

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John T. Small, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Communications equipment, Radio Control (R/C) Radio Service, Radio.

Order

In the matter of amendment of 47 CFR Part 95, Subparts C and E, Personal Radio Services.

Adopted: September 4, 1985.

Released: September 11, 1985.

By the Commission; Commissioner Rivera not participating.

1. In Part 95 Subpart E, Technical Regulations for the Personal Radio Services, § 95.627(d) prohibits the use of digital modulation techniques in all three Personal Radio Services. While this is appropriate for the two voice-only services (General Mobile Radio Service and Citizens Band Radio Service) digital modulation techniques are useful in the non-voice Radio Control (R/C) Radio Service. Type acceptance grants are routinely made for R/C Radio Service transmitters which employ certain digital modulation techniques.

2. This Order amends § 95.627 of the rules to clarify that the prohibition against digital modulation techniques in the Personal Radio Services does not apply to the non-voice R/C Radio Service. Sections 95.207 and 95.211 are also amended to make it clear that there are no restrictions to the emission types which may be employed for radio control purposes in the R/C Radio Service.

3. We have been routinely granting type acceptance for RC Radio Service transmitters employing digital modulation techniques without any complaint or problems. Therefore, we believe this change constitutes a minor amendment to our rules in which the public is not likely to be interested. Accordingly, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act (APA) is unnecessary. See 5 U.S.C. 553(b)(B). Furthermore, because this rule change relieves a restriction, the effective date provisions of the APA are inapplicable. See 5 U.S.C. 553(d)(1). These rule changes, therefore, will become effective immediately upon publication in the Federal Register.

4. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as

amended, and section 0.231(d) of the Commission's Rules.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609.

2. Subparagraph (2) of paragraph (c) of § 95.211 is redesignated as paragraph (f) of § 95.207. Subparagraph (4) of paragraph (c) of § 95.211 is redesignated as paragraph (g) of § 95.207. Subparagraphs (1) and (3) of paragraph (c) of § 95.211 are removed. As revised, paragraph (c) reads as follows:

§ 95.211 (R/C Rule 11) What communications may be transmitted?

(c) Your R/C station may transmit any appropriate non-voice emission.

3. Subparagraphs (b) and (d) of § 95.627 are revised, and a new paragraph (e) is added, as follows:

§ 95.627 Emission types.

(b) An R/C transmitter may employ any appropriate non-voice emission which meets the emission limitations of § 95.631.

(d) Digital emissions are not permitted in the General Mobile Radio Service or the Citizens Band (CB) Radio Service.

(e) The transmission of data is prohibited in the Personal Radio Services.

[FR Doc. 85-22263 Filed 9-17-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 14]

Lamps, Reflective Devices and Associated Equipment; Corrections

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects three errors in the amendment published on May 22, 1985, relating to lamps, reflective devices and associated equipment. The errors appear in the amendments to paragraph S4.1.1.36, paragraph S4.1.1.36(e)(4)(ii), and paragraph S6.7.1(a). It is therefore necessary to correct the errors.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On May 22, 1985, Motor Vehicle Safety Standard No. 108 was amended to allow motor vehicles other than motorcycles to be equipped with replaceable bulb headlamp systems consisting of either four lamps with single standardized replaceable light sources, or two lamps each with two such light sources. (50 FR 21052) The Notice consisted of 20 amendments containing the errors, and corrects them.

In amendment 3, paragraph S4.1.1.36 was amended to delete the word "two". The word, however, appears in two places in the paragraph and it was NHTSA's intent to delete it only with reference to permissible headlighting systems on four-wheeled motor vehicles, and not to delete it for motorcycles. In reviewing this error, NHTSA has concluded that the paragraph should be rewritten to more clearly state NHTSA's intent, and thus is correcting the error by revising this paragraph in a manner which does so.

In amendment 9, as published, the last sentence of paragraph S4.1.1.36(e)(4)(ii) reads: "The lens of each such headlamp shall be permanently marked with the letter 'U' ". A corrective amendment is made to delete a superfluous "such".

