private cable system operators. The Commission has developed, with the approval of the Small Business Administration (''SBA''), its own definition of a small cable system operator for rate regulation purposes. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, the Commission estimates that there were 3,400 private cable operators serving multiple dwelling units that qualified as small cable companies. Some of those companies may have grown to serve from 800,000 to 1.5 million subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 3,400 small entity cable system operators that may be affected by the decisions and rules the Commission adopts.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is not proposing to impose additional reporting or recordkeeping requirements.

F. Significant Alternatives Which Minimize the Impact on Small Entities and Are Consistent With Stated Objectives

The NPRM solicits comments on all alternatives to Optel's request which would minimize any adverse impact on small entities.

G. Federal Rules Which Overlap, Duplicate, or Conflict With the Commission's Proposal

None.

H. Report to Congress

The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 801(a)(1)(A). A copy of this IRFA will also be published in the **Federal Register**.

Ordering Clauses

It is ordered that, pursuant to Sections 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), notice is hereby given of the proposed amendments to part 78 of the Commission's rules, in accordance with the proposals, discussions, and statements of issues contained in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussions, and statements of issues.

It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph 603(a) of this regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 78

Cable television, Communications equipment.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19709 Filed 7–30–99; 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; Notice of 90-Day Finding on Petition To Delist the Concho Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service) announce a 90-day finding for a petition to delist the Concho water snake (*Nerodia paucimaculata*) under the Endangered Species Act of 1973, as amended. We find that the petitioner did not present substantial information indicating that delisting this species may be warranted.

DATES: The finding announced in this document was made on July 13, 1999.

ADDRESSES: Comments, material, information, or questions should be sent to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The petition and supporting data are available for public inspection by appointment during normal business hours at the above address. A copy of the finding announced in this notice may be obtained by writing to the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish & Wildlife Biologist, at the above address (telephone 512–490–0057 ext. 227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, we must make this finding within 90 days of the date the petition is received, and this finding must be published promptly in the **Federal Register**. If the finding is that the petitioner has presented substantial information we must then promptly commence a status review of the species.

When evaluating whether the substantial information standard is met, we use the definition provided in the implementing regulations at 50 CFR 424.14(b). Substantial information is defined as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' The factors for listing, delisting or reclassifying species are described in 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be based on one of the following reasons—(1) extinction, (2) recovery, or (3) original data for classification were in error.

On June 29, 1998, we received a petition by John W. Grant on behalf of the Colorado River Municipal Water District (CRMWD) dated June 24, 1998, to delist the Concho water snake (CRMWD 1998). The petition asserts that—(1) the status of the Concho water snake was stable at the time of listing and continues to be stable, (2) all putative threats are insubstantial, and (3) the determination that the Service made to list the snake as threatened was in error. After careful review, we find that the snake should remain classified as threatened under the Act.

The Concho water snake is endemic to the Concho and Colorado rivers in Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, Irion, Lampasas, and Coke counties, Texas. We listed the Concho water snake as threatened on September 3, 1986, due in part, to its limited geographic range, limited population sizes, and loss of important habitats and prey base resulting from water development projects (past, ongoing, and future) (51 FR 31412). We designated critical habitat for the species on June 29, 1989 (54 FR 27377).

Information presented in the petition indicates that, in the 15 areas monitored by CRMWD and in certain reaches of O.H. Ivie Reservoir's shoreline, Concho water snake populations persist. The voluminous data on the snake and its fish preybase submitted by the petitioner provides a detailed picture of snake's status at the CRMWD and Texas A&M University monitoring sites. However, as discussed in the petition, due to limitations in site visits and resultant low number of recaptures, CRMWD biologist were unable to make precise local Concho water snake population size estimates.

The current range of the Concho water snake is similar to when the species was listed 13 years ago. The snake's primary habitat remains riverine (located on or inhabiting the bank of a river). This habitat is threatened by inadequate instream flows to support the fish preybase for the snake. Each of the three major riverine sections (Concho River, Colorado River from Spence Reservoir to O.H. Ivie Reservoir, and Colorado River downstream of O.H. Ivie Reservoir) of the snake's range are downstream of reservoirs. Operations at these reservoirs (O.C. Fisher, Lake Nasworthy, Twin Buttes, E.V. Spence, and O.H. Ivie) can affect instream flows for snakes and their prey for significant periods of time.

In a biological opinion for the U.S. Army Corps of Engineers we identified instream flows (including flushing flows for channel maintenance) below Spence and Ivie reservoirs in our reasonable and prudent alternatives. If we delist the Concho water snake, the requirements of the biological opinion would no longer be in effect.

CRMWD biologists made multiple preybase surveys using seines at the 15 required monitoring sites, as well as other sites. The small fishes in these surveys, upon which snakes are known to feed, are variable in numbers from year to year but generally do not appear to have been a limiting factor for local populations during this period. However, if instream flows are inadequate there will be a decrease in Concho water snake prey.

