pesticide petition 4F3070 with EPA. The petition proposed that a tolerance be established for residues of (±)-2-[4-[(5-
(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl 2-[4-
(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propionate (fluazifop-butyl), all expressed as fluazifop, in or on the RAC
onions at 0.5 part per million (ppm).
America, Inc., subsequently amended the proposal to specify the resolved isomer of fluazifop, (R)-2-[4-
(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, and fluazifop-P-butyl, butyl(R)-2-[4-(trifluoro-
(pyridinyl)oxy]phenoxy]propionate, and onions (bulb).
There were no comments received in response to the notice of filing.
The data submitted in the petition and other relevant material have been evaluated. The data considered in support of the tolerance include:
1. Plant and animal metabolism studies.
2. A rat oral lethal dose (LD₅₀) with an LD₅₀ of 3,300 milligrams (mg) per kilogram (kg) of body weight (bwt).
3. A rabbit subchronic dermal study with a no-observed-effect level (NOEL) of 100 ppm (5 mg/kg/day).
4. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day.
5. A 90-day dog feeding study with a NOEL of 25 mg/kg/day.
6. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (the teratogenic and maternal toxic level is 200 mg/kg/day (highest dose) with diaphragmatic hernia) and the fetotoxic NOEL of 1 mg/kg/day (highest dose) with maternal toxicity NOEL of 1 mg/kg/day.
7. A rabbit teratology study with no terata at 60 mg/kg/day (highest dose) and a fetotoxic NOEL of 10 mg/kg/day.
8. A two-generation rat reproduction study with a NOEL of 60 ppm (mg/kg/day).
9. A 2-year chronic feeding/oncogenicity study in rats with no-observed-oncogenic potential under conditions of the study up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1 mg/kg/day.
10. An 18-month mouse chronic feeding/oncogenicity study with no-observed-oncogenic potential up to an including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1.0 mg/kg/day.
11. An Ames test (negative).
12. A rate cytogenetic study (negative).
14. A acute delayed neurotoxicity study in hens (negative).
15. A 1-year dog feeding study with a NOEL of 5 mg/kg/day.

According to the data considered in support of the tolerance, the acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.005 mg/kg/day; the current action will increase the theoretical maximum residue contribution (TMRC) from existing tolerances for a 60-kg human is calculated to be 0.8 mg/day.

The nature of the residue of the pesticide is adequately delineated, and an adequate analytical method, high-pressure liquid chromatography using an ultraviolet director, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes. Existing tolerances for fluazifop-butyl are adequate to cover secondary residues in meat, milk, poultry, or eggs resulting from this use of the pesticide. There are currently no regulatory actions pending against the pesticide.

Published tolerances utilize 10.0 percent of the ADI. The current action will utilize an additional 1.0 percent to utilize a total of 11.0 percent of the ADI.

Based on the information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24960).

List of Subjects in 40 CFR Part 180
Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Douglas D. Camp, Director, Office of Pesticide Programs.
Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]
1. The authority citation for Part 180 continues to read as follows:
2. Section 180.411 is amended by adding and alphabetically inserting the raw agricultural commodity onions (bulb) to paragraph (c), to read as follows:
§ 180.411 Fluazifop-butyl; tolerance for residues.
(c) *

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Parts per million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Onions (bulb)</td>
<td>0.5</td>
</tr>
</tbody>
</table>

[FR Doc. 87-25732 Filed 11-5-87; 8:45 am] BILLING CODE 4560-58-M

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Rule To Determine Astragalus montii (Heliotrope milk-vetch) To Be Threatened Species, With Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant Astragalus montii (Heliotrope milk-vetch) to be a threatened species and designates critical habitat for a portion of its range under the authority of the Endangered Species Act of 1973, as amended. Astragalus montii is known from three populations entirely on public land in the Manti-LaSal National Forest located in Sanpete and Sevier Counties in central Utah. The taxon grows on outcrop barrens formed from a substrate of partially decomposed limestone of the Flagstaff...
Astragalus montii is known from three populations, all entirely on public land in the Manit-Lasal National Forest. The best known population occurs on the western portion of Heliotrope Mountain in Sanpete County. This population on about 57.2 acres is divided between two sites approximately ½ mile apart. The larger site, with about 2,000 individuals, occurs on the south side near the top of Heliotrope Mountain and the smaller site, with fewer than 500 individuals, occurs on the north side. The second population also occurs on Heliotrope Mountain (near its confluence with, sometimes considered a part of, Ferron Mountain), about 2 miles east of the previously mentioned population. This population was discovered in the summer of 1983 and consists of about 4,000 individuals on 37 acres. The third population, also of about 4,000 individuals, occurs about 6 miles south of Heliotrope Mountain on White Mountain, in Sevier County. This population was discovered in 1982 and occurs on isolated rocky outcrops scattered within a total of about 290 acres along the rather flat expanse of the mountain top. No other populations have been located.

