

ronmental effects of the proposed action.

A. Impacts of these alternatives. Alternatives in the procedure outlined in BLM Manual sections 1791 and 1792, and the Management Framework Plan of the Bureau Planning System (BLM Manual sec. 1608), identify and evaluate locations outside the flood plain. If a location outside the flood plain would satisfactorily accomplish the same purpose as the proposal in the flood plain, the action shall not be located in the flood plain. The alternative sites or methods shall be analyzed as thoroughly as the proposed action itself has been analyzed.

1. *Consider no-action alternative.* This alternative measures the benefits or losses derived from no action as opposed to a contemplated action.

B. Impacts of the proposed action. The possible impacts using procedures described in BLM Manual section 1791 or 1792 shall be identified and discussed for all alternative sites or methods being contemplated. Also, the impacts of an action outside the flood plain, but affecting the flood plain shall be assessed. The analysis and documentation of flood plain impacts shall be included in the same document used for environmental analysis. For any analysis, actions which may support subsequent actions shall be considered with their own impacts.

C. Possible mitigating and restoring measures. During the preparation of the environmental analysis, the special means to reduce adverse impacts and/or restore the existing environment (BLM Manual secs. 1791 and 1792) shall be identified and described. As a part of flood plain management, all measures to minimize the damage and preserve and restore the flood plain functions shall be considered. If there are alternative proposals for actions in the flood plain, each action must be complete with its own mitigating and restoring measures.

1. These measures must be:
 - a. Possible and practical.
 - b. Consistent with Bureau plans, and those of other agencies, and State and local governments.
 - c. Not likely to cause additional adverse impacts.

14 *Steps in the decision process.* The impacts and mitigating and restoring measures of the proposed action and alternatives shall be analyzed. After this analysis, a tentative decision shall be made to use the proposed or the alternative action that will cause the least amount of degradation to the flood plain function(s).

B. Reevaluating the selected action. The selected action shall be reevaluated after receiving public comments (see 12B). Comments shall be incorporated into plans for the selected action. In some cases, a different

action may be chosen because the public comments have provided information that was unknown or not available when the tentative selection was made. A decision document or notice shall be issued to the public explaining the final decision.

C. Implementing the decision. Immediately after issuing the decision document, other documents such as contracts or land use authorizations shall be prepared. All actions that affect flood plain functions shall be monitored and recorded according to the appropriate Manual sections. The monitoring action insures that:

1. Mitigating and restoring measures become a part of any construction documents or land use authorization terms and conditions.

2. Terms and conditions of a contract or land use authorization are satisfactorily completed.

2 Flood plain management plan. The flood plain Executive Order 11988 states that all Federal agencies must provide flood plain management leadership. The Federal Land Policy and Management Act (sec. 102(a) (8) and (11)) require protection and management of the public lands. The preparation of flood plain management activity plans can assist in the accomplishment of these mandates. Activity plans to accomplish the above management shall be developed in a manner similar to other Bureau activity plans. (See BLM Manual sec. 1601.) The flood plain, for which an activity plan is prepared, shall be identified through the Bureau Planning System. The activity plan must address protection, restoration, and maintenance of the flood plain functions. It should also incorporate those measures that are necessary for the protection of human safety, life, welfare, and property.

GLOSSARY OF TERMS

A

- Action.** Any Federal activity for:
- (1) Acquiring, managing, and disposal of Federal lands and facilities.
 - (2) Providing federally undertaken, financed, or assisted construction and improvements.
 - (3) Conducting Federal activities and programs affecting land use, including, but not limited to, water resources and related land resources planning, regulating, and licensing activities.

B

Base flood. The flood level which has a 1 percent chance of occurring in any given year (also known as a 100-year flood).

Base flood plain. The 100-year flood plain or 1 percent chance flood plain. (Also, see definition of flood plain.)

C

Critical flood. The flood level which has a 0.2 percent chance of occurring in any given year (known as a 500-year flood).

Critical flood plain. The 500-year flood plain (0.2 percent chance flood plain).

D

Development. Any land use that alters the natural and beneficial flood plain functions.

F

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation of runoff of surface waters from any source.

Flood plain. Any land area susceptible to being flood-inundated from any source, including small and often dry watercourses and areas adjoining coastal waters.

Flood plain function. The natural biological, physical, ecological, and environmental actions that commonly occur in a flood plain.

Flood plain management. All actions taken to assure, carry out, or to achieve the natural and beneficial functions of flood plains and to minimize the loss of human life, and promote safety, welfare, and protect property.

Flood plain values. The beneficial uses of the flood plain by man.

M

Maintain. To keep up and to repair as necessary to retain the current biological, physical, and environmental features of a flood plain.

Minimize. To reduce to the smallest possible amount or degree.

Mitigation. Measures or tasks taken to minimize or eliminate definable adverse impacts.

P

Practicable. Capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost, and technology.

Preserve. To prevent modification to the natural flood plain environment or to maintain it as closely as possible to its natural state.

R

Restore. To reestablish a setting or environment in which the natural and beneficial functions of the flood plain can again operate.

