

incident, factors contributing to the incident, outcome, and measures taken to prevent future incidents. A record of such incident and action taken shall be available for review by representatives of the USDA and NIH. All records associated with the transportation of chimpanzees to or from the Sanctuary must be maintained for at least one year after the movement is completed in accordance with the current requirements set forth in the Animal Welfare Regulations (9 CFR 2.80).

(b) *What other transport regulations apply to the federally supported chimpanzee Sanctuary system?* (1) General requirements and regulations applicable to animal transport into and among Sanctuary sites include:

(i) The contractor will maintain contact with carrier personnel in order to ensure their compliance with proper care of chimpanzees during transit; and

(ii) The contractor must submit to the Project Officer by telephone, fax, or e-mail, the actual shipment schedule and proposed method of transport no less than 10 days prior to shipment. The Project Officer must be immediately informed of any changes or delays in this schedule in accordance with the terms of the current contract between NCRR and the Sanctuary contractor.

(2) Additional requirements and regulations applicable to ground transportation include:

(i) Transport must be provided by a USDA licensed intermediate handler; and

(ii) Transport must adhere to provisions of the Interstate Commerce Commission Authority Animal Transportation Regulations.

(3) Additional requirements and regulations applicable to air transportation include:

(i) The International Air Transport Association (IATA) Live Animal Regulations if air transportation is utilized, and

(ii) Delivery to and from the airports must be provided in an environmentally controlled truck per USDA Animal Welfare Regulations, (9 CFR part 3, subpart F).

(4) Requirements and regulations applicable to shipping units mandate that chimpanzees must be delivered in properly ventilated, escape-proof units, and each compartmentalized unit must have separate water and feed containers (9 CFR part 3, subpart F).

**§ 9.12 Compliance with the Standards of Care, USDA and PHS policies and regulations.**

(a) *How will compliance with the standards set forth in this part be monitored and what are the*

*consequences of noncompliance with the standards?* The federally supported chimpanzee Sanctuary must comply with the standards of care set forth in this part and include a statement in the Annual Progress Report certifying compliance with these standards of care in accordance with the terms of the current contract between NCRR and the Sanctuary contractor. A designated representative of the Secretary will monitor compliance. The responsibility to monitor compliance with the standards is delegated to the NCRR/NIH/DHHS. The NIH/NCRR Project Officer for this contract will conduct scheduled site visits at least one time quarterly (or more often if necessary), review monthly and quarterly reports submitted to the Project and Contracts Officer, Subcontractors are subjected to the same provisions. Failure to comply with the standards set forth in this part or to correct deficiencies noted within the allowable time period could result in termination of the contract by the Federal Government (DHHS/NIH), allowing the Secretary to correct the deficiencies according to the terms and conditions outlined in the contract. The Secretary may impose additional sanctions on the contractor up to, and including, authorizing assumption or reassignment of the management of the Sanctuary contract.

(b) *To what type of outside review or inspection will the federally supported Sanctuary be subjected?* As noted in paragraph (a) of this section, the contractor for the Sanctuary will be monitored on a regularly scheduled basis by representatives of the NCRR/NIH/DHHS. The NCRR representative will use facility site visits, reports, personal contact, and any other means as appropriate to assure compliance with these standards. The contractor and subcontractors are required to obtain and maintain an Animal Welfare Assurance from NIH's Office of Laboratory Animal Welfare (OLAW) when chimpanzees are used for non-invasive studies as authorized in the CHIMP Act. involving chimpanzees. In addition, the Sanctuary must achieve accreditation by a nationally recognized animal program accrediting body (such as the AAALAC, or the AZA) within a time frame to be determined by NCRR/NIH. The federally supported Sanctuary must comply with the requirements set forth in the Animal Welfare Regulations (9 CFR parts 1 through 3).

**§ 9.13 Other Federal laws, regulations, policies, and statutes that apply to the Sanctuary.**

(a) Animal Welfare Act (7 U.S.C. 2131–2159).

(b) Animal Welfare Regulations, 9 CFR, subchapter A, parts 1 and 2.

**§ 9.14 Authority of the Secretary of Health and Human Services to amend or issue additional standards of care regulations.**

The Secretary of the Department of Health and Human Services (or designated Federal agency) may amend, rescind, or promulgate new regulations if deemed necessary and appropriate to assure compliance with the CHIMP Act. Any such proposed changes must be published in the **Federal Register** for public comment for a minimum of 60 days.

