

(11) Response to Argument

A statement of whether the examiner disagrees with each of the contentions of appellant in the brief with respect to the issues presented and an explanation of the reasons for disagreement with any such contention. If any ground of rejection is not argued and responded to by appellant, the response shall point out each claim affected.

(12) Period of Response to New Ground of Rejection

A statement setting the period for appellant to file a reply to any new ground of rejection, if necessary.

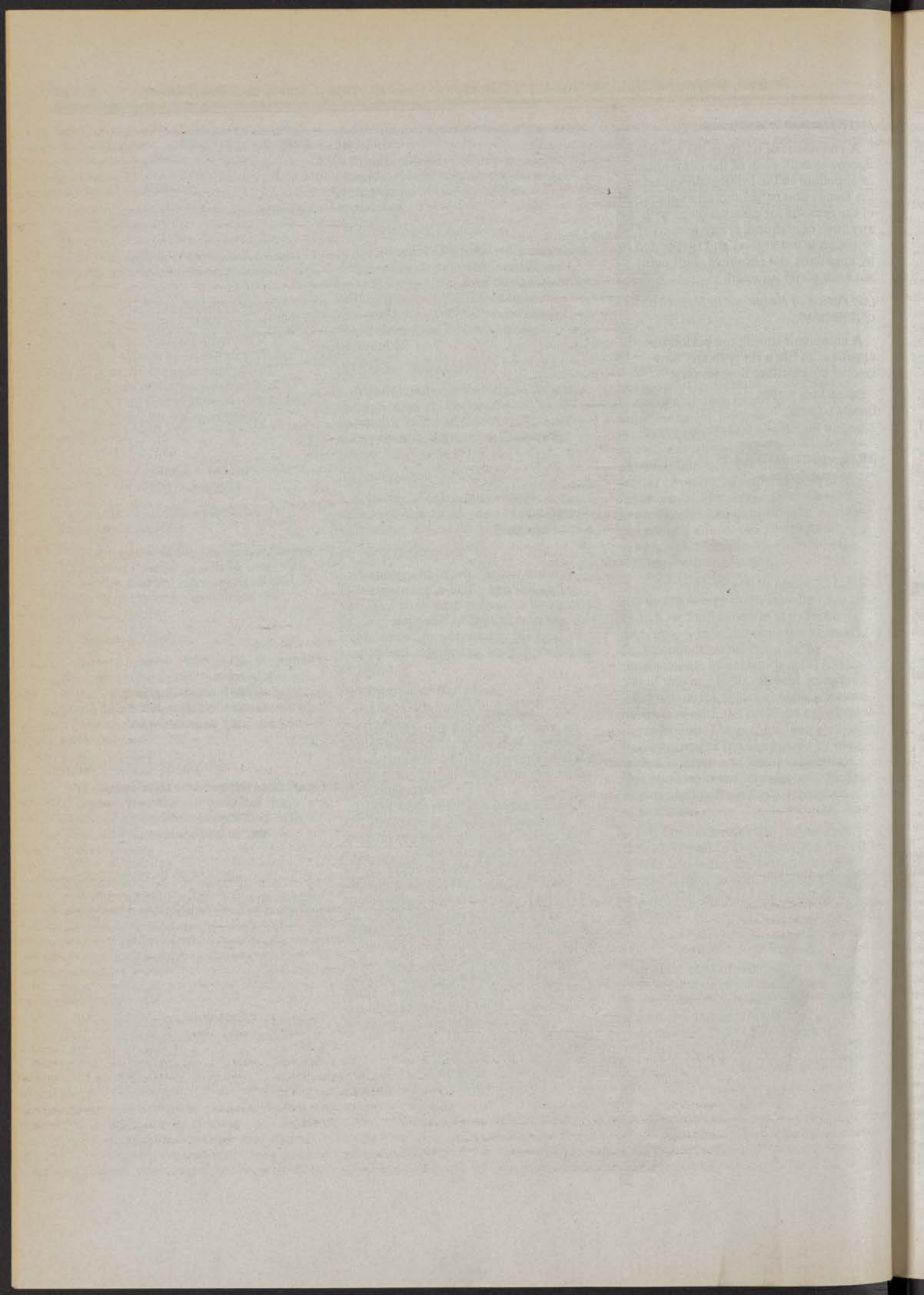
Dated: May 3, 1988.

