major threat to pygmy rabbits (Wilde 1978; Green 1979, cited in 68 FR 10388).

Gahr (1993) found bot flies only on pygmy rabbits located in the grazed area of her study, indicating that cattle may act as a vector for spreading parasites and possibly disease. She only had two rabbits with bot flies. She commented that parasitism by bot flies is not necessarily detrimental to the rabbit, and additional study is needed to determine if cattle presence increases the incidence of ectoparasites for pygmy rabbits. Siegel (2002) and Austin (2002) also expressed concern that disease transport and transmission by domestic livestock to pygmy rabbits could be a threat. Austin (2002) raised the concern that a calicivirus, such as Rabbit Hemorrhagic Disease, could explain declines in pygmy rabbit populations and suggests additional research is needed. Janson (2002) reported that no obviously diseased pygmy rabbits were seen in his earlier work in the 1940s. He thought it may be likely that disease reduced pygmy rabbit populations periodically when they reached high densities.

Predation is the main cause of pygmy rabbit mortality (Wilde 1978; Green 1979, cited in 68 FR 10388). As discussed in the background section, pygmy rabbits have numerous predators and have adapted to their presence (Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978). The petition contends that habitats degraded by grazing and its associated facilities, or other actions can damage the structural components of the sagebrush habitat as well as increase or redistribute predators, thus increasing the pygmy rabbit's vulnerability to predation. Weiss and Verts (1984) thought that use of denser and taller sagebrush habitats by pygmy rabbits was related to predator avoidance. Katzner (1994) documented that raptors were a cause of mortality and denser sagebrush cover deterred these avian predators. The petition also includes vertical structures, such as fences and powerlines, as features providing raptor perches and possibly impacting pygmy rabbit populations, as discussed earlier. Siegel (2002) suggested that artificial livestock watering possibly increased coyote numbers in Washington.

Evaluation of Information in the Petition

Disease and predation may be significant threat factors to small pygmy rabbit populations. Habitat degradation and fragmentation may increase the effects of disease, parasites, and predation on some populations. However, the petition does not adequately describe how the species' continued survival over all or a significant portion of its range is threatened by disease and predation. The information presented indicates that these potential threats have not been evaluated, and that further research is needed to determine actual impacts to pygmy rabbits. Thus the petition does not provide substantial information to indicate that disease or predation may threaten pygmy rabbits over all or a significant portion of its range.

D. Inadequacy of Existing Regulatory Mechanisms

The petition contends that State and Federal agencies have failed to conduct monitoring for the species in most of its range and to protect it from numerous direct and indirect impacts associated with livestock grazing, prescribed and wild fires, energy exploration and development, vegetation manipulation, weed invasion, roads, and OHV/ORV proliferation (see Factor A). The petition contends that mechanisms to regulate and control these various activities have failed to prevent harm to pygmy rabbit habitat in a significant portion of its range. The petition cites the following information to support these claims.

A large portion of pygmy rabbit habitat occurs on BLM lands. BLM has designated the pygmy rabbit as a special status species/bureau assessment species in five of the seven States in which it occurs (Idaho, Montana, Nevada, Oregon, and Wyoming). Special status species management is discussed in BLM's 6840 Manual, ''Special Status Species Management'' (BLM 2001b). This manual provides agency policy and guidance for the conservation of special status plants and animals and the ecosystems on which they depend, but it is not a regulatory document. Currently, there are no regulations requiring BLM land use plans to address the conservation needs of special status species (BLM 2003).

According to the petition, the U.S. Forest Service (USFS) does not include the pygmy rabbit as a Management Indicator Species in any of the States where the pygmy rabbit occurs (Committee for the High Desert *et al.* 2003) on USFS lands. Pygmy rabbit habitat also occurs on lands managed by other Federal agencies such as the Service and National Park Service.

Currently, hunting of pygmy rabbits is allowed in three of the eight States within the species' range (Committee for the High Desert *et al.* 2003). Hunting of pygmy rabbits is not allowed in Idaho

or Wyoming, where they are considered a species of special concern, or in Utah where they are considered a sensitive species. Hunting is also not allowed in Oregon, where the pygmy rabbit is protected from take. In Montana, the pygmy rabbit is also considered a species of concern, but there is no protection from take. According to the petition, Wyoming is the only state that has a management plan for the pygmy rabbit (Committee for the High Desert *et al.* 2003). In Washington, the pygmy rabbit was listed as threatened in 1990 by the Washington Wildlife Commission (Commission). In 1993, the Commission reclassified the species as endangered (WDFW 1995). A recovery plan for the species was completed in 1995, and an addendum to the plan was prepared in 2001 (WDFW 1995, 2001).