In amendment 13, the title of paragraph S6.7.1(a) appeared as "Test for a headlamp with on standardized replaceable light source". "On" should be "one".

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

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

§ 571.108 [Amended]

1. On page 21056, amendment 3, is corrected to read: "3. Paragraph S4.1.1.36 is revised to read:

S4.1.1.36 Instead of being equipped with a headlighting system specified in Table I or Table III, a motor vehicle manufactured on or after July 1, 1983, may be equipped with a system of one or two replaceable bulb headlamps, if the vehicle is a motorcycle, or two or four replaceable bulb headlamps, if the vehicle is a passenger car, multipurpose passenger vehicle, truck or bus. Each replaceable bulb headlamp shall be designed to conform to the following requirements."

2. On page 21056, the last sentence of subparagraph (e)(4)(ii) of paragraph S4.1.1.36 is corrected to read: "The lens of each such headlamp shall be permanently marked with the letter 'U'."

3. On page 21057, the title of subparagraph (a) of paragraph S6.7.1 is corrected to read "(a) Test for a headlamp with one standardized replaceable light source."

The lawyer and program official principally responsible for this correction are Z. Taylor Vinson and Jere Medlin, respectively.

Issued on September 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22252 Filed 9-17-85; 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; Determination of Endangered Status for *Acanthomintha obovata* ssp. *duttonii* (San Mateo Thornmint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*) to be an endangered species. This action is being taken because populations and/or population segments (colonies) of this annual plant have been eliminated as a result of urban development, highway and road construction, and other land use activities that altered the natural plant communities upon which this subspecies depends. The San Mateo thornmint is known only from one small population (approximately 1,000-2,000 individuals) at Edgewood County Park in San Mateo County, California. The population occupies approximately 1,940 square

feet (180 square meters) on a grassy knoll. This determination that the San Mateo thornmint is an endangered species will implement the full protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 18, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The San Mateo thornmint is an annual herb of the mint family (Lamiaceae). The plants, often branched from near the base, grow 4-7 inches high and have opposite leaves and squarish stems. The fruit is a group of four small nutlets. The oblong to ovate leaves are 1/4 to 3/4 inch long with obscurely toothed margins. The upright flowers are creamy white with rose to purplish pigment in the lower notched lip. Each flower is surrounded by spiny leaf-like bracts.

The San Mateo thornmint was first collected in April 1900 by H.A. Dutton. The type specimen (H.A. Dutton no. 63392, Dudley Herbarium) was labeled as coming from "Woodside serpentine." Jepson (1943) considered the San Mateo County plants to be a hairy, serpentine-inhabiting form of *Acanthomintha ilicifolia* Gray. Abrams (1951) described the plants as a subspecies of *A. obovata* Jepson, based on the degree, distribution, and type of hairiness. Other distinctive features of the San Mateo plants that undoubtedly influenced the subspecific placement included their occurrence on serpentine soils, and the disjunct distribution, which effectively isolated them from all other congeners.

Historically, the San Mateo thornmint grew on grassy serpentine hillsides scattered infrequently along the east side of the San Andreas fault from Woodside (Niehaus 1977) to as far north as the Crystal Springs Reservoir (Thomas 1961, Dr. L.R. Heckard, University of California, Berkeley, pers. comm.). Only one small population is now known to exist at Edgewood County Park near Redwood City. This population grows on a grassy slope on soils derived from serpentine rock. The site, owned by San Mateo County, lies within Edgewood County Park. As recently as the spring of 1984, off-road

vehicle (ORV) activities damaged the population. Damage from ORVs was most severe prior to the county obtaining ownership of the area. But even now, under County ownership and protection, unauthorized vehicle and foot traffic damage the population sporadically. Increased protective measures such as fencing and increased patrols may be necessary to prevent horses, hikers, and ORVs, from severely damaging the population. In addition, two incidents of unauthorized collection of the plant have occurred.