[FR Doc. 78-27224 Filed 9-27-78; 8:45 am]

Register
Federal Register

THURSDAY, SEPTEMBER 28, 1978

PART VI



DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE

Health Care Financing
Administration



ENTITLEMENT TO
MEDICARE BENEFITS
BASED ON END-STAGE
RENAL DISEASE

[4110-35]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Entitlement to Medicare Benefits Based on End-Stage Renal Disease

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final regulation with comment period.

SUMMARY: This regulation amends the rules concerning who is entitled to medicare benefits on the basis of having end-stage renal disease (ESRD). The amendments are necessary to implement certain legislative amendments to the ESRD program. (See Pub. L. 95-292, June 13, 1978). The amendments eliminate the requirement that a person be under 65 in order to be eligible, require the filing of an application, revise the 3-month waiting period before the start of coverage for patients who initiate training in self-dialysis or receive a kidney transplant, extend the period of entitlement to 36 months after a kidney transplant, and establish new rules concerning the resumption of coverage.

DATES: This regulation is effective October 1, 1978. Closing dates for comments: December 1, 1978.

ADDRESSES: Send comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013. When commenting, please refer to MAB-81-RC. Comments will be available for public inspection beginning approximately 2 weeks from today in room 5231 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., telephone 202-245-0950.

FOR FURTHER INFORMATION CONTACT:

John B. Russell, 301-594-8260.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Social Security Amendments of 1972 (Pub. L. 92-603) extended medicare entitlement to individuals under 65 who have end-stage renal disease (ESRD) and who are insured or enti-

pled to monthly benefits under social security or the Railroad Retirement Act, or are spouses or dependent children of persons who are insured or entitled. Those amendments also authorized us to establish requirements for ESRD facilities that would be reimbursed for kidney transplant and dialysis services. Congress mandated two requirements: A minimum utilization rate for covered procedures; and a medical review board to screen the appropriateness of patients for the proposed treatment procedures.

The ESRD program became effective July 1, 1973. It was first implemented by interim regulations and instructions governing both approval of ESRD facilities and reimbursement to such facilities. The conditions that ESRD facilities must meet to be approved for coverage of ESRD services are now codified in 42 CFR Part 405, Subpart U and the provisions for reimbursement are codified in subpart E of that part. Additional provisions relating to ESRD are set forth in subparts A and B of the medicare regulations.

STATUTORY PURPOSE

Pub. L. 95-292, enacted June 13, 1978, amends titles II and XVIII of the Social Security Act to make improvements in the ESRD program. The law is intended to provide incentives for the use of lower cost self-dialysis where medically appropriate; to eliminate program disincentives to kidney transplantation; to provide for methods of incentive reimbursement to assure cost-effective delivery of dialysis services; to develop long-term national objectives for the most effective use of ESRD treatment resources; and to provide for studies of ways to improve the program. The primary purpose is to encourage the use of lower cost treatment modalities consistent with good medical practice and, more specifically, to encourage home dialysis and transplantation for the maximum number of patients who are suitable candidates for those treatment methods. The new law reaffirms policies that we have already implemented. It also makes major changes in individuals' entitlement to benefits, coverage of services and supplies, and methods of reimbursement.

This regulation implements the provision of Pub. L. 95-292 pertaining to entitlement to medicare based on end-stage renal disease. It is the first of several regulations we will be publishing to implement Pub. L. 95-292. Later regulations will deal with certification and coverage of ESRD facilities, with reimbursement, and with the ESRD networks. For the reasons discussed below, this regulation is being issued in final, without having gone through proposed rulemaking. Wherever possi-

ble, subsequent regulations will be issued as proposed rules.

The statute also authorizes the Secretary to conduct various pilot projects, experiments and studies relating to furnishing services for renal disease. Information about these projects can be obtained by writing Cliff Gaus, Office of Policy Planning and Research, Health Care Financing Administration, DHEW.

MAJOR PROVISIONS

The major provisions in this regulation are as follows:

(1) The requirement that an individual be under 65 in order to qualify as a renal disease beneficiary has been eliminated. This requirement had originally been adopted statutorily under the assumption that those over 65 would be eligible for medicare under the ordinary entitlement provisions. However, if the onset of renal disease was after 65 and entitlement was based on the work of another related individual, certain persons were inadvertently left uncovered. For example, a person over 65 whose entitlement would otherwise be based on the work of a 60-year-old spouse still working, would have been ineligible under the old rule; the spouse in this example might be currently insured, but not presently entitled to monthly benefits. Thus, the individual with ESRD would not have been entitled to benefits. The statute and the amended rule rectify this oversight.

(2) The statute and the amended rule make the filing of an application a condition of entitlement. However, possible hardships that might result from strict application of this rule are, for the most part, alleviated by the provision that an application will be considered to have been received 12 months before it is filed (but no sooner than the first month of eligibility). Because the amended regulation is not effective until October 1, 1978, the filing of an application is not a condition of entitlement for individuals who, before that date, have met the conditions of entitlement of the present regulation. The eligibility of these individuals will be determined under the current rules for periods prior to October 1. Thus, these individuals would be entitled to benefits for a period even more than 12 months before the date on which an application is actually filed.