[FR Doc. 05–394 Filed 1–10–05; 8:45 am]

BILLING CODE 4140–01–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018—AI79

**Endangered and Threatened Wildlife and Plants; Proposed Removal of the Plant *Agave arizonica* (Arizona agave) From the Federal List of Endangered and Threatened Plants**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), propose to remove the plant *Agave arizonica* (Arizona agave) from the Federal List of Endangered and Threatened Plants. *Agave arizonica* was listed as endangered on June 18, 1984, due to threats of habitat modification and collection. Evidence collected subsequent to the listing indicates that plants attributed to *Agave arizonica* do not constitute a distinct species but rather are individuals that have resulted from recent and sporadic instances of hybridization between two species. Current taxonomic practice is not to recognize such groups of individuals as a species. The term “species,” as defined by the Act, only includes species, subspecies, and distinct population segments. Since *Agave arizonica* is not recognized as a species, it no longer qualifies for protection under the Act.

**DATES:** Comments on the proposed rule must be received on or before March 14, 2005 to ensure our consideration. Public hearing requests must be received by February 25, 2005.

**ADDRESSES:** Comments and materials concerning this proposal should be sent

to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021-4951. The proposal, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mima Falk, U.S. Fish and Wildlife Service, located in the Tucson suboffice, 110 South Church Ave, Suite 3450, Tucson, Arizona 85701 (telephone (520) 670-6150 ext. 225; facsimile (520) 670-6154).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning the taxonomic status or threats (or lack thereof) to this hybrid;
- (2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current taxonomic interpretation; and
- (3) Additional information concerning range, distribution, and population sizes, particularly if it would assist in the evaluation of the accuracy of the current taxonomic interpretation.

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law. In some circumstances, we may withhold from the rulemaking record a respondent's identity, as allowable by Federal law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

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

**Public Hearing**

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Field Supervisor (*see ADDRESSES* section).

**Background**

*Agave arizonica*, a member of the agave family, was first discovered by J. H. Houzenga, M. J. Hazelett, and J. H. Weber in the New River Mountains of Arizona. Drs. H. S. Gentry and J. H. Weber described this species in the "Cactus and Succulent Journal" in 1970 (Gentry and Weber 1970). This perennial succulent has leaves growing from the base in a small basal rosette (*i.e.*, an arrangement of leaves radiating from a crown or center), and is approximately 20–35 centimeters (cm) (8–14 inches (in)) high and 30–40 cm (12–16 in) wide. The leaves are dark green with a reddish-brown to light gray border extending nearly to the base, approximately 13–31 cm (5–12 in) long and 2–3 cm (1 in) wide. The slender, branched flowering stalk is 2.5–4 meters (m) (8.2–13 feet (ft)) tall with urn-shaped flowers 25–32 millimeters (mm) (1 in) long (Hodgson 1999).

*Agave arizonica* is found on open slopes in chaparral or juniper grassland in Gila, Maricopa, and Yavapai Counties between 1,100–1,750 m (3,600–5,800 ft) in elevation. The plants are often found associated with *Juniperus* spp., mountain mahogany (*Cercocarpus montanus*), *Opuntia* spp., sotol (*Nolina microcarpa*), and banana yucca (*Yucca baccata*), among other species common to the chaparral/juniper-oak transition (Hodgson and DeLamater 1988). There are estimated to be fewer than 100 plants in the wild, occurring mainly on the Tonto National Forest and a few locations on private property. *Agave arizonica* plants are associated with soils that are shallow, cobbled, and gravelly, on strongly sloping to very steep slopes and rock outcrops on mid-elevation hills and mountains. The soils are well-drained and derived from a variety of rocks, including granite, gneiss, rhyolite, andesite, ruffs, limestone, sandstone, and basalt (Hodgson and DeLamater 1988). Plants typically flower in May–July.

