

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-91, adopted June 13, 1991, and released June 21, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036 (202) 452-1422.

#### List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15248 Filed 6-26-91; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 91-173, RM-7558]

#### Radio Broadcasting Services; Jackson, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Teton Broadcasting Limited Partnership, permittee of Station KZJH-FM, Channel 239C, Jackson, Wyoming, requesting the substitute of Channel 237C for Channel 239C at Jackson and modification of its authorization accordingly, in order to alleviate an intermodulation problem with a two way mobile frequency of the Wyoming Highway Department. Coordinate for Channel 237C at Jackson, Wyoming, are 43-27-40 and 110-45-09.

**DATES:** Comments must be filed on or before August 12, 1991, and reply comments on or before August 27, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Stuart B. Mitchell, Esq., Mitchell, Boyer & Associates, P.C., 5025-C Backlick Road, Annandale, VA 22003.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-173, adopted June 13, 1991, and released June 21, 1991. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

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Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-15247 Filed 6-26-91; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 91-13; Notice 1]

RIN 2127-AD85

#### Federal Motor Vehicle Safety Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Standard No. 123, Motorcycle controls and displays, currently specifies a transverse (crosswise) or longitudinal (lengthwise) axis of rotation for manual fuel shutoff controls. This notice would continue to require that those controls rotate, but proposes to amend the standard to remove the restriction on the orientation of the axis of rotation. It would also continue to require that the control positions (on, off, and reserve) be separated by 90 degrees of rotation, but proposes to eliminate other current restrictions on the location of those control positions.

This action, taken in response to a grant of a petition for rulemaking, would relieve current design restrictions which have been tentatively determined by the agency to be no longer necessary for motor vehicle safety.

**DATES:** Comments on this proposal must be received by NHTSA no later than August 12, 1991.

If adopted in a final rule, the amendment would take effect 30 days after publication in the *Federal Register*.

**ADDRESSES:** Comments should refer to Docket No. 91-13; Notice 1, and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. The docket section is open from 9:30 a.m. to 4 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jere Medlin, Crash Avoidance Division, NRM-11, room 5307, NHTSA, 400 Seventh Street SW, Washington, DC 20590 (202-366-5276).

#### SUPPLEMENTARY INFORMATION:

#### Background

Standard No. 123, Motorcycle controls and displays (49 CFR 571.123), specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Table 1 of Standard No. 123 currently specifies that manual fuel shutoff controls, when provided, have the following identification and modes of operation:

"On"—Control downward; "Off"—Control forward (if control rotates around a transverse axis) or Horizontal—Left or Right (if control rotates around a longitudinal axis); "Reserve On"—(if provided) Control upward.

Thus, the standard requires that the manual fuel shutoff control rotate around a transverse or longitudinal axis.

The current specification is the result of a final rule published on September 7, 1984 (49 FR 35380). The agency determined that motor vehicle safety was best served by retaining the standardization of control position relationships while allowing the manufacturer to place the control so that it may operate in its required positions around either a longitudinal or transverse axis. Although NHTSA stated that it found merit in a comment received in response to the notice of proposed rulemaking (48 FR 40286) that favored allowing rotation around any axis, the agency declined to consider comments that went beyond the rule as proposed.

On November 14, 1990, the Motorcycle Industry Council (MIC) petitioned the

agency to amend Standard No. 123 to permit the manual fuel shutoff valve controls to rotate around any axis, provided that the relationship of the control positions (on, off, reserve) to each other remains the same as the current standard. MIC stated that the mechanical components on many of today's motorcycles are enclosed in a streamlined body. Since few parts of streamlined bodies follow the longitudinal or transverse axes of the motorcycle, MIC claimed that "special provisions" must be made in the design of the body in order to comply with the standard. This in turn severely restricts freedom of design, MIC asserted. On March 1, 1991, NHTSA granted MIC's petition. This notice is in response to the grant of that petition.

#### Proposed Rule

NHTSA has tentatively concluded that there is no safety-related justification for restricting the design of manual fuel shutoff controls to a longitudinal or transverse axis. Even though the axis orientation of the manual fuel shutoff control is currently standardized, there is no location requirement for the control itself, or even that the control be provided. Also, the standard does not regulate non-manual valves. Nor does it specify that there be adequate access of the hand to the control. Thus, there does not appear to be any justification for regulating manual fuel shutoff control axis orientation.