We do not agree with statements made in the petition that reductions in stream flow are not (and will not be) a problem. Low flow conditions exacerbate any significant pollution problems (i.e. increases in nutrients and/or toxic compounds). If those conditions persist long enough (perhaps for as little as three years), water snakes in those reaches will be at risk of extirpation. The demise of the Concho water snake population below E.V. Spence Reservoir following its construction is likely related to inadequate instream flows (reservoir releases). Scott *et al.* (1989) found certain reaches of the Colorado River ''too dry for too long to support water snake populations.''

Since the early 1930s, at least five major droughts occurred State-wide in Texas lasting multiple years and disrupting normal use of the State's water resources (U.S. Geological Service 1991). An inadequate instream flow regime remains one of the most serious threats to the snake due to the prevalence of droughts in Texas.

According to information presented in the petition, in the years following the inundation of riverine habitat by O.H. Ivie Reservoir, Concho water snakes survived and reproduced in the reservoir. However, blockage to Concho water snake movement by Freese Dam and the discontinuous nature of some of the reservoir habitat remain as potential barriers to gene flow between populations. In addition, available information does not enable precise estimates on the size or health of the snake population on O.H. Ivie Reservoir. Despite indications that Concho water snakes have been able to survive for a decade, the mid-term and long-term fate of the Concho water snake in O.H. Ivie Reservoir remains uncertain. Examination of the data presented suggests that the abundance of snakes is variable among reservoirs and in general less than the abundance of snakes in suitable riverine habitat. Information presented and available to us indicates that habitat loss from water development and diversion projects remains a threat.

The information presented in the petition indicates that, at least in the early successional stages of O.H. Ivie Reservoir, snakes have been able to survive. However, in the course of the life of reservoirs such as O.H. Ivie, sediment will deposit in the upper reaches of the reservoir. Over time and depending on various conditions in the watershed, upper O.H. Ivie will likely become less suitable snake habitat. Furthermore, changes to the reservoir's fishery due to stockings of game fish and degradation of cover and structure may adversely affect Concho water snake prey availability. While Concho water snakes are somewhat flexible in their response to changes in prey items, an event that would result in the reduction of preferred size food items (e.g, small minnows for juvenile snakes) could affect the species' ability to sustain current population levels. If such an event lasted multiple years, we would expect the snake population to decline. Recruitment would be reduced and populations would decline.

Another factor that threatens the Concho water snake is the fragmentation and isolation of populations resulting from habitat disturbance and from physical barriers such as the Freese Dam. The petition discusses fragmentation citing the Concho water snake genetics study of Sites and Densmore (1991). There is general agreement on several issues—(1) the distribution of the Concho water snake is a linear array of demes (a series of local populations) connected with occasional gene flow and associated with specific habitat features such as riffles (a section of a river characterized by swifter currents, shallow depths and broken water with turbulence or waves at the surface); (2) the Freese Dam poses a barrier to water snake movement both upstream and downstream; (3) mitigation against fragmented habitats and conservation of the Concho water snake require the artificial movement of Concho water snakes between (a) the Colorado River below Freese Dam and the Concho River and (b) the Colorado River below Freese Dam and the Colorado River above Ivie Reservoir; and (4) water snakes (*Nerodia* spp.) in general and Concho water snakes specifically have very low levels of genetic variation.

The petition states that the Ivie Reservoir population effectively connects the Concho and upper Colorado River populations. However, two issues remain that indicate the reservoir itself may be a barrier—(1) the current discontinuity of habitat patches along the reservoir shoreline along with the variability with which Concho water snakes occupy those patches and (2) more importantly, the ultimate fate of (a) the reservoir's physical habitats in the upper reaches and (b) the Concho water snake reservoir populations.

One significant point not addressed by the petition is the wide variability in the health of Concho water snake reservoir populations. Concho water snakes are probably absent from the lakes of the San Angelo area. Available information dating to Martin Whiting's thesis (1993) indicates that the Spence Reservoir population is limited with probably less than 200 individual snakes total ($n < 200$ total) for his two study sites. Additionally, Whiting found no evidence that the two Spence Concho water snake populations (Pecan Creek and Pump Station populations) exchanged individuals even though they were in the same general area of the reservoir separated by about 2,000 meters (m) or (6,562 feet (ft)).

The likelihood of survival of Concho water snakes in specific reservoirs is likely to be dependent upon a variety of factors such as—(1) reservoir hydrology (inflows to and outflows/diversions from the lake); (2) the time scale chosen (changes to water snake habitats found along the shoreline and the shallow parts of a lake may occur over several decades as opposed to years); limnology (study of freshwater systems such as lakes ponds and rivers and their plant and animal communities as they are affected by their physical, chemical, and biotic environment); and (4) continuity and connectivity with other Concho water snake populations. The persistence of the Concho water snake in Spence Reservoir does not assure us that the snake will persist in Ivie Reservoir. The two reservoirs differ in their hydrology, and we believe more data are needed to understand the fate of the Concho water snake in Ivie Reservoir area.