Populations of A. montii are in a general area of active oil and gas exploration associated with the "Overthrust Belt" of the western United States. Oil and gas exploration and development in the area where this species occurs, unless conducted with consideration for this taxon, could have a seriously negative effect on its survival. In November, 1982, the Bureau of Land Management (BLM) issued an oil and gas lease covering the then-proposed critical habitat for the taxon. With a stipulation that endangered and threatened species must be accommodated. An oil and gas lease that includes portions of the other Heliotrope Mountain (Ferron Mountain) population does not contain such a stipulation, but this lease was terminated by the lessee in September 1984.

On December 15, 1980, the Service published a notice of review for plants in the Federal Register (45 FR 82579-82569) that included A. montii as a candidate for listing. On January 13, 1981, the Service published in the Federal Register (46 FR 3107-3191) a rule that proposed A. montii to be an endangered species, with critical habitat proposed for the only population then known, on the south side of western Heliotrope Mountain. Two additional populations and one additional site were discovered in 1982 and 1983 on the limited rocky outcrops to which this species is restricted. The distribution and numbers of plants in the populations have been investigated, and the nature, magnitude, and immediacy of threats facing this taxon have been subsequently evaluated. On August 26, 1983, the Service published a notice in the Federal Register (48 FR 38860-38861) that reopened the comment period through September 14, 1983, and announced a September 12, 1983, public hearing on the proposal, indicating that the Service then considered the taxon threatened rather than endangered. The taxon is considered threatened rather than endangered because of the change in known distribution and in perceived threats, as explained below.

Summary of Comments and Recommendations

In the January 13, 1981, proposed rule (46 FR 3107) and associated 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 governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A letter was sent to the Governor of Utah on February 10, 1981, notifying him of the proposed rule for A. montii. In February, 1981, letters were sent to members of Utah's congressional delegation, Federal agencies, local governments and other interested parties notifying them of the proposal and soliciting their comments and suggestions. The proposed rule also announced that a public meeting would be held on February 18, 1981. That meeting was by error scheduled to be held in Nephi, Utah, which is not in the county in which the plant was known to occur. In order to have the meeting take place in the same area in which the proposed critical habitat is located (as the Act then required), the Service announced in the February, 1981, Endangered Species Technical Bulletin and planned to announce in the Federal Register that the public meeting would be held in Manti, Utah, on March 18, 1981. However, due to objection to the proposal as discussed below, the Service postponed the public meeting until it could reconcile the concerns of those opposed to the proposed rule. Written comments received during the period January 13, 1981, through April 14, 1981, concerning the proposed rule are discussed below. Comments were received from the Governor of Utah, Congressman James Hansen, the Forest Service, and Dr. Stanley L. Welsh, of Brigham Young
University. A total of five written responses were received relating to the proposal. All five objected to the proposal itself or to the scientific and conservation judgment on which the proposal was based. The Forest Service, in two separate but essentially identical responses, objected to the proposed rule. Its objection was based on the following three reasons: (1) "Listing the plant and designating Critical Habitat would tend to draw attention to it and could lead to its endangerment . . . ." (2) "The statements in the Federal Register regarding threats to the plant from domestic sheep and off-road vehicle use in the area are not supported with factual evidence . . . ." and (3) "The species is listed as "sensitive" by the Regional Forester and is, therefore, afforded the necessary priority to protect it from threats . . . ." Dr. S.L. Welsh’s objections were the same as those expressed by the Forest Service in points 1 and 2 above. The Governor’s objections were a reiteration of the objections noted above. Congressman Hansen’s objections again were the same as those above, plus strongly expressed concern of excessive government regulation and interference that he believed would result from the rule. The Service’s reply to these comments follows.

There is no evidence of botanical or horticultural interest in the taxon that would lead one to expect an additional threat to Astragalus montii from plant or seed collectors as a result of listing and designating critical habitat. Subsequent field work on A. montii has indeed failed to support statements in the proposed rule concerning threats to this taxon from off-road vehicle (ORV) use and livestock grazing and trampling. The Service recognizes the importance and utility of the Forest Service’s sensitive species policy in conserving rare species. However, the Service is not authorized to delegate its legal responsibility for the identification of vulnerable species to any other agency. Finally, the Service neither anticipates that planning for A. montii will cause irresolvable conflict with oil and gas exploration or development, nor that this final rule will result in excessive regulation.