Although the removal of plants and soil from the thornmint population may have been an attempt at transplantation, this has not been confirmed. The net result has been the loss of potentially productive individuals from the wild population and disruption of life history studies by the California Department of Fish and Game.

Although San Mateo County has maintained Edgewood Park as essentially natural open space up to this time, several recreational uses are being considered for the park, including day camps, picnic areas, expanded hiking and equestrian trails, and an 18-hole golf course. All of these uses have the potential to directly or indirectly disrupt and/or extirpate the small thornmint population.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, as amended, prepared a report to Congress on those native U.S. plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51), which included the San Mateo thornmint, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the *Federal Register* (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (acceptance of petitions is now governed by section 4(b)(3) of the Act). On June 16, 1975, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species, including the San Mateo thornmint, to be endangered species pursuant to the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not then been made final, along with four other proposals that had expired. On December 15, 1980, the

Service published a revised notice for plants (45 FR 82480). This notice included the San Mateo thornmint as a category 1 species. Category 1 is composed of taxa for which the Service has sufficient biological information to support their being listed as endangered or threatened species. On June 18, 1984, the Service repropose the San Mateo thornmint as an endangered species (49 FR 24906).

Summary of Comments and Recommendations

In the June 18, 1984, proposed rule to list the San Mateo thornmint (49 FR 24906), and associated newspaper and written notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *San Francisco Chronicle/Examiner* on July 15, 1984, the *San Jose Mercury News* on July 24, 1984, and *Northwest Publications* on July 15, 1984. On July 25, 1984, Mr. Paul Koenig, Department of Environmental Services, County of San Mateo, requested a public hearing on the proposal to list the San Mateo thornmint. As a result of discussions with the county and other interested agencies and individuals, the Service decided to hold a combined public hearing for the thornmint and bay checkerspot butterfly (*Euphydryas editha bayensis*), which has also been proposed to be listed as endangered (49 FR 35665). Notification of the public hearing was published in the *Federal Register* on Friday, October 26, 1984 (49 FR 43076) and in the following local newspapers: *San Jose Mercury News* (October 26, 1984), *San Francisco Chronicle/Examiner* (October 18, 1984), *Palo Alto Times* (October 30, 1984), and the *San Mateo Times and News Leader* one publication (October 30, 1984). Written notification also was sent to interested State, local, and Federal agencies, and interested individuals and organizations.

On November 13, 1984, the Service held a public hearing at the Hillsdale Inn in San Mateo County, California, on the proposals to list the San Mateo thornmint and bay checkerspot butterfly as endangered species and to designate critical habitat for the butterfly. Approximately 120 people attended the hearing. Comments from the hearing as well as written comments have been carefully considered in preparing this final rule. Seventy-four written

comments were received during the comment period from various individuals, organizations, and government agencies, and 39 more were received during the public hearing. Nineteen of those presenting oral comments at the public hearing also provided written comments. Multiple comments (whether written or oral) from the same individual were regarded as one comment. Sixty-four of the commenters expressed support for listing the San Mateo thornmint as endangered and 10 opposed the thornmint listing. Twelve commenters gave no clear indication of their positions on the thornmint listing. Most comments expressing concern or opposition to the listing presented no substantive data refuting the need for listing the thornmint, but merely stated their support for a golf course at Edgewood Park. Similarly, many of the comments in favor of the thornmint listing merely agreed with the data presented in the proposal and opposed a golf course at Edgewood Park.

Comments from the California Department of Fish and Game (CDFG) supported the thornmint proposal and provided specific information on the occurrence of, and threats to, the plant. The CDFG data agreed with, and corroborated much of the information presented in the proposal. CDFG agreed that designation of critical habitat for the San Mateo thornmint could be detrimental.