(3) The statute and the amended rule make two major changes in the date on which entitlement begins in certain circumstances. As a general rule, a person who undertakes a regular course of dialysis must wait 3 months before his entitlement begins. Under the new rule, an individual who participates in a self-care dialysis training program will be entitled to

benefits from the beginning of his regular course of dialysis. However, in accordance with the intent of Congress, the waiver of the 3-month waiting period is only intended for those individuals who can reasonably be expected to complete the training program, and, on completion to enter into a self-dialysis setting. (See S. Rept. 95-714, at p. 5.) We will instruct the ESRD facility on how to certify that these requirements are met. In addition, the waiver will only be made if the person maintains dialysis throughout the waiting period.

Under the prior rule, entitlement for renal transplant patients began with the month in which the operation was performed or in the month before it. The amended rule provides that entitlement can begin in the second month before the month of the transplant. This exception to the waiting period is applicable only if the individual is admitted as an inpatient to a hospital that has been approved for participation in medicare as a renal transplantation center or a renal dialysis center. (These terms are defined in 42 CFR 405.2102.) This limitation conforms to sections 226A(b)(1)(B) and 1881(b)(1) of the Act, which require that the hospital meet whatever requirements the Secretary has prescribed for providers of renal dialysis services. We believe that this requirement will assure quality of care in kidney transplantations.

(4) The former rule provided that, for those who received kidney transplants, entitlement ended with the 12th month after the transplant. It has become clear that complications and relapses related to kidney failure frequently occur long after the 12th month and thus, the 12-month rule has come to serve as a disincentive to transplantation. Accordingly, in accordance with Pub. L. 95-292, we have amended the rule to provide for a 36-month period of entitlement after a kidney transplant. We have interpreted this statutory extension of the entitlement period to apply to persons whose entitlement began prior to October 1, 1978, as well as persons whose entitlement begins on or after October 1, 1978. Therefore, persons who received kidney transplants after September 30, 1975, will still have some period of entitlement remaining. Such a person's entitlement will end 36 months after the month of transplant, but will not include periods of time prior to October 1, 1978, which are more than 12 months after the month of transplant. Thus, an individual who received a transplant in December, 1976, and whose entitlement previously ended on December 31, 1977, would be entitled to benefits from October 1, 1978 through December 31, 1979. However, we do not believe that we have

the statutory authority to extend entitlement to this individual retroactively for the period after December 31, 1977 through September 30, 1978.

(5) The former rule made no special allowance for those persons whose coverage ended, but who later initiated or resumed a regular course of dialysis. The statute and the amended rule provide that coverage for those persons begins immediately with the month in which the course of dialysis is begun; the 3-month waiting period is not applicable.

(6) A conforming technical amendment to 42 CFR 405.210(b)(1)(iii) and clarifying editorial changes in § 405.104 have also been made.

BENEFITS AVAILABLE TO KIDNEY DONOR

Pub. L. 95-292 provides that a person who donates a kidney for transplant surgery, and who is not otherwise entitled to medicare benefits, shall be entitled to both part A and part B medicare benefits, with respect to his kidney donation. The purpose is to encourage kidney transplantation and the scope of benefits covers all reasonable preparatory, operation and post-operation expenses associated with his kidney donation, through the actual period of recovery. Moreover, the kidney donor is not required to meet the deductible, premium or coinsurance requirements of medicare.

This provision is not being implemented in this particular regulations package. It will be included in a subsequent regulation dealing with coverage issues, which we also plan to publish near October 1, 1978.

WAIVER OF PROPOSED RULEMAKING

We believe there are good reasons for issuing these regulations in final, without prior notice and opportunity for public participation in the rulemaking. First, Pub. L. 95-292 provides that medicare payments for the various dialysis and transplant services, supplies, and equipment provided under the statute shall be available beginning on October 1, 1978. Second, Pub. L. 95-292 is quite specific in prescribing the expanded entitlement to dialysis and transplant services and leaves very little to the exercise of administrative interpretation. Therefore, these regulations merely conform the existing regulations to the statutory amendments. Accordingly, we find that there is good cause to waive a notice of proposed rulemaking and good cause not to have a delayed effective date.

EXPLANATION OF EFFECTIVE DATE

These amendments become effective on October 1, 1978. This means that they govern entitlement decisions with respect to any individual whose entitlement begins on or after that date.

In addition, the extended 36-month entitlement following a kidney transplant is applicable to persons whose entitlement began before October 1. In making determinations of entitlement for periods prior to October 1, we will use the regulations previously codified in 42 CFR 405.104.

42 CFR Part 405 is amended as set forth below:

1. Section 405.104 is revised to read as follows:

§ 405.104 Entitlement to hospital insurance benefits based on end-stage renal disease.

(a) *Scope and applicability.* This section explains the conditions of entitlement to medicare, part A, based on end-stage renal disease, and specifies the beginning and end of the period of entitlement. It implements section 226A of the Social Security Act and governs entitlement to medicare benefits on or after October 1, 1978.