In the August 26, 1983, Federal Register notice (40 FR 38680) that reopened the comment period through September 14, 1983, and in associated correspondence, all interested parties were again requested to submit factual reports or information that might contribute to the development of a final rule. The same groups notified of the 1981 proposal were contacted and requested to comment. A letter was sent to the Governor of Utah on August 31, 1983, again notifying him of the proposed rule for A. montii. In August and September 1983, letters were again sent to members of Utah’s congressional delegation. Federal agencies, local governments and other interested parties notifying them of the proposal and soliciting their comments and suggestions. A newspaper notice that invited general public comment was published in the Manti Messenger on September 1, 1983. The notice also announced that a public hearing would be held on the proposal in Manti, Utah, on September 12, 1983. All comments received during the period from August 26, 1983, through September 21, 1983, are discussed below, as well as a comment from the Governor received November 4, 1983.

Three written comments were received. In a comment from the Regional Forester, recommended against officially listing A. montii as either threatened or endangered. The Forest Service comment maintained that populations of A. montii appear stable under current land management conditions. The Forest Service also expressed confidence that it could direct any threat to A. montii away from its habitat. The Governor referred to his March, 1981, comment letter and reaffirmed his objection to listing the taxon. He indicated his belief that grazing is not a threat and that the authority of the Forest Service is sufficient protection from any grazing or ORV threats. He stated that discovery in 1982 of the White Mountain population, which is not threatened by grazing or ORV activity, further supports his recommendation not to list the taxon. He did not mention the eastern Heliotrope Mountain (Ferron Mountain) population or address the threat to the Heliotrope populations from energy exploration or development. Dr. Stanley L. Welsh of Brigham Young University commented on the rarity of A. montii, its very limited distribution, and its susceptibility to habitat destruction from energy development. He urged protection for this taxon under the Endangered Species Act to ensure its long-term survival. No substantive comments were received at the public meeting held on September 12, 1983, although there was informal discussion on the recently discovered eastern Heliotrope Mountain (Ferron Mountain) population.

The U.S. Fish and Wildlife Service recognizes and values the conservation efforts of the Forest Service in conserving wildlife and plants in general, and A. montii in particular. Biological evidence suggests that Astragalus montii is vulnerable to localized habitat alteration and, given the potential for further energy exploration in its restricted habitat and the fact that energy exploration is taking place in the vicinity of its proposed critical habitat and elsewhere on Heliotrope Mountain, it fits the criteria of the Act for listing as a threatened species. Since the protective stipulation on the BLM lease that includes the area of critical habitat is restricted to proposed or listed endangered and threatened species, listing is necessary to ensure that the stipulation has effect. It is anticipated that the listing of A. montii as threatened will not limit any action or land use plan the Forest Service currently has in operation in the area in which this taxon occurs, and listing will carry out the intent of the BLM lease stipulation.

Summary of Factors Affecting the Species

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Astragalus montii occurs in a general area of active petroleum exploration associated with the "Overthrust Belt" of the western United States, indicating a potential that oil and gas could be found there. Given the very limited distribution of A. montii, habitat disturbance as a consequence of oil and gas exploratory drilling or production that did not plan for this taxon could have a seriously negative impact on its survival. On November 1, 1982, the BLM issued an oil and gas lease that includes the area classified as critical habitat for the taxon, but included a stipulation that could restrict or disallow use of the lease if the exploration or drilling operation may detrimentally affect an endangered or threatened species . . . . The stipulation indicated that "The Federal surface management..."
agency [i.e., the Forest Service] is responsible for assuring that the area to be disturbed is examined, prior to undertaking any surface-disturbing activities [1]. Listing Astragalus montii is necessary for this stipulation to aid the taxon. Recreational ORV activity in the area is now thought to be uncommon and not harmful to the taxon.

B. Overutilization for commercial, recreational, scientific, or educational purposes. None known.

C. Disease or predation. Limited sheep grazing under a management plan occurs in the habitat of A. montii. Actual detrimental impacts to this plant resulting from grazing or associated trampling have not been observed. The plateau tops were more intensely grazed in the past, but Forest Service policy in recent years has reduced grazing in the area to a level believed compatible with conservation of Astragalus montii.

D. The inadequacy of existing regulatory mechanisms. No State laws or regulations currently protect A. montii. The Forest Service has established a national policy, based on the National Forest Management Act, of protecting species that it has designated as "sensitive" [Title 36, Chapter 270.3(2); 36 CFR 251.9]. The Forest Service has designated A. montii as a sensitive species, and as such it is the policy of the Forest Service to provide for its conservation. The Forest Service has developed a management plan for A. montii and has initiated inventories and studies to develop necessary conservation for it.