The National Park Service (NPS) Regional Office and Golden Gate National Recreation Area commented that Federal listing is required for the thornmint and that listing would effect needed protection for the plant. NPS indicated that weather patterns in 1982-1983 may have contributed to the reduction in the thornmint population during those years, but that in 1984 the population increased slightly. NPS also noted that water flows to the upper thornmint colony have been restricted because of blockage in a nearby culvert. The Service believes that blockage of, or alterations to, natural water flows to the thornmint population could constitute a significant threat to the species. NPS provided photographs showing damage to the thornmint population in 1981 from unauthorized removal of plants and the activities of ORVs.

The California Native Plant Society (Santa Clara Valley Chapter, San Francisco Bay Area Chapter, and the Rare Plant Program) and the Committee for Green Foothills voiced strong support for listing the San Mateo thornmint. Their comments included additional information on the

occurrence of the thornmint, past survey efforts, and additional information on likely effects of golf course construction, including the following: increased human intrusion into the habitat of the thornmint; possible changes to the hydrological regime within the thornmint habitat; destruction, disturbance, or adverse changes to between 42 and 64 percent of the serpentine grassland as a result of golf course construction, use, and maintenance; significant increased erosion in graded areas that could adversely affect the thornmint and its habitat; and inadvertent damage to nearby "protected habitats" resulting from the use of fertilizers, herbicides, and insecticides.

Other organizations supporting the listing of the thornmint included the Environmental Defense Fund (EDF), the Garden Club of America, Sierra Club (San Mateo County Group), Defenders of Wildlife, Friends of the Earth, Bay Land Area Study Team, and the National Audubon Society, Inc. (Santa Clara Valley Chapter).

Five professional botanists (three from the University of California, Berkeley, one from Stanford University, one from the Missouri Botanical Garden) and one professional ecologist (no affiliation given) voiced support for listing the San Mateo thornmint and presented information on the very restricted distribution of the thornmint. The ecologist and botanists from Berkeley and Stanford indicated that the only extant population known is at Edgewood Park. The ecologist stated that he has been searching the serpentine areas within the thornmint's historic range since 1979 and knows of no other sites supporting the plant.

A geologist supportive of the thornmint listing discussed the possible transmission of waters through the serpentine body at Edgewood Park. He expressed concern that golf course irrigation could enter the serpentine fracture system and resurface within or near the thornmint population. The geologist also noted that this water could carry various chemicals such as insecticides, herbicides, and fertilizers if a golf course were placed nearby. He expressed concern that such transmissions could inadvertently damage or destroy the thornmint population.

One comment by a licensed pest control operator supported listing the thornmint and provided information on likely adverse effects of insecticide and herbicide applications for a golf course at Edgewood Park. He stated that control of broadleaf plants on the golf

course would threaten the thornmint colony.

Another individual commenting in support of listing the San Mateo thornmint provided a report on her studies of the population at Edgewood Park conducted since 1977 (Sommers, 1979). This report presents detailed information on the size of the population (number of plants and occupied acreage), potential habitats, and threats to the population, including past incidents of unauthorized taking, urbanization, ORV damage, and recreational activities (including the proposed golf course).

Ten individuals expressed concern that listing the San Mateo thornmint would affect the proposed golf course at Edgewood Park. Most of those commenting in this vein indicated that the Endangered Species Act is being used by local environmentalists to halt San Mateo County's recreation plans for Edgewood Park; specifically, a golf course development.

The Service responds that identifying and listing endangered or threatened species pursuant to the Endangered Species Act, as amended, is a requirement mandated by Congress. Moreover, section 4 of the Act requires the Service to concentrate on biological factors in determining whether to list a species and prevents the Service from giving any weight to economic and other non-biological considerations. The Service recognizes that listings may affect various State and local entities and planned and approved development proposals through the local planning process. Listing of the thornmint, however, will primarily constrain Federal activities and federally-authorized activities that may affect the thornmint or its habitat. In addition, even in instances where local or Federal developments or proposed activities may adversely affect federally listed species, the Service has found that modifications or alternative designs usually allow projects to proceed while providing adequate protection for the species. Specific procedures for conflict resolution are provided in sections 7 and 10(a)(2) of the Act. With respect to previously authorized projects, such projects are not automatically exempt from the provisions of the Act; however, section 7(g) does provide for exemptions.