Donald J. Quigg,

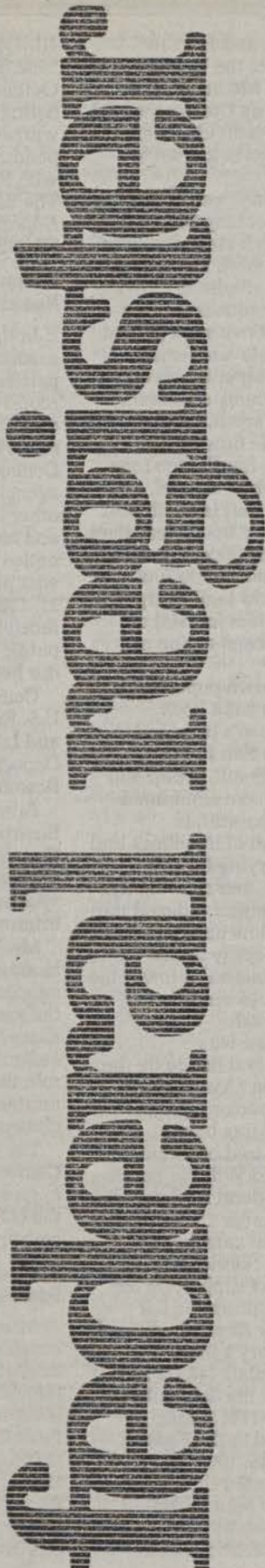
*Assistant Secretary and Commissioner of
Patents and Trademarks.*

[FR Doc. 88-14160 Filed 6-22-88; 8:45 am]

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Thursday
June 23, 1988



Part V

**Department of the
Interior**

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; *Daphnopsis hellerana*, *Hymenoxys
acaulis*, and *Arenenaria cumberlandensis*;
Final Rules**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant *Daphnopsis Hellerana*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Daphnopsis hellerana* to be an endangered species. *Daphnopsis hellerana* is a small tree or large shrub endemic to evergreen and semi-evergreen seasonal forests on limestone hills of the karst region of northern Puerto Rico. The species has been seriously impacted by agriculture, urbanization, and limestone quarrying. This final rule will implement for *Daphnopsis hellerana* the Federal protection and recovery provisions afforded by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: July 25, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander at the Caribbean Field Office address (809/851-7297) or Mr. Tommy Turnipseed at the Atlanta Regional Office address (404/331-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:**Background**

Daphnopsis hellerana was first discovered and collected by Amos Arthur Heller in 1900 on a limestone hill near Bayamon, Puerto Rico. The species was not seen again until 1958, when Roy O. Woodbury found it in Toa Baja, near the type locality (Nevling and Woodbury 1966). Since 1958, three other populations have been located in the karst region of Puerto Rico, two in the Toa Baja/Dorado area, and the third near Isabela in northwestern Puerto Rico (Vivaldi and Woodbury 1981). The Isabela population and the plants rediscovered by Woodbury have since been destroyed, leaving two small populations of seven trees in Toa Baja and Dorado. The Toa Baja population is on Federal land under the jurisdiction of the National Institutes of Health (U.S.

Department of Health and Human Services) and leased to the University of Puerto Rico School of Medicine. The Dorado population is on Commonwealth public land. These 14 individuals are the only plants of this species known to exist.

Daphnopsis hellerana is an evergreen shrub or small tree reaching 20 feet (6 meters) in height, with a stem diameter of 2 inches (5 centimeters). The leaves are simple, alternate, elliptic to obovate in shape, and blunt or rounded at the apex. Both leaves and twigs are golden hairy when young. Male and female flowers are borne on separate plants (dioecious), and terminally clustered. The male flowers are small, tubular, and finely hairy; the female flowers are smaller, less than one-fourth inch (one-half centimeter) long, bell-shaped, and also finely hairy. The fruit is an elliptic, one-seeded, white berry that is less than three fourths of an inch (2 centimeters) long. The species is endemic to low elevation evergreen and semi-evergreen forests (subtropical moist forests) on limestone hills in the karst region of northern Puerto Rico.

Nearly all of the known populations of *Daphnopsis hellerana* have been located near Puerto Rico's principal population center (the San Juan/Bayamon area). As a result, urban and industrial expansion have eliminated known and potential habitat. In particular, construction of dwellings and roads, limestone quarrying for this construction, landfills, and clearing by yam planters have together reduced the species to its present low numbers. In addition, the extreme rarity of the species and its dioecious habit lower the probability of successful seed production and dispersal.