(b) *Definitions.* As used in this section:

"End-stage renal disease" means that stage of kidney impairment that appears irreversible, and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

"Child" or "spouse" means a child or spouse whose relationship to the parent or spouse meets the relationship requirements for entitlement to child's monthly social security benefits or to wife's, husband's, widow's, widower's, mother's, or father's monthly benefits, as set forth in 20 CFR Part 404, subpart L. However, the duration of relationship requirements of subpart L apply only to divorced wives. (See 20 CFR 404.1105)

"Dependent child" means a person who, on the first day he has end-stage renal disease, is unmarried and meets the dependency requirements for entitlement to child's social security benefits on the basis of a parent's earnings (see 20 CFR 404.323-404.327a) and:

- (1) Is under age 22; or
- (2) Is under a disability that began before age 22; or
- (3) Is under age 26, is receiving at least one-half support from that parent, and has continuously received at least one-half support from that parent since the day before attaining age 22.

"One-half support" means regular contributions, in cash or in kind, that equal or exceed one-half of the child's total support.

(c) *Conditions of entitlement.* An individual is entitled to medicare, part A benefits based on end-stage renal disease if he is medically determined to have that disease and meets the following conditions:

- (1) He is: (i) Fully or currently insured under the social security pro-

gram (title II of the Act) or would be fully or currently insured if his employment (after 1936) as defined under the Railroad Retirement Act were considered "employment" under the Social Security Act; or

(ii) Entitled to monthly social security or railroad retirement benefits; or

(iii) The spouse or dependent child of a person who meets the requirements of paragraph (c)(1)(i) or (c)(1)(ii) of this section, and

(2) He has filed an application.

(3) He has satisfied the waiting period explained in paragraph (e) of this section.

(d) *Filing an application.* (1) An individual who wishes to apply for hospital insurance based on end-stage renal disease may obtain an application form and help in completing it at any social security office.

(2) If an individual is deceased or, because of poor health, or mental condition, is unable to file an application, a relative or person responsible for his affairs may file the application on his behalf. If such a person is not available, the hospital or dialysis facility that furnished treatment may file the application.

(3) An application is not valid if it is filed earlier than the third month before the month in which the individual meets all the conditions specified in this section

(4) If an application is filed within 12 months after the month in which the individual first met the other conditions of entitlement, it will establish entitlement as of that first month. An application filed more than 1 year after the month the other conditions are met will be retroactive only 12 months before the month of filing.

(e) *Beginning of entitlement*—(1) *Basic factors.* Entitlement can begin no earlier than the first month in which the individual meets the conditions specified in paragraph (c) of this section, or the 12th month before he files an application, whichever is later.

(2) *Waiting period.* Entitlement begins on the first day of the third

month after the month in which the individual initiates a regular course of renal dialysis, if the course is maintained throughout the waiting period, unless entitlement would begin earlier under paragraph (e) (3) or (4) of this section. This means that if dialysis began in January, entitlement would begin April 1.

(3) *Exception: Early kidney transplant.* If the individual receives a transplant, entitlement begins with the first day of the month in which the transplant was performed. However, if the individual is admitted as an inpatient to a hospital that is an approved renal transplantation center or renal dialysis center (see § 405.2102 for procedures preliminary to transplant surgery, entitlement begins; .

(i) On the first day of the month in which he initially enters the hospital, if the transplant is performed in that month or in either of the next 2 months; or

(ii) On the first day of the second month before the month of kidney transplantations, if the transplant is delayed more than 2 months after the month of initial hospital stay.

For example, if an individual enters the hospital in January, and the transplant is performed in January, February, or March, entitlement would begin January 1. However, if the transplant is performed in April, entitlement would begin February 1.

(4) *Exception: Self-dialysis training.* Entitlement begins on the first day of the month in which a regular course of renal dialysis began if:

(i) Before the end of the waiting period, the individual participates in a self-dialysis training program offered by a medicare approved facility;

(ii) The facility has certified it is reasonable to expect the individual will complete the training program and will self-dialyze on a regular basis; and

(iii) The regular course of dialysis is maintained throughout the time that would otherwise be the waiting period.

(f) *End of entitlement.* Entitlement ends with the earlier of the following:

(1) The end of the 12th month after the month in which a course of dialysis ends, unless the individual receives a kidney transplant during that period or begins another regular course of dialysis; or

(2) The end of the 36th month after the month in which the individual has received a kidney transplant, unless the individual receives another kidney transplant or begins a regular course of dialysis during that period.

(g) *Resumption of entitlement.* An individual who initiates dialysis more than 36 months after the month of a kidney transplant or resumes dialysis more than 12 months after the month a previous course of dialysis ended, must submit a new application but need not serve a waiting period. If he is otherwise entitled under the conditions specified in paragraph (c) of this section, and files an application, entitlement begins with the month in which dialysis is initiated or resumed.

2. Section 405.210(b)(1)(iii) is revised to read as follows:

§ 405.210 Individual enrollment; enrollment procedures.

(a) *What constitutes enrollment.* . . .

(b) *Automatic enrollment.* . . .

(1) . . .

(iii) He is entitled to hospital insurance benefits by reason of end-stage renal disease. (See § 405.104.)

(Secs. 226A, 1102, and 1837 of the Social Security Act (42 U.S.C. 426-1, 1302, and 1395(p).)

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare-Hospital Insurance and No. 13.774 Medicare-Supplementary Medical Insurance.)

Dated: September 19, 1978.

ROBERT A. DERZON,
Administrator, Health Care
Financing Administration.