Evaluation of Information in the Petition

Based on the information in the petition, the primary concern expressed by the petitioners regarding the inadequacy of existing regulatory mechanisms is related to pygmy rabbit habitat conservation. Sagebrush habitat degradation and loss, discussed under Factor A, is due mostly to human activities as opposed to natural events. However, the petition does not provide substantial scientific information that quantifies impacts to pygmy rabbit habitat rangewide, or the level of significance of these threats to pygmy rabbit populations. Thus, we conclude that the petition does not present substantial information to indicate that pygmy rabbits are threatened by the inadequacy of existing regulatory mechanisms across all or a significant portion of its range.

E. Other Natural or Manmade Factors Affecting the Species Continued Existence

The petition contends that several other factors, not discussed above, negatively impact pygmy rabbit populations. These include: intra- and interspecific competition, habitat fragmentation, natural stochastic (random) events such as floods and drought; mortality caused by collisions with OHV/ORV, snowmobiles, and automobiles; and life history traits. The petitioners are also concerned that habitat manipulations taken to benefit sage grouse may negatively impact pygmy rabbit. Lastly, the petition claims that predator control to benefit livestock may have a negative impact on pygmy rabbits.

The petition suggests that because pygmy rabbits are extreme habitat specialists, intraspecific competition among individuals may be exacerbated under environmental stress such as drought. The petition also contends interspecific competition with other herbivores for sagebrush such as jackrabbits (Wilde 1978), pronghorn, and mule deer, could occur. Large populations of jackrabbits from past decades are likely gone, but as sagebrush is reduced across the range, they may compete with pygmy rabbits at lower population levels. Conde (1982) compared pygmy rabbit and black-tailed jackrabbit use in sagebrush-greasewood habitat in Cassia County, Idaho. She found in summer that pygmy rabbits selected areas with abundant grass while jackrabbits selected areas with abundant forbs. During the fall-winter period, shrubs played an important role for both species, but pygmy rabbits fed on sagebrush leaves and young stems (Johnson 1979, cited in Conde 1982) and jackrabbits on 2-year old woody stems (Currie and Goodwin 1966, cited in Conde 1982). Spatial distribution and exploitation of different vegetation in the summer allow a sympatric relationship to occur between these two species (Conde 1982).

Siegel (2002) at Sagebrush Flat, Washington, found cottontails inhabited burrows dug by pygmy rabbits, but it is unclear if cottontails were displacing pygmy rabbits. Cottontails may use burrows after they are abandoned by pygmy rabbits, because 60 percent of the burrows used by cottontails had not shown pygmy rabbit use on the date the burrow was last checked. Siegel (2002) found pygmy rabbits reused burrows in summer that had been occupied by cottontails the previous winter.

Grazing competition with livestock will depend on the range conditions and grazing practices that vary across the range of the pygmy rabbit. At Sagebrush Flat, Washington, Siegel (2002) determined that livestock grazing seasonally reduced the quantity of preferred vegetation by pygmy rabbits as well as reduced the nutritional quality of the forage. By spring, fewer differences were noted, likely reflecting the new spring growth. Other impacts of cattle grazing in pygmy rabbit habitat have been previously discussed under Factor A. In Montana, there is spatial overlap between big game winter range, other sagebrush winter ranges, and the range of pygmy rabbits. Hence, interspecific competition may result (Janson 2002). No substantial scientific information regarding the effects of intra- and interspecific competition on pygmy rabbits has been provided.

The petition identifies habitat fragmentation as a threat to pygmy rabbits as it results in small, isolated populations surrounded by vast areas of inhospitable lands (Austin 2002; White and Bartels 2002; Roberts 2003). Habitat fragmentation can influence size, stability, and success of pygmy rabbit populations because of their low dispersal capabilities (Katzner and Parker 1997). Bartels (2003) suggested that pygmy rabbit distribution may be more fragmented than previously thought due to the limited availability of suitable habitat and their absence from large areas of sagebrush. Bartels (2003) suggested other disturbances, such as habitat fragmentation, seeding after wildfires, improper range improvements, sagebrush removal, development, agriculture, sagebrush diseases, and floods, are all contributing factors.