Daphnopsis hellerana was recommended for Federal listing by the Smithsonian Institution (Ayensu and Defilippis 1978). The species was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the *Federal Register* (45 FR 82479) dated December 15, 1980. The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened), and was retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the *Federal Register* on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section

4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found in October of 1983, 1984, and 1985, that listing *Daphnopsis hellerana* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Daphnopsis hellerana* on July 6, 1987 (52 FR 25265).

Summary of Comments and Recommendations

In the July 6, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual report of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in *El Nuevo Dia* on July 21, 1987. Two letters of comment were received and are discussed below. A public hearing was neither requested nor held.

Comments were received from the U.S. Environmental Protection Agency and Lorin I. Nevling of the Illinois Department of Energy and Natural Resources.

Administrators of the U.S. Environmental Protection Agency stated that they knew of no ongoing or proposed actions that would affect the species and that they had no information on the status of the species.

Mr. Lorin Nevling, the author of a monograph of the genus *Daphnopsis*, supported the listing but commented on the spelling of the species name. The name has been spelled both as *helleriana* and *hellerana*. In this final rule the spelling *hellerana* has been retained in accordance with the rules of nomenclature.

The Caribbean Primate Research Center, in a telephone conversation, expressed interest in cooperating with the U.S. Fish and Wildlife Service in the conservation of this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Daphnopsis hellerana* 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 (50 CFR Part 242) 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 *Daphnopsis hellerana* Urban (no common name) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat and direct destruction of plants have been significant factors reducing the number of *Daphnopsis hellerana*. Deforestation for construction and yam cultivation, the leveling of limestone hills for construction material, and random cutting have all contributed to the species' decline. The Commonwealth (Autoridad de Tierras) land is not in any protection status, and maybe subject to construction of roads and powerlines and to quarrying for construction material. The population on Federal land is not recognized or protected by any existing management plan.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species. However, any take by curiosity seekers could be extremely detrimental.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Daphnopsis hellerana* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* Since *Daphnopsis hellerana* is dioecious, and only two populations of seven plants each are known to exist, rarity and the resulting effects on reproduction and genetic diversity are factors that could eventually lead to the species' extinction. Seedlings have been observed in the past, but there is no evidence at any site that they survived to maturity. Furthermore, there has been a steady decline in the number of mature plants at sites that have otherwise remained undisturbed. These observations suggest that recruitment is not adequate to sustain the remaining populations. There is also no evidence of vegetative reproduction by *Daphnopsis hellerana*, and, thus, the species' continued existence may depend upon reproduction from seed

and maintenance of a minimum population size.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Daphnopsis hellerana* as endangered. Since there are so few individuals remaining and a continuing risk of damage to the plants and/or their habitat, endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this 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 the 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. The number of individuals of *Daphnopsis hellerana* is sufficiently small that collecting or vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat would also be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Daphnopsis hellerana* 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, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth 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 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)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a 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. No critical habitat is being proposed for *Daphnopsis hellerana*, as discussed above. Federal involvement is expected only if there is a change in the present status of National Institutes of Health lands in the Toa Baja area.

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 plants. 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 any endangered 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 from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth 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. It is anticipated that few trade permits for *Daphnopsis hellerana* will ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Hamilton Building, Room 400, Washington, DC 20240 (202/343-4969).

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(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)

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.
 Nevling, L.I., and R.O. Woodbury. 1966. Rediscovery of *Daphnopsis hellerana*. J. Arnold Arbor. 47:262-265.
 Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Daphnopsis hellerana* Urban. Unpublished status report submitted to the

U.S. Fish and Wildlife Service, Atlanta, Georgia. 56 pp.

Author

The primary author of this final rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron Puerto Rico 00622 (809/851-7297).

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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Thymelaeaceae—Mezereum family:						
Daphnopsis Hellerana.....	None.....	U.S.A. (PR).....	E	309	NA	NA

Dated: June 3, 1988.
 Susan Recce,
 Acting Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 88-14245 Filed 6-22-88; 8:45 am]
 BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Hymenoxys acaulis* var. *glabra* (Lakeside daisy)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines threatened status for *Hymenoxys acaulis* var. *glabra* (Lakeside daisy), under authority of the Endangered Species Act (Act) of 1973, as amended. This plant is known only from Manitoulin Island and the Bruce Peninsula in Ontario, Canada, where it is considered rare, and one fragmented population in Ottawa County, Ohio. It has apparently been extirpated from two counties in Illinois. The Ohio population occurs on private land, where its continued existence is threatened by habitat alteration caused by limestone quarrying activities and the unmanaged succession of woody overgrowth. This action will implement

Federal protection provided by the Act for *Hymenoxys acaulis* var. *glabra*.