Approved: September 25, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-29286 Filed 9-27-78; 8:45 am]

Registered
Federal Order

THURSDAY, SEPTEMBER 28, 1978
PART VII



DEPARTMENT OF
THE INTERIOR

Fish and Wildlife
Service

COACHELLA VALLEY
FRINGE-TOED LIZARD

Proposed Listing and Critical
Habitat Determination

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE
AND PLANTS

Proposed Listing and Critical Habitat Determination for the Coachella Valley Fringe-toed Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes that the Coachella Valley fringe-toed lizard (*Uma inornata*), known only from the Coachella Valley, Calif., be listed as a threatened species. A review of the status of this lizard reveals that (1) it is restricted to sandy habitats in the Coachella Valley, Riverside County, Calif.; (2) its historical range was approximately 324 square miles; (3) by 1975 its range had been reduced to 236 square miles, 120 square miles of which was suitable habitat, including marginal areas; (4) habitat losses due to urban and agricultural growth in the Valley have occurred since 1975 and are expected to continue; (5) the lizard population has been impacted by off-road vehicle use in parts of the Valley; and (6) changes in the lizard's habitat are occurring through the planting of tamarisk wind-breaks and the invasion of Russian thistle. This rule would provide needed protection for the Coachella Valley fringe-toed lizard and its remaining habitat.

DATES: Comments from the public and the Governor of California must be received by December 28, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On November 3, 1977, the Fish and Wildlife Service published a notice in the FEDERAL REGISTER (42 FR 57492) to the effect that a review of the status of 10 reptiles was being conducted.

The Coachella Valley fringe-toed lizard was included as part of the review. As a result of the notice of review, responses were received from the California Department of Fish and Game, the California State office of the Bureau of Land Management, and eight professional biologists. Several agencies and individuals included a report by A. S. England and S. G. Nelson entitled "Status of the Coachella Valley fringe-toed lizard (*Uma inornata*)" which had been prepared for the California Department of Fish and Game in 1976. The comments and supportive documents have been reviewed and a summary is presented below. This information has been considered and is incorporated into the administrative record of this proposal.

The following biologists all recommended protection for the lizard: P. A. Medica, K. S. Norris, T. R. Van Deventer, D. B. Wake, H. F. Delisle, D. W. Stevens, W. W. Mayhew, and A. S. England. Habitat protection from encroaching development, off-road vehicle use, and non-native plant species were frequently cited as of being paramount importance to the continued survival of this species. Many of the biologists supplied information on the modification of the habitat and indicated that it was representative of what is happening throughout the California desert. Dr. Mayhew supplied specific information concerning areas of potential critical habitat and Dr. England clarified certain statements in his 1976 report to the State. Threatened status was recommended by most of the biologists.

Mr. John Birch, acting State director of the Bureau of Land Management in California, supplied information on the threats to the lizard, habitat modification, and a California State land acquisition request on behalf of the lizard. He recommended a threatened status under provisions of the Endangered Species Act of 1973.

Mr. J. McCormick responded for the California Department of Fish and Game. He recommended no listing although he indicated that the State will continue to "monitor this species closely in an effort to prevent its status from declining further". He also states that "We agree with the author's conclusion that this species does not now qualify as threatened or endangered." However, the authors do not say that the species should not be federally protected. On page 27 of their report, England and Nelson do say that the Coachella Valley fringe-toed lizard does not qualify as endangered under that definition in the Endangered Species Act of 1973. However, they continue: "The Federal definition of a threatened species is broad enough to conceivably include *U. inornata*, given the existing threats that

we have described". In his letter dated January 25, 1978, Dr. England further states: "Based on these findings, it is clear that *Uma inornata* is likely to become an endangered species in the foreseeable future, and thus meets the threatened species criteria." Therefore, the Service believes that a proposal to list this species as threatened is justified under provisions of the Act.

The Coachella Valley fringe-toed lizard is known only from the Coachella Valley, Riverside County, Calif. Like other members of the genus *Uma*, it is adapted for living in fine wind-blown sand, and is restricted to areas where this habitat occurs in the floor of the Coachella Valley. At times, the Coachella Valley fringe-toed lizard has been considered a subspecies of the Colorado fringe-toed lizard (*Uma notata*). A recent study proposes reestablishing the single species *Uma notata* by lumping the Coachella Valley, Calif., and Mojave fringe-toed lizards, but it does not address the subject of subspecies. Based on current reproductive, physiological, and behavioral evidence, most experts agree on the existence of either three discrete species or three subspecies. The Coachella Valley fringe-toed lizard is of special interest to scientists because of its morphological and behavioral adaptations to sandy habitats, and its evolutionary relationships to other closely related species.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under the five criteria of section 4(a) of the Act. These factors, and their application to the Coachella Valley fringe-toed lizard, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—The historical range of the Coachella Valley fringe-toed lizard was approximately 324 square miles. The results of a study funded by the California Department of Fish and Game indicated that by 1975 the historical range of this species had been reduced by 27 percent to 236 square miles. Further, suitable habitat, including marginal areas, comprised only 120 square miles or 51 percent of range remaining in 1975. The amount of habitat that has been lost since 1975 is not known. These losses have occurred as a result of rapid urban and agricultural growth in the Valley since 1945, and this trend is expected to continue. In 1940, the human population in the Coachella Valley was 12,000. By 1970, it had risen to over 100,000, and has been projected to reach 139,500 to 164,000 by 1990. Population projections made for the early 1970's have already proven to be too low. These predic-

tions were only for permanent populations, and in 1971, seasonal residents represented an additional 40 percent of the total population. At the present time, none of the lizard's habitat has been permanently preserved. An analysis of city and county general plans, and county zoning has shown that all remaining habitat could eventually be developed.