However, the agency has tentatively concluded that the requirements for standardization of the relationship between the control positions (on, off, and reserve) are a necessary crash avoidance requirement. Standardization of the control positions enables the operator to use the control without taking his or her eyes off the road.

MIC suggested that the manual fuel shutoff control have the following modes of operation: "Off" would be located midway between "On" and "Reserve"; and "On" located 180 degrees from "Reserve." Although MIC's suggestion recognizes the importance of standardization of the relative position of the control settings, its workability is premised on the existence of a "Reserve" setting. However, such a setting may not be provided since provision of that setting is not required by the standard. If there is no "Reserve" setting, MIC's suggested amendment would not adequately regulate the relative positions of the "On" and "Off" positions. Although the agency is not aware of a shutoff control which lacks a "Reserve" position, the installation of

such a control is not required under the standard.

Therefore, the agency is proposing a standardized control position requirement that is not dependent upon the existence of a "Reserve" setting.

#### Effective Date

Because the proposed amendment relieves restrictions and is optional in nature, the agency has tentatively determined that there is good cause shown that an effective date earlier than 180 days after issuance is in the public interest, and proposes that the effective date be 30 days after publication in the Federal Register.

#### Rulemaking Analyses and Notices

##### *Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This proposed amendment would impose no additional requirements but would permit manufacturers greater design flexibility in locating the manual fuel shutoff control. The agency has determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not required.

##### *Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. As stated above, the proposed action would allow additional design flexibility. Manufacturers of motorcycles, who would be affected by the proposed amendment, are generally not considered small businesses for the purposes of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected since the price of new motorcycles would be minimally impacted. Accordingly, no regulatory flexibility analysis has been prepared.

##### *Executive Order 12612 (Federalism)*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that the proposed rule does not have

sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *National Environmental Policy Act*

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment nor would it require any increase in materials required in the manufacture of motorcycles.

#### Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon

receiving the comments, the docket supervisor will return the postcard by mail.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

#### PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

#### § 571.123 [Amended]

2. The operation requirements for the manual fuel shutoff control (item 7) in column 3 of table 1 of Standard No. 123 would be revised to read as follows:

Rotate to operate. "On" and "Off" are separated by 90 degrees of rotation. "Off" and "Reserve" (if provided) are separated by 90 degrees of rotation. Sequence order: "On"-"Off"-"Reserve".

\* \* \* \* \*

Issued on: June 21, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-15286 Filed 6-26-91; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Sonoran Desert Tortoise as Threatened or Endangered

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

**ACTION:** Notice of petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to amend the List of Endangered and Threatened Wildlife and Plants. After review of all available scientific and commercial information available on the Sonoran population of the desert tortoise (*Gopherus* (= *Exerobates*) *agassizii*), the Service has determined that listing the Sonoran desert tortoise as threatened or endangered is not warranted at this time.

**DATES:** The finding announced in this notice was made on June 20, 1991. Comments and information should be submitted until further notice.

**ADDRESSES:** Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sam Spiller, Field Supervisor at the above address or telephone 602/379-4720 or FTS 261-4720.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 14, 1984, the Service received a petition to list the desert tortoise (*Gopherus agassizii*) as an endangered species throughout the remainder of its range in Arizona, California, and Nevada (the Beaver Dam Slope population of the desert tortoise in Utah was listed as threatened with critical habitat in 1980). The desert tortoise also occurs in Sonora and Sinaloa, Mexico.

A 90-day finding that the petition presented substantial information indicating that the requested action may be warranted was made on December 14, 1984, and published on April 2, 1985 (50 FR 13054). On December 5, 1985, the Service published a 12-month finding (50 FR 49863) that the petition to list the desert tortoise throughout its range was warranted, but precluded by other pending proposals of higher priority. On July 1, 1987, after review of additional data, the Service again published a finding of warranted but precluded in the Federal Register (52 FR 24485).