EFFECTIVE DATE: July 28, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys acaulis var. *glabra* (Lakeside daisy) is a member of the family Asteraceae. It has previously been recognized as *Actinea herbacea* (Greene) Robins, and *Actinea acaulis* (Pursh) Spring var. *glabra* (Gray) Parker. While conducting taxonomic research on the western species of *Actinea*, Parker (1950) demonstrated that *Hymenoxys acaulis* var. *glabra* is the correct name for the plant.

A perennial with a taproot and branching caudex, *Hymenoxys acaulis* var. *glabra* is characterized by densely tufted, thick spatulate to nearly linear basal leaves 1-8 centimeters (0.4-3.1 inches) long and up to 1 centimeter (0.4 inches) wide, strongly punctuate with a

scape-like peduncle 5-25 centimeters (2-10 inches) high, which bears a solitary head with 10-30 radiating yellow rays. Most individuals in a population tend to bloom at the same time in late April to mid-May, producing radiant mass of yellow flowers. After flowering the plants become light gray in color and quite inconspicuous and easily overlooked; in a few weeks the rich green color returns (R.E. Moseley, Ohio Department of Natural Resources, pers. comm. September 1985). DeMauro (Will County Illinois, Forest Preserve District, pers. comm. 1987) reports observing a gray color and flattening of leaves of *H. acaulis* var. *glabra* when the plant is water stressed; the dark green color returns several hours after watering.

In the United States *Hymenoxys acaulis* var. *glabra* is currently known from one fragmented population on the Marblehead Peninsula in Ottawa County, Ohio, where it occurs on dry rocky prairie habitat, much of which has been altered by limestone quarrying activities (Weed 1890, Wunderlin 1971, Cusick and Burns 1984). The plant has also been recorded from Will and Tazewell Counties in Illinois (Wunderlin 1971, John Schwegman, Illinois Department of Conservation, pers. comm. April 1986). The Illinois populations, however, are considered to be extirpated (Schwegman, pers. comm. April 1986). In Canada, where the plant

is considered rare, it is known from two locations on the Bruce Peninsula with the largest population scattered in two 5-acre patches, and approximately 12 sites on Manitoulin Island (H.V. Elliot, Stokes Bay, Ontario, pers. comm. 1987, White and Maher 1983, DeMauro 1987). Available records do not indicate a serious recent decline in the Canadian populations, but uncontrolled woody overgrowth always poses a threat.

Moseley (1930) raised a question about whether this plant is indigenous to Ohio, although Weed (1890) had pointed out that it had been found on the Marblehead Peninsula of Ottawa County as long as anyone then alive could remember. Cusick and Burns (1984) noted that the habitat in Ohio closely resembles the Canadian habitat, where the plant is considered indigenous. Allison Cusick (Ohio Department of Natural Resources, pers. comm. April 1986) considers the plant native to the Marblehead Peninsula. Some additional research is needed regarding population genetics of this species.

Federal actions on the Lakeside daisy began with Section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Hymenoxys acaulis* var. *glabra* was included in the July 1, 1975, notice of review. On December 15, 1980 (45 FR 82479), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the *Federal Register*; *Hymenoxys acaulis* var. *glabra* was included in those notices as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Hymenoxys acaulis* var. *glabra*, was October 13, 1983. In October 1983, 1984, 1985, and 1986, the petition finding was made that listing *Hymenoxys acaulis* var. *glabra* was warranted but precluded by other pending listing actions, in accordance

with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(c)(i). The August 19, 1987, proposal (52 FR 31048) to determine threatened status for *H. acaulis* var. *glabra*, constituted the final required finding for this species, that the action requested by the petitioner was warranted.

Summary of Comments and Recommendations

In the August 19, 1987, proposed rule (52 FR 31048) 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 newspaper notice inviting public comment was published in the *Port Clinton News Herald* on September 3, 1987.