The proposed golf course at Edgewood Park is but one of many activities and factors that may adversely affect the San Mateo thornmint. San Mateo County's Stage II Final Supplement to its Environmental Impact Report (1984) identified the environmental effects of the proposed

Master Plan for Edgewood Park, which includes the proposed golf course development and other recreation facilities. This document indicates that 42 percent to 64 percent of the serpentine grassland habitat at Edgewood Park will be destroyed as a result of Master Plan implementation. The document also indicates that the San Mateo thornmint and other Federal candidate plants may be adversely affected by project design, construction, operation, and maintenance activities. Because local or even absolute extinction of the San Mateo thornmint is a real possibility even without disturbance, the Service views the County's existing Master Plan (1984) and proposed recreation developments at Edgewood Park as a significant threat to the San Mateo thornmint. This does not mean, however, that future modifications or alternative designs could not eliminate or significantly reduce those threats.

San Mateo County provided several comments on the listing of the thornmint, indicating that it was premature to say the thornmint exists only at Edgewood Park considering the extensive amount of potential serpentine habitat on San Francisco's watershed lands. The county stated that the Service should undertake a complete survey before listing, and further stated that the thornmint receives more protection today under county ownership and surveillance than at any time in the past.

The Service responds that the only site now known for the San Mateo thornmint is at Edgewood County Park. Extensive efforts by many local botanists (professional and non-professional) over the last 10-15 years, as well as recent efforts by the California Department of Fish and Game and the Service, have been unable to locate any additional populations on any of the remaining serpentine areas within the historic range of the thornmint, including serpentine areas on the San Francisco watershed lands. This situation was emphasized at the public hearing, when all attending local botanists stated that no other locations have been found despite many hundreds or possibly thousands of hours of effort. The Service finds that the best scientific and commercial data available on the thornmint strongly suggest that it now exists at only one location, Edgewood County Park. The known occurrence at only one site and the very small number of plants in the population make the thornmint critically vulnerable to extinction.

County efforts to protect the thornmint are well recognized. However,

the Service believes additional efforts are necessary to adequately protect and recover the plant. Federal listing not only would provide additional conservation measures, but is required by Congressional mandate when a species fits one or more of the five criteria identified in section 4(a) of the Act. The thornmint clearly fits the criteria (see following section of this rule).

Two comments opposing the listing of the thornmint stated that Interstate 280 destroyed hundreds of acres of serpentine rock-outcroppings, implying that many likely habitats for the thornmint were also destroyed. The comments also noted that construction of Interstate 280 was vigorously supported by many of those now hoping to block the golf course development.

The Service replies that the destruction of serpentine habitat as a result of the construction of Interstate 280 is well known. This is one of the activities contributing to the decline of the thornmint identified in the original proposal. Whether a particular group or groups of people supported the highway construction, however, has no bearing on the determination of endangered status for the thornmint.

Several comments stated that designation of the San Mateo thornmint as an endangered species was inappropriate since it is not a full species. They stated that the Act was designed to protect full species.

The Service replies that pursuant to section 3(16) of the Act, the term "species" includes any species or subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Consequently, the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*) qualifies as a "species" as defined in Section 3(16) of the Act. The subspecific designation for the San Mateo thornmint is recognized in the most recent available scientific literature and the Service knows of no recent alternative taxonomic treatments that controvert this status.

San Mateo County commented on the thornmint listing that threats from disease are highly speculative and unfounded. They state that disease and natural predation are normal biological phenomena. The County notes that since the plant was first discovered at Edgewood Park in 1977, there has been no indication of loss from disease and that such loss would not necessarily be controllable by man. The County further indicated that Federal listing offers no additional assistance over and above

that which is now available from the County without listing. The County indicated that certain recovery actions such as raising plants and seeds in a botanic garden and implementing efforts to reestablish populations in appropriate habitats elsewhere within the range can be achieved without Federal controls or listing.