The Endangered Species Act of 1973, as amended, and in particular its interagency cooperation regulations under section 7, will provide the necessary regulatory base to sustain the Forest Service in its national sensitive species policy on behalf of A. montii. Listing also is necessary to maintain in effect the BLM lease stipulation for this threatened species on western Heliotrope Mountain, and to require further consideration for the taxon by the BLM in its other lease stipulations. The Act will also add the authority and resources of the U.S. Fish and Wildlife Service in providing for the continued conservation of this taxon as long as it remains listed as threatened.

E. Other natural or manmade factors affecting its continued existence. The harshness of the alpine environment (short growing season, intense sunlight, extremely variable temperatures, etc.) contributes to the fragility of the ecosystem of A. montii. Disturbances may have catastrophic and as yet unknown long-term consequences to such a narrow endemic occupying these alpine habitats.

The careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this taxon were considered in determining to make this rule final. Based on this evaluation, the preferred action is to list Astragalus montii as a threatened species. Listing as endangered, as proposed, is no longer appropriate, because it has been found to have a somewhat wider distribution and greater number of populations and individuals than had been believed at the time of proposal. It is prudent to designate critical habitat for it, since no threats are anticipated from delineating its location, as discussed above in the response to comments.

Critical Habitat

Critical habitat, as defined by section 3 of the Act and at 50 CFR Part 424, means: (I) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (II) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is designated for A. montii to include the western population on Heliotrope Mountain in Sanpete County, Utah, about 15 miles southeast of Manti on top of the Wasatch Plateau. This area is revised from that proposed, based on field work undertaken in the past few years, and now includes the entire western Heliotrope Mountain population. Acreage is decreased from about 80 to about 65 acres, and the boundaries are redrawn based on most recent knowledge of the species' occurrence in this area. The habitat is characterized by low, barren knolls with very shallow soils derived from partially decomposed white limestone of the Flagstaff Formation. The east Heliotrope (Ferron) Mountain and White Mountain populations were unknown when the proposed rule was published. These additional areas are nevertheless considered necessary habitat for the taxon's survival. These additional areas may be proposed as critical habitat for this plant at some future time Although these additional areas are not being designated as critical habitat at this time, the listing of the Heliotrope milk-vetch provides protection for all individuals of this taxon, whether or not they are within the designated critical habitat.

Section 4(b)(8) requires, for any final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) that may adversely modify such habitat or may be affected by such designation. Activities within the proposed critical habitat were identified to include grazing of sheep and off-road vehicle touring. However, additional information collected after publication of the proposal indicated that ORV recreation within or in the vicinity of the proposed critical habitat is considered uncommon and is not expected to affect or be affected by the critical habitat designation. Oil and gas leasing, cattle grazing, and hunting also occur within or in the vicinity of the critical habitat.

Surface disturbance associated with potential oil and gas exploration or development represents the greatest potential threat to this taxon. The area designated as critical habitat for this plant is one of the locations covered by the BLM lease stipulation already requiring consideration of proposed and listed endangered and threatened species. Designation of the area as critical habitat does not additionally affect the lease stipulation other than to reinforce the importance of the area.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the designation in light of all information obtained. The proposed critical habitat designation for the Heliotrope milk-vetch consisted of about 80 acres of limestone barrens near the timberline of Heliotrope Mountain. The proposed critical habitat is located on Federal land administered by the Forest Service within the Manti-LaSal National Forest in Sanpete County, Utah. The boundaries of the critical habitat have been adjusted from about 80 acres of Federal land to about 65 acres of Federal land by removing about 52.5 acres of the area originally proposed and adding about 37.5 acres of limestone barrens directly adjacent to the proposed critical habitat. This adjustment is based on an evaluation of additional information about the location of the species and the constituent elements necessary for the conservation of the species. The critical habitat designation in the final rule consists of limestone barrens near the
timberline within about 65 acres of Federal land on the Heliotrope Mountain in the Manti-LaSal National Forest, Sanpete County, Utah. No significant economic or other impacts are expected to result from the critical habitat designation for the Heliotrope milk-vetch. This conclusion is based on the following: (1) Forest Service’s current management of the portion of Manti-LaSal National Forest that contains the proposed critical habitat areas; (2) the absence of the submission of plans of operations for development of oil and gas leases; (3) the unknown potential for oil and gas development within the areas of critical habitat not within known geologic structures, and current oil prices; (4) the remoteness of and unsuitable grazing conditions within the grazing allotments that contain the proposed critical habitat areas; (5) the absence of any known or expected effect on recreational activities; and (6) the unquantifiable benefits that may result from the designation. In addition, no significant impact on the economy or present economic status of Sanpete or Sevier Counties, Utah, is expected as a result of the designation of critical habitat for the Heliotrope milk-vetch. Protective measures for this taxon may require some control over the siting of various features of oil and gas exploration or development. However, due to the very limited extent of the critical habitat of this taxon, it is expected that its designation will have no effect on any exploitation of these possible energy resources.