Finding

In addition to the analysis discussed above, we evaluated the petition in the context of the snake's recovery criteria as set forth in the species' recovery plan (Service 1993). We will consider the Concho water snake for delisting when—(1) Adequate instream flows are assured; (2) viable populations are present in each of the three major reaches * * *; and (3) movement of an adequate number of snakes is assured to counteract the adverse effects of population fragmentation. Importantly, the petition does not address criterion one. In regards to criterion two, while Concho water snake population in each of the three major reaches are stable, there is no reliable data available to indicate that these populations remain viable. Viable populations are self-sustaining and can persist for the long-term (Soulé 1987).

We believe the information provided by the petitioner has added to our knowledge of the distribution and abundance of the Concho water snake. However, the petition lacks adequate information upon which to evaluate the long-term viability of individual populations. Further investigations are needed to understand the various factors important to the snake's long-term viability, including range wide monitoring, and the future distribution of habitat patches, whether occupied and unoccupied, including those at the O.H. Ivie Reservoir.

In summary, the petition fails to provide information indicating that any of the three criteria for delisting (from the recovery plan) are met. Further, the impact of declining instream flows (due to drought and/or water diversions), long term changes to lake habitats, pollution, and other habitat threats on the riffle-dwelling fish in the Concho and Colorado rivers are not addressed in the petition.

References Cited

Colorado River Municipal Water District. 1998. Petition to delist the Concho water snake. Submitted to United States Department of the Interior and Texas Parks and Wildlife Department. pp. 33 + appendices a–c.

Scott, N.J., Jr., T.C. Maxwell, O. W. Thornton, Jr., L.A. Fitzgerald, and J.W. Flury. 1989. Distribution, habitat, and future of Harter's water snake, Nerodia harteri, in Texas. Journal of Herpetology 23(4): 373–389.

Soulé, M.E. 1987. Introduction. In: Viable Populations for Conservation. M.E. Soulé, editor. Cambridge Univ. Press. New York. 189 pp.

U.S. Fish and Wildlife Service. 1993. Concho Water Snake Recovery Plan. Albuquerque, New Mexico vii+66 pp.

Whiting, M.J. 1993. Population ecology of the Concho water snake, Nerodia harteri paucimaculata, in artificial habitats. Unpublished M.S. thesis. Texas A&M University. xvi+137 pp.

Author: The author of this document is Patrick Connor, Austin Ecological Services Field Office (see **ADDRESSES** section).

Authority

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

Dated: July 13, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19711 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 072099F]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a series of 10 public workshops on the possible use of marine reserves as a fishery management tool in Federal waters of the Gulf of Mexico.

DATES: Written comments will be accepted until 5 p.m. on September 13, 1999. The public workshops will be held from August 9 through 24, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. Copies of the scoping documents that will be used at the workshops (Marine Reserves for Fisheries Management: Questions and Answers; and Marine Reserves Technical Document) can be obtained from the Council office at 813-228-2815; web site: http://www.gulfcouncil.org.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; (813) 228–2815; Fax: 813–225–7015.

SUPPLEMENTARY INFORMATION: These workshops are to introduce the concept of marine reserves, i.e., zones of restricted or no fishing, to the public, to solicit public comment on whether they are an appropriate tool to use for fishery management in the Gulf of Mexico, and if so, how they should be used. No specific options to create marine reserves will be presented at these workshops, but the the Council will consider comments provided by the workshop participants in deciding whether and how to proceed with the development of marine reserves. The Council intends to use an outside facilitator to gain the greatest amount of input from participants and avoid any perceptions of bias.

The workshops will be held from 7:00 p.m. to 10:00 p.m. at the following locations:

1. Monday, August 9, 1999—Four Points Sheraton, 3777 North Expressway, Brownsville, TX; telephone: 956–547–1500;

2. Tuesday, August 10, 1999—Ellis Memorial Library, 700 West Avenue A, Port Aransas, TX; telephone: 512–749–4116;

3. Wednesday, August 11, 1999—Texas A&M University Auditorium, 200 Seawolf Parkway, Galveston, TX; telephone:

409–740–4416;

4. Thursday, August 12, 1999—Four Points Sheraton, 333 Poydras Street, New Orleans, LA; telephone: 504–525–9444;

5. Monday, August 16, 1999—J. L. Scott Marine Education Center & Aquarium, 115 East Beach Boulevard, Biloxi, MS; telephone: 228–374–5550;

6. Tuesday, August 17, 1999—Hilton Beachfront Garden Inn, 23092 Perdito