On May 31, 1989, substantial new information on population declines due to Upper Respiratory Disease Syndrome (URDS) was provided, and the Service was petitioned to list the desert tortoise as endangered throughout its range in the United States. As a result of the new information, the Service listed the Mojave population as endangered by emergency rule on August 4, 1989 (54 FR 32326). The Mojave population was designated in the rule as all tortoises north and west of the Colorado River (California, Nevada, the Arizona Strip, and Utah). The emergency rule provided protection under the ESA for 240 days, until April 2, 1990. The Service did not list the Sonoran population (occurring south and east of the Colorado River) under the emergency provisions of the ESA for the following reasons:

1. Historically, desert tortoises in the Sonoran population occur in numerous distinct, small groups in a distribution

pattern described as patchy or disjunct and inhabiting steep-sided canyons.

2. The very patchiness of the distribution in the Sonoran population leads the Service to conclude that the URDS affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of respiratory disease have been documented in the Sonoran population, it appears that respiratory disease is: (a) Usually present in tortoise populations to varying degrees, (b) has not shown any evidence of becoming pandemic, (c) has not been shown to be URDS, and (d) is currently being addressed by the Service and the Arizona Game and Fish Department (AGFD), who will continue to gather and evaluate data.

On October 13, 1989, the Service published a proposal (54 FR 42270) to list the Mojave population of the desert tortoise as an endangered species under regular listing procedures.

The reasons for not proposing the Sonoran population as endangered at that time were the same as applied at the time of the emergency listing, plus the fact that the habitat in the Sonoran Desert is less subject to disturbance than is the more level terrain occupied by tortoises in the Mojave Desert. Additionally, the proposed rule stated that a report on the results of studies undertaken on the Sonoran population in 1990 would be available in January 1991. The report would contain information needed to determine whether the Sonoran population of the desert tortoise warranted listing. All available information on distribution, abundance, and threats would be summarized. This summary would include review of published and unpublished information and preparation of maps overlaying tortoise distribution with projected land use patterns. Results of field work to determine population status and trends, with emphasis on reproduction, disease, and mortality, would be available by revisiting previously sampled sites.

On April 2, 1990, the Service listed the Mojave population of the desert tortoise as a threatened species (55 FR 12178). The Service stated that it would continue to evaluate the status of the Sonoran population and, in settlement of litigation, agreed that it would determine either that a proposal to list the Sonoran population of desert tortoises as an endangered or threatened species was warranted, as provided in section 4(b)(3)(B)(ii) or the Act, 16 U.S.C. 1533(b)(e)(B)(ii), or that such action is not warranted, as

provided in section 4(b)(3)(B)(i) of the Act 16 U.S.C. 1533 (b)(3)(B)(i). The October 16, 1990, petition finding stated that the Sonoran Desert population of the desert tortoise would be addressed in a later and separate administrative finding.

Information already in Service files and that obtained in 1990 have been assembled into a document entitled "Status Summary of the Desert Tortoise in the Sonoran Desert." All these best available data show neither a significant decrease in the species' range nor a decline in abundance over a significant portion of the range.

The five factors for listing prescribed by the Act were evaluated in order to make a determination in response to the petition.

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

As currently assessed by the AGFD, there are approximately 27,623 km<sup>2</sup> of potential tortoise habitat in the Sonoran Desert in Arizona. It is projected that approximately 10,061 km<sup>2</sup> (36 percent) of all tortoise habitat in the Sonoran Desert in Arizona may receive adverse impacts, directly or indirectly, over the next 25 years. Conversely, 64 percent of all tortoise habitat in Arizona is not expected to receive impacts at all over the next 25 years. The levels of the impacts for land uses thought to be potential threats to tortoises and/or their habitat have not been fully assessed, and may range from non-existent to exceedingly severe. The magnitude and extent of the impacts often depends upon land ownership and associated management policies, but overall, will ultimately be determined by Arizona's economic situation.