Much of the habitat in the southern and eastern part of the Valley is being invaded by dense stands of Russian thistle (*Salsola iberica*), a noxious weed introduced from Europe. This is a recent phenomenon and the potential effects on Coachella Valley fringe-toed lizard populations are not known. There is heavy off-road vehicle use in parts of the Valley. Studies in other areas show that this activity can have significant negative effects on densities and biomass of vertebrate populations. Tamarisk (*Tamarix aphylla*) wind-breaks have been planted throughout the Valley to protect agricultural and urban developments. A row of 40 foot trees can create a wind-shadow up to 1200 feet wide on the leeward side of the windbreak, causing changes in soil movement patterns. The potential effects of these plantings on fringe-toed lizard populations are not known. An additional 15 to 20 miles of wind-breaks have been proposed, partially along Bob Hope Drive, Ramon Road, and Indian Avenue, through relatively undisturbed habitat.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—Although existing regulations prohibit collecting more than two fringe-toed lizards per day without a special permit, collecting for the pet trade has continued. This is due primarily to a sharp increase in prices paid for reptiles. During the spring of 1978, several violations involving the Coachella Valley fringe-toed lizard were issued for over-collecting without a license. The extent of this problem is not known.

3. *Disease or predation.*—Not applicable.

4. *The inadequacy of existing regulatory mechanisms.*—To the present, nothing has been done to prevent the continued loss of Coachella Valley fringe-toed lizard habitat through conversion to urban and agricultural land uses. Although a county ordinance restricts the use of off-road vehicles on private lands without possession of written permission from the landowner, heavy use continues in certain areas and habitat conditions have deteriorated.

5. *Other natural or man-made factors affecting its continued existence.*—Not applicable.

CRITICAL HABITAT

Section 7 of the Act, entitled "Inter-agency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or results in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "critical habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876) and is reprinted below:

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978 FEDERAL REGISTER (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing of offspring; and generally,
- (5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

With respect to the Coachella Valley fringe-toed lizard, the areas proposed as critical habitat satisfy all known criteria for the evolutionary, ecological, behavioral, and physiological requirements of the species. Nesting and

successful incubation of eggs occurs within the proposed areas. Shelter and hibernation sites are present in the dunes and adjacent sandy habitat. Organisms on the dunes provide food for the lizards and the sand provides sufficient cover from disturbance and overheating. Sufficient areas for normal growth of both the population and individual lizards are provided within the proposed critical habitat.

Critical habitat of the Coachella Valley fringe-toed lizard, exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species, is proposed as follows:

California. Riverside County: All aeolian sand deposits present on the following sections of land (San Bernardino base and meridian):

- T3S R2E Secs. 13, 14, 23, 24.
 T3S R3E Secs. 7, 8, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24.
 T3S R4E Secs. 1, 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36.
 T3S R5E Secs. 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.
 T4S R5E Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 36.
 T4S R6E Secs. 6, 7, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36.
 T4S R7E Secs. 29, 30, 31, 32, 33.
 T5S R6E Secs. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 25, 36.
 T5S R7E Secs. 1, 5, 6, 7, 8, 9, 12, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 33.
 T5S R8E Secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21.

The areas proposed do not necessarily include the entire critical habitat of this lizard, and modifications to critical habitat descriptions may be proposed in the future. In accordance with section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction or adverse modification of the critical habitat of the Coachella Valley fringe-toed lizard.

All Federal departments and agencies shall, in accordance with section 7 of the Act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect critical habitat. Consultation pursuant to section 7 should be carried out using the procedures contained in the January 4, 1978, FEDERAL REGISTER (43 FR 870-876).

EFFECT OF THE RULEMAKING

In addition to the effects discussed above, the effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in title 50 of the Code

of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered and threatened species. The regulations referred to above, which pertain to threatened species, are found at § 17.31 of Title 50, and are summarized below.

With respect to the Coachella Valley fringe-toed lizard, all prohibitions of section 9(a)(1) of the Act, as implemented by 50 CFR 17.31, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in 50 CFR Part 17 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified

period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the Act, the Director will notify the Governor of California with respect to this proposal and request his comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the Coachella Valley fringe-toed lizard;
- (2) The location of and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided for by section 7 of the Act;
- (3) Additional information concerning the range and distribution of this species.