Ten comments were received. Seven comments expressed support for the proposal, including the Ohio Department of Natural Resources, the Illinois Department of Conservation, the Royal Botanical Gardens of Canada, and four private parties. The letter from the Royal Botanical Gardens pointed out that a minor construction project, or well intentioned "weed killers" could exterminate the population on the Marblehead Peninsula. One person who submitted a comment believed that the mining (quarrying) activities posed a serious threat to this species. Another person provided additional status, biological, and monitoring information accumulated as a graduate student while working with this species. Another party who has observed *H. acaulis* var. *glabra* for about 40 years, voiced concerns over increased quarrying activities that continue to adversely affect this species. The Ohio Department of Natural Resources advised of recent land acquisition attempts to bring one of the populations on the Marblehead Peninsula under public ownership, but negotiations so far have been unsuccessful. The Illinois Department of Conservation advised that, although extirpated from the State, the plant is on the official endangered species list, which prohibits the sale or offer of sale. The Illinois Department of Conservation now owns the site in Tazewell County, which formerly supported the Lakeside daisy, and believes that with proper management, a reintroduction effort would be in order. Three additional comments were received that offered no new information and did not take a position

on the proposal. One of these respondents, a botanist, suggested an additional synonym (*Tetraneris scaposa* var. *scaposa*) for the taxon, but acknowledged that supporting evidence has not yet been published.

Summary of Factors Affecting the Species

After a thorough review and consideration of information available, the Service has determined that *Hymenoxys acaulis* var. *glabra* should be classified as a threatened species. Procedures found at 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker (Lakeside daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the Lakeside daisy is habitat destruction. This plant is found in open, dry, rocky, prairie areas where active limestone quarrying occurs. The Marblehead Peninsula population consists of seven scattered sites within a 4 square mile area, all on privately owned land in an area where active limestone quarrying is being conducted now, and has been conducted for 150 years. Quarrying activity has destroyed most of the original prairie habitat. Where quarrying activities are conducted, any existing Lakeside daisy plants are completely destroyed. Once quarrying has ceased on an area, the plant occasionally reappears after a period of 15-20 years but not abundantly (Allison Cusick, Ohio Department of Natural Resources, pers. comm. 1986). Because the quarrying activities have moved from area to area, the "cycle" from destroyed habitat to subsequent reappearance of the plant years later has been continuous for 70-80 years on this small area of the Marblehead Peninsula (Cusick pers. comm. 1986). Cusick points out that while the Lakeside daisy is easily grown when transplanted into gardens, it does not seem to expand its natural range. In addition, the succession of overgrowth by woody species reduces the open sunny habitat necessary for the plant's survival (Cusick and Burns 1984, DeMauro 1987). Cusick and Burns (1984) also noted that overcollecting for gardens is a hazard, because the plant is one of Ohio's more spectacular

wildflowers. DeMauro (pers. comm. 1987) reports that several nurseries in Illinois and Wisconsin provide Lakeside daisy seeds, but does not believe the trade is significant. Populations have been extirpated in Will and Tazewell Counties in Ohio due to quarrying, grazing, and industrial activities (Schwegman, pers. comm. 1986). Since all of the remaining Lakeside daisy plants are found on privately owned land, some form of land protection and management rights are needed in order to protect the existing population and manage the woody overstory. Provisions of the Endangered Species Act of 1973, as amended, will enhance and reinforce protection efforts.

B. Overutilization for commercial, recreational, scientific, or educational purpose. Commercial trade of this plant is not known to be extensive. Because it is easily transplanted and has very showy flowers, the possibility for increased commercial trade is present. Several nurseries in Illinois and Wisconsin provide Lakeside daisy seeds, but it does not appear the volume is significant (M. Demauro, pers. comm. 1987).

C. Disease or predation. None known.

D. The inadequacy of existing regulatory mechanisms. *Hymenoxys acaulis* var. *glabra* is officially listed as endangered by the States of Ohio and Illinois. Ohio law prohibits commercial taking of any State-listed plant from its native habitat. The law also prohibits the taking of any listed species for any purpose without either the written permission of the landowner, or a collecting permit from the Department of Natural Resources and verbal permission of the landowner. Illinois law protects plants on State lands and prohibits the sale or offer of sale. These prohibitions on trade and collecting do not specifically provide for protection or management of the species habitat. These regulations will be further strengthened by prohibitions of the Endangered Species Act. The Ohio Department of Natural Resources is negotiating with a landowner for the purchase of a site where the Lakeside daisy occurs, but so far these negotiations have been unsuccessful. *Hymenoxys acaulis* var. *glabra* is not protected under the Ontario Endangered Species Law.

E. Other natural or manmade factors affecting its continued existence. Results of a reproductive study by DeMauro (1982) indicates, and further substantiates that *Hymenoxys acaulis* var. *glabra* is self-incompatible. This may have been a factor leading to the natural disappearance of one of the last

Lakeside daisy populations in Illinois (DeMauro 1982).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this rule final. Based upon this evaluation, the preferred action is to list *Hymenoxys acaulis* var. *glabra* as threatened. In the United States only one fragmented population of this species is known to survive. It is on privately owned property and receives no protection or management designed to enhance its likelihood of continued existence. Threatened status is appropriate for the species as a whole, because without protection and further research the present vulnerability of the species to become endangered will continue. For reasons detailed below, it is not considered prudent to designate critical habitat.