The Service responds that the San Mateo thornmint is known only from one small area at Edgewood County Park, occupying a nearly contiguous area of about 1,940 square feet (180 square meters). It is well known that the risk of extinction is most acute in small isolated populations (Frankel and Soule 1981, Pickett and Thompson 1978, Soule 1983, Beardmore 1983). In such circumstances otherwise minor events, such as a relatively short, dry spell, locally increased predation, or a local disease outbreak or infection can easily result in the extinction of a small population at a single site. The highly clustered distribution of the plants makes this possibility even greater (Soule 1983). Without additional populations, random events such as these represent significant potential threats that could easily cause the extinction of the thornmint. As stated previously, Federal listing is required by law for those species facing high risk of extinction regardless of whether or not the threats are controllable by man. The Service believes that Federal listing will provide additional opportunities for the conservation of the thornmint as discussed in the section titled "Available Conservation Measures" later in this rule.

One comment indicated that the file information on the listing was not reasonably available to people in the local area.

The Service responds that notifications of the proposal and the public hearing were made public through several notices published in the *Federal Register* and in local newspapers (refer to the previous background section for specific newspapers and publication dates). With respect to the reasonable availability of the file information, this information was available at the Regional Office in Portland, Oregon. A phone number and address were provided in the notifications for those wishing to ask questions or inquire about the file information. This information was also available through the Freedom of Information Act, and was so requested by one agency, San Mateo County. The Service finds that all requirements of Section 4(b)(5) of the Act have been met.

One comment from a private citizen complained about the conditions under which the public hearing was conducted. The public address system at first did not work, and then later periodically played music, making it difficult to hear the speakers. He also felt the Service took too much time explaining the reasons for listing the species; this information had been previously discussed in the *Federal Register*. The commenter felt equal time was not allotted for each side to present relevant facts. A videotaped presentation prepared by Mr. Robert Trent Jones was delayed until after 10 p.m. and by that time most of the audience had left.

The Service apologizes for any inconvenience to the audience caused by the public address system, but this did not appear to be a significant problem at the hearing. Several other individuals commented that they felt the conduct and conditions at the public hearing were very good. The court recorder experienced no difficulties, and the transcript of the hearing is complete. The Service believes presentations on the provisions of the Act and background information in support of the listings were necessary to clarify the proposal and background information, and ensure that everyone was familiar with the purpose of the public hearing. The hearing officer ensured that all those wishing to comment were given adequate time to present relevant facts. No one was denied an opportunity to speak, and the hearing was extended to accommodate all speakers. Mr. Jones' video recording was held until last so that all individuals actually present would be given an opportunity to speak first.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Acanthomintha obovata* ssp. *duttonii* (San Mateo thornmint) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Acanthomintha obovata* ssp. *duttonii* Abrams (San Mateo thornmint) are as follows:

A. The present or threatened destruction, modification, or curtailment

of its habitat or range. The San Mateo thornmint historically was found at scattered locations in San Mateo County, California, from Crystal Springs Reservoir in the north to Woodside in the south. Most of these sites have been destroyed, presumably by urban development, highway and road construction, and similar land use alterations. The only known remaining colony is at Edgewood Park, San Mateo County, California. The proposed recreation plan and golf course development of San Mateo County could adversely affect the thornmint colony and, considering the small number of plants at the one site, could easily destroy the entire population.

The possibility that additional colonies may exist on the Crystal Springs Reserve property has been mentioned by Dr. J.H. Thomas of Stanford University (pers. comm.), but none have been located recently. This situation has been substantiated by many knowledgeable local botanists, professional and non-professional.