Final promulgation of the regulations on the Coachella Valley fringe-toed lizard will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C., and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposed rulemaking is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

- 1. Amend § 17.11(i) by adding, in alphabetical order under "Reptiles" the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

Species		Range		Portion endangered	Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution				
Reptiles:							
Lizard, Coachella Valley fringe-toed.	<i>Uma inornata</i>	NA	U.S.A. (California)	Entire	T		

§ 17.95 [Amended]

2. Also, the Service proposes to amend § 17.95(c) by adding critical habitat of the Coachella Valley fringe-toed lizard after that of the Mona ground iguana as follows:

• • • • •

(c) Reptiles. ***

COACHELLA VALLEY FRINGE-TOED LIZARD
(*Uma inornata*)

California, Riverside County. All aeolian sand deposits present on the following sections of land (San Bernardino base and meridian):

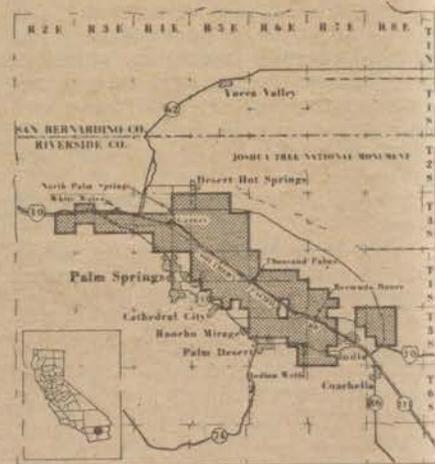
- T3S R2E secs. 13, 14, 23, 24.
- T3S R3E secs. 7, 8, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24.
- T3S R4E secs. 1, 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36.

- T3S R5E secs. 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.
- T4S R5E secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 34, 36.
- T4S R6E secs. 6, 7, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36.
- T4S R7E secs. 29, 30, 31, 32, 33.
- T5S R6E secs. 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 25, 36.
- T5S R7E secs. 1, 5, 6, 7, 8, 9, 12, 16, 17, 18, 19, 20, 21, 29, 30, 31, 32, 33.
- T5S R8E secs. 4, 5, 6, 7, 8, 9, 16, 17, 18, 20, 21.

NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 23, 1978.

KEITH M. SCHREINER,
Acting Director,
Fish and Wildlife Service.



FR Doc. 78-27313 Filed 9-27-78; 8:45 am

THURSDAY, SEPTEMBER 28, 1978
PART VIII



**DEPARTMENT OF
THE INTERIOR**
Fish and Wildlife
Service

■

**ENDANGERED AND
THREATENED WILDLIFE
AND PLANTS**

Determination of Five Plants As
Endangered Species

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Five Plants as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines five plants (*Arabis macdonaldiana*, *Phacelia argillacea*, *Pogogyne abramsii*, *Orcuttia mucronata*, and *Cordylanthus maritimus* ssp. *maritimus*) to be endangered species. Past degradation of and potential loss of habitat due to agriculture, housing developments, filling of coastal salt marshes, road and railroad construction, off-road vehicle use, and mining operations are threatening the continued existence of these species. These plants occur in California, Utah, and northern Baja California, Mexico. This action will provide conservation measures necessary for these plants' continued survival.

DATE: This rulemaking becomes effective on October 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Secretary of the Smithsonian Institution, in response to section 12 of the Act, presented his report to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the FEDERAL REGISTER (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical, pursuant to section 7 of the Act.

In the FEDERAL REGISTER of June 7, 1976 (41 FR 22915-22922), the Service published proposed rules which among other things:

(1) Set forth the procedural steps of determining endangered or threatened species of plants;

(2) Prescribe the prohibitions which apply to such endangered or threatened plants or to the seeds, roots, or parts thereof;

(3) Establish procedures, conditions, and criteria for the application for and issuance of permits to conduct otherwise prohibited activities.

On June 16, 1976, the Service publishes a proposed rulemaking in the FEDERAL REGISTER (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above-mentioned FEDERAL REGISTER publications.

In the June 24, 1977, FEDERAL REGISTER (42 FR 32373-32381), the Service published a final rulemaking detailing the regulations to protect endangered and threatened plant species. The rulemaking established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the FEDERAL REGISTER prior to adding any species to the list of endangered and threatened wildlife and plants.

Official comments were received from the State of California. The California Department of Fish and Game did not offer any objections to the four California plants included in this rulemaking. Official comments were not received from the State of Utah or from Mexico. Hundreds of comments were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of endangered plants and their protection and regulation. These comments are summarized in the April 26, 1978, FEDERAL REGISTER publication of a final rulemaking to determine 13 plant species to be endangered or threatened species (43 FR 17909-17916).

The California Native Plant Society (CNPS), on contract to the U.S. Forest Service, supplied the Office of Endangered Species status reports on the four California plants included in this rulemaking. These status reports contain distribution and habitat data, endangerment factors, and management suggestions. The management sugges-

tion for *Arabis macdonaldiana* and *Pogogyne abramsii* was that they be declared endangered species as soon as possible so that Federal agencies could preserve that portion of the species' range on public lands. The management suggestion for *Orcuttia mucronata* was that if the species ever grew in large numbers again, some of the plants could be transplanted to a protected alkaline pool or an artificial alkaline vernal pool that could be constructed on any of the waterfowl refuges in the Central Valley. The CNPS suggested that research was needed to identify currently unknown factors adversely influencing *Cordylanthus maritimus* ssp. *maritimus*.