Field studies on *Agave arizonica* began in 1983. A natural distribution study was not finalized until August 1984 (DeLamater 1984), after the final listing rule (49 FR 21055, May 18, 1984) was published. Surveys for this study were conducted in the New River Mountains, and by 1984, ten new clones (vegetative offsets, or buds, from an individual plant) were found in these mountains. These were individual clones of 2–5 rosettes. All of the clones occurred together with two other agaves, *Agave toumeyana* ssp. *bella* and *A. chrysantha*. *A. chrysantha* is found in southern and eastern Yavapai Counties, through much of Gila and Maricopa Counties, northern and eastern Pinal County, and northeastern Pima County. *Agave toumeyana* ssp. *bella* is restricted to the eastern slope of the Bradshaw Mountains, eastern Yavapai to northwestern and central to southern Gila County, northeastern Maricopa to northern Pinal County. Neither species is considered rare. A comparison of plant characters showed *Agave arizonica* to be intermediate to the other two agave species with which it is always found in association (DeLamater and Hodgson 1986). Pinkava and Baker (1985) suggested that plants recognized as *Agave arizonica* may be the result of continuing production of hybrid individuals rather than a species of hybrid origin based on their occurrence only where the ranges of the putative parents overlap; they are found only in random, widely scattered locations of individual plants and clones; their putative parents have overlapping flowering periods; *Agave arizonica*'s morphological characters are intermediate between the putative parents; and they appeared to be subfertile (reduced fertilization), producing pollen with a low percent of stainability, or viability. *Agave arizonica* has a chromosome count (2n) of 60, as does both its parents, indicating that gross chromosomal barriers to backcrossing with the putative parents are lacking. Polyploidy (having more than two complete sets of homologous chromosomes) is one factor in determining if a hybrid between two species can become genetically stable. That condition is not present in the genetic constitution of *Agave arizonica*.

Additional surveys were conducted in areas that supported sympatric populations (occurring together) of the putative parents. This resulted in the discovery of two clones in the Sierra Ancha Mountains, 100 miles disjunct from the New River Mountain locations. To date, plants and clones are known from three areas on the Tonto National

Forest (New River Mountains, Sierra Ancha Mountains, and the Humboldt Mountains). These three areas are widely separated from each other. The New River population is the most numerous, located 17.94 kilometers (km) (10.7 miles (mi)) west-northwest of the Sierra Ancha population. The Sierra Ancha population is comprised of one individual (Trabold 2001). There is another hybrid from the Payson area in the Humboldt Mountains. This agave is produced from a cross between *A. toumeyana* ssp. *toumeyana* X *A. chrysantha* that is sometimes incorrectly referred to as Arizona agave (Pinkava and Baker 1985). That individual is a triploid (3n=90), and therefore has a different chromosome count than *Agave arizonica*.

The Desert Botanical Garden (DBG), in Phoenix, initiated ecological studies of *Agave arizonica* in the mid-1980s through 1994. They conducted numerous surveys on the Tonto National Forest, collected seeds *in situ* (outside of confinement), conducted experimental crosses *in situ* and *ex situ* (in an artificial environment), and started an *ex situ* collection. DBG's work has shown that *Agave arizonica* can produce viable seed. In 1985, three different crosses were performed on clone #52, *in situ*, using flowers from different panicles (flower stalks). One cross used frozen pollen collected from *Agave arizonica* at the DBG, the second cross was self-fertilization of clone #52, and the third cross was uncontrolled outcrossing of clone #52 (flowers were left open to be pollinated by various donors). Seed was collected from all three crosses. Cross #1 produced 250 seeds, cross #2 produced 20 seeds, and cross #3 produced a large quantity of seeds (Hodgson and DeLamater 1988). Cross #2 produced poor seed set from self-fertilization, while outcrossing with *Agave arizonica* pollen produced a high proportion of viable seed, as did uncontrolled outcrossing. The majority of the seeds were planted. Ten months after planting, 10 of the 105 seeds produced from cross #1 germinated. Some of those resembled *Agave arizonica*, while others did not (W. Hodgson, Desert Botanical Garden, pers. comm. 2003). DBG also conducted controlled crosses of *A. chrysantha* and *A. toumeyana* ssp. *bella*. The seeds produced from this cross resulted in *Agave arizonica* plants. Individual *Agave arizonica* plants can therefore be created by crosses of the parental species. This condition indicates that there is nothing genetically unique about *Agave arizonica*. If all of the *Agave arizonica* individuals that exist in

the field were destroyed, it is unlikely that any unique genetic material would be lost (M. Baker, Southwest Botanical Research, pers. comm. 2004). These results support the hypothesis that *Agave arizonica* is composed of individuals that resulted from recent and spontaneous instances of hybridization between two species, and is not, at this time, a species of hybrid origin.