Available Conservation Measures

Conservation measures provided to species listed as threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages other Federal, State, and private agencies, groups, and individuals. The Act requires that recovery actions be carried out for all listed species; this requirement may assist the Forest Service in carrying out its management plan for A. montii. The required protection by Federal agencies and the Act’s taking prohibitions are discussed in part below.

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 to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible threats to Astragalus montii within the control of the Forest Service and BLM may include oil and gas exploration and energy resource development, grazing, and recreational activities.

Section 9 of the Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it and reduce it to possession from lands under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from trade prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With respect to A. montii it is anticipated that few permits will ever be sought or issued since the taxon is not of commercial interest and is not known in cultivation or common in the wild. 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, DC 20240 (703/235-1903).

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the 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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The entire critical habitat area for the Heliotrope milk-vetch is administered by the Forest Service. Currently, Forest Service management of the critical habitat is apparently compatible with designation of critical habitat. Therefore, no significant economic impacts are expected to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collect, or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects that is available from the Service’s Denver Regional Office Endangered Species Staff (see ADDRESSES section above).

References


Authors

The primary authors of this final rule are Dr. James L. Miller and Mr. John L. England (see FOR FURTHER INFORMATION CONTACT section above).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

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

PART 17—[AMENDED]

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


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

<table>
<thead>
<tr>
<th>Species</th>
<th>Common name</th>
<th>Historic range</th>
<th>Status</th>
<th>When listed</th>
<th>Critical habitat</th>
<th>Special rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fabaceae—Pea family:</td>
<td>Heliotrope milk-vetch</td>
<td>U.S.A. (UT)</td>
<td>T</td>
<td>209</td>
<td>17.96(a)</td>
<td>NA</td>
</tr>
</tbody>
</table>

3. Amend §17.96(a) by adding critical habitat Astragalus montii, in the same alphabetical order as the species appears in §17.12(h).

§ 17.96 Critical habitat—plants.

(a) * * * * * * *

Family Fabaceae: Astragalus montii (Heliotrope milk-vetch)

Utah, Sanpete County, western Heliotrope Mountain. T19S R4E, Sec. 34, NE ¼ of SW ¼ of SE ¼ of NW ¼; S ½ of SE ¼ of SE ¼ of NW ¼; NE ¼ of NW ¼ of NE ¼ of SW ¼; NE ¼ of NE ¼ of SE ¼ of SW ¼; NE ¼ of NW ¼ of SE ¼ of SW ¼; S ½ of NW ¼ of SE ¼ of SW ¼; NW ¼ of SE ¼ of SW ¼; NW ¼ of NE ¼ of SW ¼; NE ¼ of NE ¼ of SE ¼ of SW ¼; SW ¼ of NW ¼ of NE ¼ of SW ¼; SW ¼ of SW ¼ of SE ¼ of SW ¼; W ½ of SE ¼ of NW ¼ of SE ¼ of SW ¼; NW ¼ of NW ¼ of SW ¼ of SE ¼. The primary constituent element is the white limestone barrens of the Flagstaff Formation.

CRITICAL HABITAT

Astragalus montii

SANPETE COUNTY, UTAH

LEGEND

Critical Habitat

0 1 Mile
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Two Florida Lizards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the sand skink (Neoseps reynoldsi) and the blue-tailed mole skink (Eumeces egregius lividus).

EFFECTIVE DATE: The effective date of this rule is December 7, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Office Supervisor, at the above address (904/791-2580) or FWS (988-2580).

SUPPLEMENTARY INFORMATION: Background

The sand skink (Neoseps reynoldsi) was described by Stejneger in 1910. He established a new genus for this unique lizard, which is adapted to a fossorial (underground) existence. The sand skink is the only North American skink completely specialized for "swimming" through loose sandy soils. The sand skink measures 10–13 centimeters (4–5 inches) in total length and is gray to tan in color. The forelegs are tiny and bear only one toe; the hindlegs are small and have two toes. The tail comprises about half the animal's total length. The sand skink has a wedge-shaped head, a partially countersunk lower jaw, body grooves into which the forelegs can be folded, and small eyes which have transparent windows in the lower lids. These features enable the sand skink to "swim" beneath the surface of loose sand. This lizard is known only from the high sandy ridges of Lake, Marion, Orange, Polk, and Highlands Counties, Florida.