CONCLUSION

After a thorough review and consideration of all the information available, the Director has determined that *Arabis macdonaldiana* Eastwood, *Phacelia argillacea* Atwood, *Pogogyne abramsii* J. T. Howell, *Orcuttia mucronata* Crampton, and *Cordylanthus maritimus* Nutt. ex Benth. ssp. *maritimus* are in danger of becoming extinct throughout all or significant portions of their ranges due to one or more of the factors described in section 4(a) of the Act.

These factors and their application to the plant species contained in this rulemaking are as follows:

Arabis macdonaldiana

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Red Mountain, Medocino County, Calif., is the only known locality for this species. Approximately half of the species' range is privately owned by the Coastal Mining Co., a subsidiary of Hanna Mining Co. This company has unpatented mining claims on the remainder of the species' range, public land managed by the Bureau of Land Management. It is anticipated that this company plans to remove as much of the nickel-containing soil as is economically feasible. This operation could cover the entire top of Red Mountain and extirpate the species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened by a proposed change in land use. *Arabis macdonaldiana* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Phacelia argillacea

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* The only known location of this species is in Utah County, Utah, on the Greenriver Shale Formation. As of 1977, only nine plants were counted. The loss and modification of habitat by the construction of a railroad that bisects its only known population has seriously affected this species. An access road runs along the railroad line and any expansion might extirpate this species.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws protecting this species or its habitat.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Pogogyne abramsii

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Collections of this species are from vernal pools on mesas of western San Diego County, Calif. Widening of Miramar Road and use of off-road vehicles are destroying the populations on Kearney Mesa. Widening Highway 163 through lands under the jurisdiction of the Miramar Naval Air Station north of San Diego would destroy several dozen vernal pools and a sizable section of the Miramar Mounds Natural Landmark. Cloverleaf construction on Highway 52 in this same area would destroy one-third of the Miramar Mounds Natural Landmark. Vernal pools at the end of Mira Mesa Road are being lost to housing development, off-road vehicle use, and illegal dumping. Some of the historical habitat at Otay Mesa is now in agricultural use.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened by a proposed change in land use. *Pogogyne abramsii* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Orcuttia mucronata

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* This species is currently known to occur only in one large (approximately 1 square mile) vernal lakebed 12 miles south of Dixon, Solano County, Calif. The site is surrounded by land used for agricultural purposes. Although the alkaline lake is not likely to be used for agricultural purposes in the near future, such use could take place in the eventual future. Housing developments have destroyed many vernal pools in this region.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened by a proposed change in land use. *Orcuttia mucronata* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Cordylanthus maritimus ssp. *maritimus*

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, this species has occurred at sea level in coastal salt marshes from Carpinteria, Santa Barbara County, to San Diego County and northern Baja California, Mexico. Present distribution may be restricted to the Tijuana River estuary, San Diego County; Point Mugu, Ventura County; and northern Baja California. Filling in of coastal salt marshes has either eliminated or drastically reduced this species in its known habitats. A current proposal to restore "natural" tidal flow to the marshes of Point Mugu Lagoon could eliminate a flourishing colony of *Cordylanthus maritimus* ssp. *maritimus*.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened

by a proposed change in land use. *Cordylanthus maritimus* ssp. *maritimus* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

EFFECT OF THE RULEMAKING

Section 7 of the act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Provisions for interagency cooperation were published on January 4, 1978, in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with section 7.

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. The regulations referred to above, which pertain to endangered and threatened plant species, are found at sections 17.61 and 17.71 of title 50 and are summarized below.

All prohibitions of section 9(a)(2) of the act would apply. These prohibitions, in part, would 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, or sell or offer for sale these species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the FEDERAL REGISTER of June 24, 1977 (42 FR 32373), codified in 50 CFR Part 17, provided for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving endangered plants are available for scientific purposes or for enhancing the propagation or survival of the species. Such permits involving threatened plants are available for scientific purposes, the enhancement of the propagation or survival of the species, economic hardship, botanical or horticultural exhibition, educational purposes, or

other activities consistent with the purposes and policy of the act.

EFFECT INTERNATIONALLY

In addition to the protection provided by the act, the Service will review the status of these species to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendixes to that convention or whether they should be considered under other appropriate international agreements.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Mrs. Lorraine K. Williams, Washing-

ton Office of Endangered Species, 202-343-7814.

REGULATION PROMULGATION

Accordingly, § 17.12 of part 17 of chapter I of title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, and species, the following plants:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Brassicaceae—Mustard family:						
<i>Arabis macdonaldiana</i>	McDonald's rock cress	U.S.A. (California)	Entire	E	44	NA
Hydrophyllaceae—Waterleaf family:						
<i>Phacelia argillacea</i>	Unnamed Phacelia	U.S.A. (Utah)	do	E	44	NA
Lamiaceae—Mint family:						
<i>Pogogyne abramsii</i>	San Diego pogogyne	U.S.A. (California)	do	E	44	NA
Poaceae—Grass family:						
<i>Orcuttia mucronata</i>	Crampton's orcutt grass	do	do	E	44	NA
Scrophulariaceae—Snapdragon family:						
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Salt marsh bird's-beak	U.S.A. (California); Mexico	do	E	44	NA

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 21, 1978.

HARVEY K. NELSON,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-27314 Filed 9-27-78; 8:45 am]