From a land ownership perspective, Federal and State land management agencies and wildlife agencies have the greatest potential for affecting Sonoran tortoise populations in Arizona. Approximately 48 percent of the Sonoran habitat occupied by tortoises in Arizona is under management jurisdiction of the Bureau of Land Management (BLM) and Forest Service (FS) which manage the majority of their lands for multiple use. These uses may include oil, gas, and mineral exploration; livestock grazing; recreation; and wildlife management. The Service and various Federal, State, and local parks and recreation-oriented agencies manage 9 percent of the habitat in the aggregate. The State of Arizona owns 16 percent of the occupied habitat, and another 12 percent is in private ownership. Both State and private lands are, for the most part, managed for

economic benefit. Indian reservations and the military manage 16 percent of the tortoise habitat. There are currently no data by which to determine the quality of habitat or density of tortoise populations managed by each entity.

Although most Federal agencies are currently managing the desert tortoise as a candidate category 2 species, the BLM, National Park Service (NPS), and the Service have specific management policies that provide increased levels of protection for the desert tortoise. The BLM, which manages approximately 41 percent of the desert tortoise habitat in Arizona, is operating under the "Desert Tortoise Habitat Management on Public Lands: A Range-wide Plan" and the "Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona." These documents provide objectives and management actions for the conservation of desert tortoises on BLM lands. The Service and NPS have management policies for the preservation and protection of natural ecosystems. Additionally, in November of 1990, Congress passed the Arizona Desert Wilderness Act (Act) of 1990. On BLM land, the Act designates 30 wilderness areas containing approximately 2,805 km<sup>2</sup> of desert tortoise habitat. The act also provides for approximately 1,435 km<sup>2</sup> of Wilderness containing desert tortoise habitat on four National Wildlife Refuges in Arizona.

From a historical perspective, of over 200 townships reviewed by AGFD, there were only four townships in Arizona where Sonoran tortoise occurrence has not been re-confirmed since 1965. These data indicate that the overall range of the tortoise in Arizona has not been reduced in recent times. However, some populations within the range in metropolitan areas have been severely affected or perhaps eliminated. It appears that the tortoise currently occupies virtually all potential habitat in Arizona.

Desert tortoise populations in the Sonoran Desert occupy discrete mountain ranges. Valleys between these mountains are and have been historically unoccupied by desert tortoises, except for dispersal and movement among preferred habitats. As the human population of Arizona has expanded, the tortoise populations within the mountain ranges may have become further isolated due to agriculture, urbanization, construction of roadways, utility corridors, canals, grazing, and off-highway vehicle activity. These activities have resulted in local changes to vegetative communities, especially the reduction in diversity and cover of shrubs and

perennial grasses. These changes have created openings and barren areas in some desert landscapes and may have degraded the quality of habitat for dispersing tortoises in some areas. The effects on dispersal have not been examined.

The impacts of off-highway vehicles (OHV's) on tortoises are well established for the Mojave Desert. In the Mojave Desert, OHV's compact the soil, crush tortoises, crush dens and pallets, and reduce plant abundance, cover, and productivity. Although some OHV traffic occurs year-round in desert tortoise habitat in Arizona, no quantifiable data exist on amount of impact caused by OHV's. Most OHV use occurs in more navigable areas, away from the best tortoise habitat. Sonoran habitats, especially upland shelter sites, are generally less subject to compaction because they are rocky. However, OHV use may affect desert washes where tortoise travel routes often occur and tortoise burrows occasionally are found. Very little OHV impact to tortoises or their habitat occurs in Mexico.

The impacts of livestock grazing to Sonoran tortoises are not well known but seem to be different than those that have been documented in the Mojave Desert. In general, the sites most heavily grazed by livestock in Arizona (i.e., flatlands) do not have tortoise populations and livestock rarely extend up the rocky slopes preferred by Sonoran Tortoises. In the Mojave population, which occurs on more level ground, there has been considerable concern about grazer/tortoise interaction and/or competition. It is unknown whether tortoises and livestock compete for forage or have simple dietary overlaps.

Mexico contains about a third of the desert tortoise's total range and perhaps more than 50 percent of the Sonoran population's range. It appears that potential threats to the tortoise in Mexico may be less severe than in the U.S. due to economics: Slower urban growth and the lack of potable water throughout much of the Sonoran Desert reduces the human-related impacts from development and proximity to habitation. Other Mexican impacts of unknown magnitude to tortoise populations occur from illegal take for pets, consumption, etc., and from habitat alterations due to livestock grazing, including the introduction and propagation of non-native grasses such as buffle grass (*Cenchrus* sp.).