B. Overutilization for commercial, recreational, scientific, or educational purposes. During the Spring in 1981 and 1983, patches of soil containing individuals of the thornmint were removed from Edgewood Park. It is not known who removed the soil and plants, or for what purpose they were removed. Because soil was taken along with plants, this action may have been an attempt at transplantation or cultivation, but this has not been confirmed. Such unauthorized and uncoordinated removal from this small and localized population may exacerbate the already vulnerable condition of the thornmint.

C. Disease or predation. Although mortalities from disease or predation have not been reported for the San Mateo thornmint in the literature, the small size of the population (1,000-2,000 individuals), its occurrence at only one known site (total occupied area of about 1,940 square feet or 180 square meters), and its clustered distribution make this plant exceedingly vulnerable to any disease outbreak or increase in predation.

D. The inadequacy of existing regulatory mechanisms. The thornmint is listed as an endangered species by the California Fish and Game Commission and is thus protected under State law, which principally provides for salvage of plants (when there is a change in land use) and restrictions on trade. In addition, County regulations provide some restrictions on the taking of the thornmint. Lawful taking is provided by the County under a permit system from the County Parks and Recreation

Department. Federal listing would provide additional options for protecting the species in its natural habitat.

E. Other natural or manmade factors affecting its continued existence. Unauthorized activities such as ORV use and trash dumping, which adversely affected the plant in the past, have been largely eliminated by County management of the site. However, incursions still occur, but at a much reduced frequency. Complete protection of the thornmint colony from ORV damage is very difficult without costly increased patrols and/or fencing. Also, a previously unstable slope above the thornmint colony was recently graded and hydroseeded to stabilize it. Landslides onto the road above the thornmint colony threatened to block the drainages that provide water to the thornmint habitat. It is too early to know if this slope has been adequately stabilized to prevent future slides from adversely affecting the colony. Low thornmint population numbers raise concerns that genetic depletion and reduced reproductive potential may further threaten the plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in preparing this final rule. Based on this evaluation, the preferred action is to list *Acanthomintha obovata* ssp. *duttonii* (San Mateo thornmint) as an endangered species. Historically, the San Mateo thornmint occurred on grassy serpentine hillsides from Crystal Springs Reservoir on the north to Woodside in the south, a range of approximately 5 miles. Today, this plant is known only from Edgewood County Park, about 2 miles north of Woodside. Searches of previous collection locations and presumably suitable habitat have failed to locate any additional populations. Most of the historic sites have been destroyed or severely disturbed as a result of urbanization and/or road or highway construction. The known population consists of between 1,000 and 2,000 individuals occupying a total area of about 1,940 square feet (180 square meters). A proposed recreation plan by San Mateo County involving construction of a golf course and other recreation facilities at Edgewood Park could adversely affect the plant. As a consequence of this critical situation, the Service finds that endangered classification is most appropriate for the San Mateo thornmint. For reasons set forth in the "Critical Habitat" section, the Service further finds that it is not prudent to designate critical habitat for the thornmint at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Considering the highly vulnerable status of the one known population at Edgewood Park, the lack of Federal protection from taking on non-Federal land, and past unauthorized collections, this finding is appropriate. Publication of precise maps and descriptions of the critical habitat would make this plant even more vulnerable, could increase law enforcement problems, and could contribute to the taxon's continued decline.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could affect the San Mateo thornmint in the future include, but are not limited to, the following: the

issuance of permits or approvals for roads or transmission lines, or funding or approval to build or construct any structures or facilities in or near any of the areas now supporting the San Mateo thornmint.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the San Mateo thornmint, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade is known for this plant and it is anticipated that few trade permits will be sought or issued for the San Mateo thornmint.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to the San Mateo thornmint, though, as noted below, the species currently is known to occur only on non-Federal lands. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). Because the San Mateo thornmint is only known to occur on non-Federal lands, it is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section

(4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

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List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17--[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
LAMIACEAE—MINT FAMILY						
<i>Acanthomintha obovata</i> ssp. <i>duttoni</i>	San Mateo thornmint	U.S.A. (CA)	E		NA	NA

Dated: September 3, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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