The sand skink has been studied by Cooper (1953), Telford (1959, 1982), Myers and Telford (1965), Campbell and Christman (1982), and Smith (1982). Areas occupied by the lizards are primarily vegetated with sand pine (Pinus clausa)—rosemary (Coriaria ericoides) scrub or a longleaf pine (Pinus palustris)—turkey oak (Quercus laevi) association. The sand skink spends most of its time beneath the soil surface, burrowing to a depth of 5–10 centimeters (2–4 inches) and it feeds on a variety of small arthropods, principally beetle larvae, termites, spiders, and larval ants. The species appears to be most active from March to May. Mating occurs during this period, and females deposit two elongate eggs, probably under logs or other cover, in early summer. The female remains with the eggs and probably protects or cares for them (broods).

Sand skinks are host to three endemic endoparasites: the flagellate protozoans Monocercomonas neosepsorum and Rigidomastix scincorum and an undescribed species of oxyurid nematode, Thelandros sp. (Telford 1969).

The blue-tailed mole skink (Eumeces egregius lividus) was described by Mount in 1965. This species has a long cylindrical body with small legs. It reaches 9–15 centimeters (3–6 inches) in total length, the body making up less than half this length. The tail is blue in young animals, but may become pinkish with age or if regenerated. The blue-tailed mole skink is known only from Polk and Highlands Counties. Both skinks are threatened by the conversion of their habitat for agricultural, residential, and commercial purposes. This rule will implement the protection and recovery provisions of the Act for the two lizards.
drained sites are suitable for citrus groves, and residential, commercial, and recreational development. From 1960 to 1978, citrus production doubled, and most of the increase in acreage of these crops was in southern counties (Fernald 1981). Peroni and Abrahamson (1985) estimated that 64 percent of these xeric upland habitats in the southern Lake Wales Ridge had been converted to improved pasture, cultivation, or housing by 1981. An additional ten percent of the uplands had been moderately disturbed. This trend of land use has continued since 1981, with increased pressure on the citrus industry to move southward down the Florida peninsula following severe freezes during the winters of 1983-1984 and 1984-1985. The Lake Wales ridge includes most of the range of the sand skink, and the entire range of the blue-tailed mole skink.

Because of isolation of the higher portions of the Florida peninsula by higher sea levels at various periods since the Pliocene, considerable plant and animal endemism has occurred. The conversion of these upland areas for agricultural, residential, recreational, and commercial purposes in recent times has caused the ranges of many endemic Florida plants and animals to become greatly reduced and fragmented.

Twelve Federally-listed plant species are restricted to Florida's scrub areas: Lakela's mint (Dicerandra immutaculata), scrub mint (D. frutecens), longspurred mint (D. cornuississima), four-petal pawpaw (Asimina tetramera), pygmy fringe tree (Chionanthus pygmeeae), snakeroot (Eryngium cuneifolium), Highlands scrub hypericum (Hypericum camulicolum), wireweed (Polygonella basiramosa), scrub plum (Prunus angustifolia var. Wayo carter), papery whitlow-wort (Paronychia chartacea), and the scrub lupine (Lupinus aridorum). Also, the Florida scrub jay ( Aphelocoma coerulescens coerulescens) has been Federally-listed. Numerous other plants and animals of Florida's scrub habitats are candidates for listing.

The sand skink and the blue-tailed mole skink were considered Category 2 candidates for listing in the Service's December 30, 1982 (47 FR 58454), and September 18, 1985 (50 FR 37958), vertebrate review notices. The proposed rule to list both species as threatened was published in the Federal Register on January 21, 1987 (52 FR 2242).

Summary of Comments and Recommendations

In the January 21, 1987, proposed rule (52 FR 2242) and associated 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 governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting general public comment, were published in the Winterhaven News Chief (February 14, 1987); the Ocala Star-Banner (February 17, 1987); the Sebring News-Sun (February 15, 1987); the Leesburg Commercial (February 17, 1987); and the Orlando Sentinel (February 15, 1987). Eight comments were received and are discussed below.