*Agave arizonica* is most likely a first-generation (F1) hybrid between two other species. It is not known if any individuals of the F1 generation, *in situ*, have backcrossed with either one of the parents or with another *Agave arizonica* individual. The latter seems unlikely because of the distance pollen would have to travel given the low numbers of individuals and the great distance separating them. Seeds have been produced in the wild, but it is not known if those seeds were produced from *Agave arizonica* X either parent or *Agave arizonica* X *Agave arizonica*. Seeds grown out in greenhouse conditions produced plants with wide phenotypic (visible) variations; not all seedlings represented "pure" *Agave arizonica* traits. The fact that *Agave arizonica* can be reliably produced by crossing the putative parents *ex situ* lends support to the hypothesis that *Agave arizonica* is a recurring F1 hybrid. All evidence supports that *Agave arizonica* individuals are derived from crosses between different species. In other words, each individual *Agave arizonica* was created spontaneously and independently from separate crossings of the putative parental species (M. Baker, pers. comm. 2004).

*Agave arizonica* plants are rare in the wild. The likelihood is low that two of these plants would breed with one another because it is not likely that two such plants would be close enough to one another and bloom in the same year. Plants of a clone may produce flowers in synchrony, but spatially separated clones may not all bloom at the same time. The flowering period of *Agave arizonica* overlaps with that of its putative parents, and the same insects (bumblebees, mining bees of the family Halictidae, and solitary bees) visit all three agave species. This condition can lead to back-crosses with one of the putative parents. Whether *Agave arizonica* can maintain a separate genetic identity is not likely, due to low numbers, overlap of flowering period with the putative parents, and lack of an effective reproductive isolating mechanism to promote genetic stability.

In 1999, Hodgson published a treatment for the Agave family for the "Flora of Arizona" (Hodgson 1999).

*Agave arizonica* was not recognized as a species in that treatment, which indicated that it should be referred to as *Agave X arizonica*, a hybrid of recent origin involving *A. chrysantha* X *A. toumeyana* var. *bella*.

Jolly (in Riesberg 1991) has suggested protection for a hybrid taxon if (1) Its evolution has gone past the point where it can be reproduced through crossing of its putative parents, (2) it is taxonomically distinct from its parents, and (3) it is sufficiently rare or imperiled. Under these criteria, F1 hybrids such as *Agave arizonica* should receive no protection.

In summary, the plant species formerly referred to as *Agave arizonica* is now recognized as an interspecific hybrid produced sporadically and spontaneously by the cross of *Agave chrysantha* X *Agave toumeyana* var. *bella*. Individuals have been determined to be a hybrid for the following reasons: (1) They share the same chromosome number (2n=60) with the putative parents, indicating that there are no genetic barriers in place to facilitate genetic stability, (2) flowering periods of the putative parents overlap, (3) morphological characters of *Agave arizonica* are intermediate with those of the putative parents, (4) *Agave arizonica* only occurs where there is overlap with the putative parents, (5) it appears to be subfertile, producing pollen with low percent stainability (pollen viability is correlated with the ability of pollen to absorb certain chemical stains; low percent stainability is correlated with reduced pollen viability), (6) *Agave arizonica* can be created, *ex situ*, by crossing the putative parents, indicating that there may be no unique genetic characters associated with these plants, and (7) it has not, to anyone's knowledge, reproduced itself sexually in the field.

#### Previous Federal Action

Federal Government action concerning *Agave arizonica* began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51), which included *Agave arizonica*, was presented to Congress on January 9, 1975, and accepted by the Service under section 4(c)(2), now section 4(b)(3)(A), of the Act as a petition to list these species. The report, along with a statement of our intention to review the status of the plant taxa, was published in the **Federal Register** on July 1, 1975 (40 FR 27823). On June 16, 1976, we published a proposed rule in the

**Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plants to be endangered pursuant to section 4 of the Act. *Agave arizonica* was included in this proposal. On December 10, 1979, we withdrew all outstanding proposals not finalized within two years of their first publication, as required by the 1978 amendments to the Act. On August 26, 1980, the Service received a status report prepared by four researchers employed by the Museum of Northern Arizona. This report documented the status of, and threats to, the species. On December 5, 1980, we published a revised notice for plants (45 FR 82479) and included *Agave arizonica* in category 1. Category 1 comprised taxa for which we had sufficient biological information to support their being listed as endangered or threatened species. We published a proposed rule to list *Agave arizonica* as an endangered species on May 20, 1983 (48 FR 22757). No critical habitat was proposed. We received a total of 13 written comments on the proposal. No public hearing was requested or held. The final rule listing *Agave arizonica* as endangered was published on May 18, 1984 (49 FR 21055), and concurrent with the proposal, no critical habitat was designated.