The petition claims that because most of the remaining pygmy rabbit populations are small, they are vulnerable to environmental and demographic stochasticity. Natural stochastic events can significantly impact local populations if they result in high mortality, habitat loss, or little or no possibility of recolonization. They are most significant for small or fragmented populations. Small, isolated populations are also at a greater risk to the deleterious effects of demographic and genetic problems (Schaffer 1981). The petition cites a concern with flooding which may cause burrow abandonment, mortality, and erosion of deep soils. Pygmy rabbits are known to use deeper soils found along drainages for burrows (Flath and Rauscher 1995). Bartels and Hays (2001) state that historic pygmy rabbit habitat was lost in Oregon and Idaho due to flooding. White and Bartels (2002) reported that uncontrolled floods at the Sagebrush Flat site in Washington were a major reason for loss of individuals during 1996 to 1997. Bartels (2003) mentions a large flood event in pygmy rabbit habitat in the Harney Basin, Oregon, in 1984. Natural stochastic events have not been reported as types of events that have played a significant role in population abundance and/or trends for the pygmy rabbit range wide, nor did the petition provide substantial scientific information that current pygmy rabbit populations are small or isolated.

Because the pygmy rabbit is a habitat specialist, and its climax-type habitat is highly fragmented and occurs across the landscape, the petition contends the species' life history traits could affect population viability. Pygmy rabbits have small home ranges, are not evenly distributed across the species' range, and appear to have poor dispersal and low reproduction capabilities. Pygmy rabbits do not respond to abundant spring food supply by producing

additional litters like other rabbits (Wilde 1978). These factors may explain the slow recolonization of vacated habitat even under normal conditions (Heady *et al.* 2001). However, though the pygmy rabbit is a habitat specialist, the petition does not present substantial information on how the pygmy rabbit's natural history characteristics have limited the species across its range.

Lastly, the petition does not provide supporting documentation that supports the claim that predator control for livestock benefits increases predation on pygmy rabbits.

Based on the foregoing discussion, we do not believe that the petition has presented substantial scientific information to indicate that natural or manmade factors threaten the continued existence of pygmy rabbits throughout all or a significant portion of the species' range.

Finding

We have reviewed the petition and literature cited in the petition, and evaluated that information in relation to other pertinent literature and information available in our files. After this review and evaluation, we find the petition does not present substantial information to indicate that listing the pygmy rabbit may be warranted at this time. Although we will not be commencing a status review in response to this petition, we will continue to monitor the species' population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the pygmy rabbit across its range. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the pygmy rabbit, you may submit your information or materials to the Field Supervisor, Nevada Fish and Wildlife Office (*see* **ADDRESSES** section above).

References Cited

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

Author

The primary author of this notice is Marcy Haworth, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (*see* **ADDRESSES**).

Authority

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

Dated: May 12, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–10056 Filed 5–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050510127–5127–01; I.D. 050305D]

RIN 0648–AS35

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab (Red Crab) Fishery Management Plan (FMP). This proposed rule would modify the existing annual review and specification process to allow specifications to be set for up to a 3–year timeframe. The proposed action would allocate for fishing year (FY) 2006 and FY2007 the current (FY2005) target total allowable catch (TAC) and fleet days-at-sea (DAS) of 5.928 million lb (2.69 million kg) and 780 fleet DAS, respectively. The primary purpose of this proposed action is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery by reducing the frequency with which Stock Evaluation and Fishery Evaluation (SAFE) Reports, specification packages, and rule-making documents need to be prepared and processed, and provide consistency and predictability to the industry.

DATES: Comments must be received (see **ADDRESSES**) on or before 5 p.m., local time, on June 20, 2005.

ADDRESSES: Written comments on the proposed framework adjustment may be submitted by any of the following methods:

- E-mail: *RC2005@noaa.gov*. Include in the subject line the following identifier: ''Comments on Fr Adj 1 to the Red Crab FMP.''
- Federal e-Rulemaking portal: *http://www.regulations.gov*.
- Mail: Comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Fr Adj 1 to the Red Crab FMP.''
- Fax: (978) 281–9135.

Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION:

Background

The Red Crab FMP was implemented on October 21, 2002. Regulations implementing the Red Crab FMP require the New England Fishery Management Council (Council) to review annually the red crab specifications. The Council's Red Crab Plan Development Team (PDT) meets at least annually to review the status of the stock and the fishery. Based on this review, the PDT reports to the Council's Red Crab Committee any necessary adjustments to the management measures and recommendations for the specifications. Specifications may include the specification of optimum yield (OY), the setting of a target TAC, allocation of DAS, and/or adjustments to trip/possession limits. In developing the management measures and recommendations for the annual specifications, the PDT reviews the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information. The regulations also require the Council to prepare a biennial SAFE Report. Recommended specifications are subsequently presented to the Council for adoption and recommendation to NMFS.

This process has proven to be administratively burdensome given that