The Florida Game and Fresh Water Fish Commission, the Florida Natural Areas Inventory, and three private individuals supported the proposal. Two zoologists supported the proposal; one included information on another site for both skink species in Polk County. The Society for the Study of Amphibians and Reptiles (The Society) supported the listing of the two skinks, but suggested that, since habitat destruction, not collecting, is the principal threat to these species, designation of critical habitat would enhance their protection. The Society further suggested that a Federal collecting permit should be required for the two skinks, to be consistent with other Federally-listed species. The Society suggested that such consistency would be less cumbersome administratively. Service response: As explained under the critical habitat section, the Service continues to believe that there would be no net benefit of critical habitat designation for these species (see "Critical Habitat" section). With respect to collecting permits, the Service does not believe that the special rule delegating this responsibility to the Service is invalid. The existing rules for threatened species are intended to provide for regulatory flexibility. The proposal to delegate this authority was developed in consultation with herpetologists in Florida who have conducted conservation-oriented research on Federally-listed reptiles and amphibians. All concurred that the State permitting system is fully capable of regulating taking of the sand skink and blue-tailed mole skink. The existing rules of the Florida Game and Fresh Water Fish Commission (FGFWFC) (Florida Administrative Code Title 39-27.02) apply strict standards to granting permits, and applications are reviewed rigorously. A Federal permit review would result in administrative duplication of the permit process. It should be pointed out that the FGFWFC already has considerable permitting authority over Federally-listed animals through its Section 6 agreement with the Service, pursuant to the Endangered Species Act.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the sand skink and the blue-tailed mole skink should be classified as threatened species. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act 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 the sand skink (Neoseps reynoldsi) and the blue-tailed mole skink (Eumeces egreugius lividus) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The sand skink is known from Marion, Lake, Orange, Polk, and Highlands Counties, Florida. The Florida Natural Areas Inventory has records of 31 sites for this species. The lizard probably also occurs at other sites where suitable habitats remain. These habitats, however, have been reduced to a small amount of their original extent, and destruction of much of the remainder is ongoing or likely in the foreseeable future, particularly at privately owned sites. Some degree of habitat protection occurs for the sand skink at the following seven locations:

1. Ocala National Forest, Marion County—the species is known from several sites, although the distribution is apparently spotty.

2. Lake Louisa State Park, Lake County—less than 50 acres of suitable habitat exists at this site.

3. Tiger Creek Preserve, Polk County—this site, owned by The Nature Conservancy, supports several hundred acres which may be suitable for the sand skink.

4. Archbold Biological Station, Highlands County—this private research institution encompasses about 3,900 acres; about 2,400 acres are xeric habitats inhabited by the sand skink in varying densities [Dr. James N. Layne, pers. comm.].

5. Wekiwa Springs State Park, Orange County—the status of the sand skink here is uncertain, but there may be several hundred acres of xeric habitat suitable for the species.

6. Saddle Blanket Lakes Preserve, Polk County—this site, owned by The Nature Conservancy, includes only 55 acres of...
The sand skink is likely to occur at Lake Arbuckle State Park and Wildlife Management Area, Polk County, which includes about 13,500 acres; but only a portion of this is scrub.

The blue-tailed mole skink is restricted to Polk and Highlands Counties, Florida. It occurs at many of the same sites as the sand skink, but north of Polk County it is replaced by the peninsula mole skink (Eumeces egregius onocrepis) or by intergrades with that subspecies (Mount 1965, Christman 1970). The Florida Natural Areas Inventory records only 20 sites for this subspecies, but it probably occurs at additional sites where scrub and sandhill habitats remain. Dr. Steve Christman (pers. comm.) has found the blue-tailed mole skink to be much less numerous than the sand skink where the two species coexist in scrub habitats. The total habitat for the blue-tailed mole skink has greatly declined, paralleling the 64 percent decline in xeric habitats of the south Lake Wales ridge documented by Peroni and Abrahamson (1985). Mount (1965) estimated that less than 50,000 acres of habitat for the blue-tailed mole skink remained in the 1960's. According to Peroni and Abrahamson (1985), 23,200 acres of xeric habitats remained in Highlands County in 1981, but not all of this acreage would be expected to support the blue-tailed mole skink. The rate of possible habitat destruction is serious and much of this species' range occurs on private lands. The species is protected on Archbold Biological Station, and is also recorded from Lake Kissimmee State Park, where its status is unknown. The blue-tailed mole skink is also likely to occur on the protected lands mentioned above near Lake Arbuckle, Saddle Blanket Lakes, and Tiger Creek.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Both the sand skink and the blue-tailed mole skink are unique Florida endemics with limited ranges. They are therefore of interest to both amateur reptile collectors and scientific collectors, although there is currently no known serious impact due to collecting.

C. Diseases or predation. No threats are known.

D. The inadequacy of existing regulatory mechanisms. The sand skink and the blue-tailed mole skink are considered threatened by the Florida Game and Fresh Water Fish Commission (Chapter 38-27, Florida Administrative Code). This legislation prohibits take, except under permit, but does not provide any direct habitat protection for these species. Therefore, the Endangered Species Act of 1973, as amended, would provide additional protection for the blue-tailed mole and sand skinks and their habitat through section 7 (interagency cooperation), as well as through the prohibitions of section 9(a)(1) and provisions of section 4(d) and for recovery planning.