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 the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Hymenoxys acaulis* var. *glabra* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description and map.

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. It also requires that recovery actions be carried out for listed species. Such actions are initiated by the Service following the listing. Potential recovery activities include vegetation control of woody overstory and reintroduction into areas of the plant's historic range. The protection required of Federal agencies

and prohibitions against collecting 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 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. Since the Lakeside daisy is not known to grow on Federal lands, little if any Federal involvement is anticipated.

The Act and its 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 endangered plant species. With respect to *Hymenoxys acaulis* var. *glabra*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 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, sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these 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 and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038 (703/343-4955).

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(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).

References Cited

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DeMauro, M.M. 1987. A permanent monitoring program for the Lakeside Daisy (*Hymenoxys acaulis* var. *glabra*) at the Marblehead Quarry, Marblehead, Ottawa County, Ohio. unpubl. rep. 48 pp.

DeMauro, M.M. 1982. Aspects of the reproductive biology of the endangered *H. acaulis* var. *glabra*: Implications for conservation. M.S. Thesis. U. of IL at Chicago, Chicago, IL. 64 pp.

Moseley, E.L. 1930. Some plants that were probably brought to northern Ohio from the west by Indians. Papers of the Mich. Acad. of Sci., Arts, and Letters 13:169-172.

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Weed, C.M. 1890. The Lakeside daisy. Journal Columbus. Horticultural Soc. 5:72-73.

White, D.J. and R.V. Maher. 1983. *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker. 1 page In: G.W. Argus and D.J. White, Eds. Atlas of the Rare Vascular plants of Ontario. National Museum of Natural Sciences, Ottawa. n.p.

Wunderlin, R.P. 1971. Contributions to an Illinois Flora No. 4. Trans. Illinois Acad. Sci. 64:317-327.

Author

The primary author of this proposed rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

List of Subjects in 50 CFR Part 17

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

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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetic order under the family Asteraceae, 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					
Asteraceae—Aster family:						
<i>Hymenoxys acaulis</i> var. <i>glabra</i> .	Lakeside daisy	U.S.A. (OH,IL) Canada (ON)	T	310	NA	NA

Dated: June 3, 1988.
 Susan Recce,
 Acting Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 88-14246 Filed 6-22-88; 8:45 am]
 BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Arenaria cumberlandensis*

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: The Service determines *Arenaria cumberlandensis* (Cumberland sandwort) to be an endangered species under authority of the Endangered Species Act of 1973 (Act), as amended. This small plant is known from only five sites, one in Kentucky and four in Tennessee. The species is endangered by timber harvesting, trampling by recreational users of its unique habitat, and destruction of its habitat by collectors of Indian artifacts. This action

will implement the Federal protection provided by the Act for *Arenaria cumberlandensis*.

EFFECTIVE DATE: June 23, 1988.
ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (telephone 704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Arenaria cumberlandensis (Cumberland sandwort) was described as a new species by Wofford and Kral (1979). This perennial, herbaceous member of the Pink family (Caryophyllaceae) is 4 to 6 inches (10 to 15 centimeters) tall and has small, white-petaled flowers and relatively long, narrow leaves. It is distinguished from a related species, *Arenaria glabra*, by the presence, at flowering, of basal rosettes of leaves and by its wider and

thicker leaves. Additionally, *Arenaria cumberlandensis* flowers in late June and early July, while *Arenaria glabra* flowers in late April and early May (Wofford and Smith 1980).

Arenaria cumberlandensis is known only from a limited portion of the Cumberland Plateau in north-central Tennessee and adjacent Kentucky. It is restricted to shady, moist rockhouse floors, overhanging ledges, and solution pockets in sandstone rock faces. Rockhouses were defined by Wofford (1976) as "cave-like overhangs resulting from differential weathering of sandstone." This species occurs where the correct combination of shade, high moisture, cool temperatures, and high humidity provides appropriate habitat conditions. These habitat requirements are in sharp contrast to those of other members of the genus in the southeastern United States, which are typically found in hot, dry areas in full sun (Wofford and Kral 1979, Wofford and Smith 1980). The five currently known populations of *A. cumberlandensis*, one in Kentucky and four in Tennessee, are described below.