In 1985, a year after *Agave arizonica* was listed, the USDA Forest Service (FS) petitioned us to delist *Agave arizonica* because of its hybrid status. We sent out the work on *Agave arizonica* that had been published for peer review and solicited comments. Many of the comments supported delisting based on the available evidence; however, the Service disagreed that the available data conclusively proved that *Agave arizonica* was a hybrid. The Service believed that the results of the controlled crosses were important for the analysis, and those had not been completed at the time of the review. Therefore, on January 21, 1987 (52 FR 2239), we announced that delisting was not warranted.

#### Delisting Analysis

After a review of all information available, we are proposing to remove *Agave arizonica* from the List of Endangered and Threatened Plants, 50 CFR 17.12. Section 4(a)(1) of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to or removing them from Federal lists. The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original

classification data were in error. Since the time of listing, additional study has shown that *Agave arizonica* is not a distinct species, but consists of individuals that are the result of spontaneous, occasional, and continuing hybridization between two distinct species. In modern taxonomic practice, such groups of individuals are not recognized as species. We have concluded that the original taxonomic interpretation upon which the listing decision was based has not been substantiated by subsequent studies, and *Agave arizonica* does not qualify for protection because it does not fit the definition of a species in the Act.

Our determination that *Agave arizonica* should be proposed for delisting is based on evidence that it is not a species and, therefore, does not qualify for protection under the Act, rather than on the control of threats. The term "species," as defined in the Act, includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature. *Agave arizonica* does not meet this definition because it is not known to interbreed *in situ* or otherwise reproduce itself. Hybrid origin of species is considered common within the flowering plants (Grant 1963). Species of hybrid origin are capable of reproducing themselves and maintaining a degree of genetic stability. Scientific evidence at this point supports the determination that *Agave arizonica* does not have these characteristics of a species. The plants are not known to have sexually reproduced *in situ*. *Agave arizonica* plants have sporadically developed *in situ* from the putative parents, but they have not been reproductively self-sustaining. *Agave arizonica* has never been found in well-developed populations or outside patches of its putative parents.

We have carefully assessed the best scientific and commercial information available regarding the conclusion that *Agave arizonica* is a hybrid that does not qualify for protection under the Act. Based on this evaluation, the preferred action is to remove *Agave arizonica* from the List of Endangered and Threatened Plants, 50 CFR 17.12.

#### Effects of the Proposed Rule

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply to *Agave arizonica*. These prohibitions, in part, make it illegal for any person

subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce *Agave arizonica* to possession from areas under Federal jurisdiction. For plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. If *Agave arizonica* is removed from the List of Endangered and Threatened Plants, these prohibitions would no longer apply.

If *Agave arizonica* is delisted, the requirements under section 7 of the Act would no longer apply. Federal agencies would not be required to consult with us on their actions that may affect *Agave arizonica*.

If delisted, *Agave arizonica* would continue to receive limited protection under Arizona's Native Plant Law, A.R.S., Chapter 7, Section 3-901, which specifically prohibits collection except for scientific or educational purposes under permit.

The 1988 amendments to the Act require that all species delisted due to recovery be monitored for at least five years following delisting. *Agave arizonica* is being proposed for delisting because the taxonomic interpretation that it is a species is no longer believed to be correct; *Agave arizonica* is a sporadically occurring hybrid, rather than a distinct taxon. Therefore, no monitoring period following delisting would be required.

#### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our delisting decision is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final

decision may differ from this proposed rule.

### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION**; section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

### National Environmental Policy Act

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

### Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed

by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The *Agave arizonica* is being proposed for delisting because the taxonomic interpretation that it is a species is no longer believed to be correct; *Agave arizonica* is a sporadically occurring hybrid, rather than a distinct taxon. Therefore, no monitoring period following delisting would be required and so we do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

### Executive Order 13211

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

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### Authors

The primary authors of this document are staff located at the Ecological Services Tucson Sub-office (*see ADDRESSES* section).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

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

### PART 17—[AMENDED]

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

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

### § 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry "*Agave arizonica*" under "FLOWERING PLANTS" from the List of Endangered and Threatened Plants.

Dated: December 7, 2004.

### Marshall Jones,

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

[FR Doc. 05–442 Filed 1–10–05; 8:45 am]

**BILLING CODE 4310–55–P**