E. Other natural or manmade factors affecting its continued existence. Sand pine scrub and longleaf pine communities are both fire dependent. The sand pine is adapted to fire at long (20-50 year) intervals; the peninsular populations of this tree do not shed seeds until the cones are opened by fire. If fire is suppressed in sand pine scrub, succession to xeric hardwood forest eventually occurs. Because of the large expenses of open sand and the slow accumulation of litter in sand pine scrub, fires occur only at infrequent intervals. Longleaf pine communities are dependent on more frequent fires (1-8 year intervals). Lack of fire will result in these communities succeeding to scrub or eventually to hardwoods. Therefore, lack of fire or changes in land use could eventually eliminate the sand skink or blue-tailed mole skink from localities where they currently exist.

Campbell and Christman (1982) studied the reptiles and amphibians occurring in sandhills and scrub. They suggested that this fauna was not associated with particular plant associations but with physical factors, namely, well-drained sands with open areas free of rooted vegetation. They found that the sand skink and mole skink populations in Ocala National Forest (ONF) were most abundant in early successional stages of sand pine scrub. The clear-cutting and even-age stand management of sand pines in ONF appeared to have a similar effect to the natural fire regime typical of sand pine. Although both lizards seem to benefit from the opening and clearing of sand pine communities, it may be important to leave widely scattered surface litter when clear-cutting (see earlier discussion on the importance of litter in the "Background" section).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the sand skink and the blue-tailed mole skink as threatened species. Neither species is currently in danger of extinction, because both occur on protected lands. Both, however, have already lost substantial portions of their original habitat throughout their range and could decline even on the protected areas where they occur. Both species could become endangered over all or a significant portion of their range in the foreseeable future. Therefore, they meet the Act's definition of threatened species. The reasons for not designating critical habitat for these species are discussed below in the "Critical Habitat" section.

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 the sand skink and blue-tailed mole skink at this time. Although the primary threat to both species is habitat destruction, the number of localities at which each species occurs is limited. Excessive collecting could adversely affect these skinks. Because of its unusual morphology and behavior, the sand skink could be of considerable interest both to amateur reptile collectors and scientific collectors. Taking prohibitions on these species would be difficult to enforce. Publication of critical habitat descriptions would increase the vulnerability of these species and increase enforcement problems. All involved Federal agencies will be notified of the location and importance of protecting these species' habitat. Habitat protection can be adequately addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the sand skink and the blue-tailed mole skink at this time.

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 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 provisions for Federal agency management and harm 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 being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to 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. The sand skink occurs on Ocala National Forest. Present forest management practices (block clearcutting) appears to result in succession changes favorable to the continued existence of the sand skink there (Campbell and Christman 1982). Changes in management practices could result in section 7 consultation between the Forest Service and the Fish and Wildlife Service. This situation already exists, however, because of other Federally-listed species already occurring on Ocala National Forest.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take a listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell or offer it for sale in interstate or foreign commerce. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State Conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has the discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. The blue-tailed mole and sand skinks are threatened primarily by habitat disturbance or alteration, not by intentional direct taking or by commercialization. Given this fact, and the fact that the State of Florida currently regulates direct taking of these species through the requirement of State collecting permits, the Service has concluded that the State of Florida’s collection permit system is more than adequate to protect the species from excessive taking, so long as such taking is limited to educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. Therefore, a special rule is promulgated which allows take to occur for the above stated purposes, without the need for a Federal permit, if a State collecting permit is obtained and all other State wildlife conservation laws and regulations are satisfied. Taking of these species for purposes other than those described above, including taking incidental to carrying out otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.22 and 17.32. The special rule will allow for more efficient means of controlling take of these lizards, and thus will enhance their conservation. For these reasons, the Service concludes that this regulation is necessary and advisable for conservation of the blue-tailed mole and sand skinks.

General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened wildlife species, under certain circumstances, are set out at 50 CFR 17.22, 17.23, and 17.32.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(d) 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).

References Cited


§ 17.11 Endangered and threatened wildlife.

(h) * * *

Skink, blue-tailed mole

Eumeces egregius lividus

U.S.A. (FL)

Entire

T

298 NA

17.42(d)

Skink, sand

Neoseps reynoldsi

U.S.A. (FL)

Entire

T

298 NA

17.42(d)

3. Amend § 17.42 by adding new paragraph (d), as follows:

§ 17.42 Special rules—reptiles.

(d) Blue-tailed mole skink (Eumeces egregius lividus) and sand skink (Neoseps reynoldsi). (1) No person shall take these species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of these species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any such species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraph (c)(1) through (3) of this section.

(5) Taking of these species for purposes other than those described in paragraph (c)(1) of this section, including taking incidental to carrying out otherwise lawful activities, is prohibited except when permitted under §§ 17.23 and 17.32.


Susan Recce,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–25687 Filed 11–5–87; 8:45 am]

BILLING CODE 4210–55–M