Although there are no data to support or refute any inferences of the relative security of desert tortoise populations in Mexico, a major threat from urban

growth is not immediate. Some of the highest densities of tortoise known in the Sonoran Desert occur on Isla Tiburón in the Sea of Cortez. This island is now protected as a preserve by the Mexican government.

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

It is currently estimated that over 100,000 tortoises exist in captivity in the Sonoran and Mojave deserts. Existing tortoise adoption programs, which distribute surplus backyard tortoises and those brought in from permanent habitat modification projects, probably meet most of the demand for pets and for scientific and educational purposes.

Commercial use of tortoises does not appear to be widespread in Arizona, probably because pet store owners are more aware of the pertinent State laws than is the general public. AGFD investigations of the black market pet trade over the past several years have revealed very little tortoise activity.

Human predation of desert tortoises occurred historically and still continues today in some areas. In Mexico, consumption of tortoise appears to be a threat to some tortoise populations. Not only do isolated ranches hunt tortoises for inexpensive meat, but there are reports of tortoise hunters, "tortugueros", who seek out populations and hunt them until they are depleted. Although consumption of tortoises appears to be a more-or-less common practice in rural Mexico, it most likely occurs only in isolated events in the United States.

*C. Disease or Predation*

URDS is the principal disease threat to Mojave tortoises, where it has reached epidemic proportions in some populations. Although URDS-like signs have been diagnosed from several Arizona localities, there are no veterinary diagnoses which confirm this syndrome in Arizona. The only population of tortoises exhibiting a suite of characteristic signs occurs in the Black Mountains near Bullhead City.

Signs of a respiratory disease have been observed in localities near Tucson and in the San Pedro River Valley. There have been no precipitous population declines from URDS in the Sonoran population, as were documented in Mojave populations.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The State of Arizona currently has no specific law for the protection of endangered species or their habitat and no State environmental policy legislation. The AGFD includes the desert tortoise on its list of Threatened Native Wildlife in Arizona (1988), as a candidate for State endangered or threatened status. This designation has no regulatory mandate vested in law. However, on January 1, 1988, the Arizona Game and Fish Commission prohibited the take of desert tortoises from the wild. The Commission also prohibits the sale of tortoises and the export of tortoises from the State.

Illegal vandalistic shooting and intentional killing of tortoises have been documented in Arizona. The impact of these activities is unknown, but is probably greater to populations near urban centers.

Because state laws do not apply on Indian reservations, prohibition of take can only be enforced through the Lacey Act when a tortoise is taken across reservation boundaries. The Lacey Act also regulates the transport of tortoises across state lines. *Gopherus* spp. are listed in appendix II of the Convention on International Trade in Endangered Species (CITES), which requires a Federal export permit when taking a tortoise out of the United States. Because Mexico has not signed CITES, no CITES export permit is required to transport a tortoise from Mexico to the United States, but a Mexican export permit from the Secretaria de Desarrollo Urbano y Ecología (SEDUE) is required.

For purposes of regulating commerce and taking of federally listed species, tortoises from the Sonoran Desert found outside their natural range in Arizona (south and east of the Colorado River)

and Mexico are considered a threatened species due to similarity of appearance to Mojave tortoises.

In Mexico, the desert tortoise is categorized as endangered in its natural environment. As of August 2, 1985, SEDUE prohibited the take of tortoises from the wild. Regulations state that it is unlawful to hunt, capture, possess, harass, transport, sell, or purchase specimens of or goods made from the desert tortoise. A special permit is required from SEDUE to capture or export the desert tortoise.

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

No such factors have been documented or recognized at this time.

After review of all available scientific and commercial information available on the Sonoran population of the desert tortoise, the Service has determined that listing the Sonoran desert tortoise as threatened or endangered is not warranted at this time. This decision is based on scientific information contained in the petition and otherwise available to the Service at the time the 12-month finding was made.

*Author*

The primary author of this notice is Dr. Richard A. Byles, Endangered Species Division, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103-1306 (505/766-3972 or FTS 474-3972).

*Authority*

The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1543); unless otherwise noted.

*List of Subjects in 50 CFR Part 17*

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 20, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-15241 Filed 6-26-91; 8:45 am]

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