

information, and entertainment programming. The efficiency and responsiveness of such operations depends, however, on a partnership between the network and its numerous affiliates. The additional flexibility provided by the elimination of the two-year rule should, we believe, be of some assistance to networks and their affiliates in assuring that this partnership functions effectively.

7. In sum, we find that the record supports our initial evaluation in the *Notice* that the two-year rule should be eliminated to allow networks and stations to negotiate the term of affiliation agreements in accordance with their business judgments. The initial considerations that prompted the adoption of the rule have been greatly eroded by developments in the intervening years, such as the increased diversity and complexity of the video marketplace. Indeed, in today's video marketplace, the rule may even be detrimental to the network and station interests that it was intended to protect, limiting these entities' flexibility to negotiate agreements that will permit them to respond to an increasingly competitive marketplace and to better serve the public.

Final Regulatory Flexibility Analysis Statement

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, we conclude that the adopted rule modifications will have a positive impact on many small entities, by giving them greater flexibility in negotiating with networks on the term for which affiliation agreements will run, thus creating a greater opportunity for a steady supply of programming, which may make it easier to obtain financial backing necessary to construct or improve facilities and easier to attract advertisers.

9. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981)).

Paperwork Reduction Act Statement

10. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

11. Authority for the rule changes adopted herein is contained in Sections 4 (i) and (j), and 301, 303, 308, and 309 of the Communications Act of 1934, as amended.

12. Accordingly, it is *ordered*, That pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(1), the amendments to the Commission's Rules and Regulations adopted herein, as set forth below shall become effective 30 days from the date this *Report and Order* is published in the *Federal Register*.

13. It is *further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Rule Amendment

47 CFR Part 73 is amended as follows:

14. The authority citation for part 73 continues to read as follows:

Authority: 47 USC sections 154 and 303.

15. Section 73.658 is amended by removing the text of paragraph (c) and marking it reserved.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-9005 Filed 4-13-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-144; FCC 89-62]

FM Broadcast Service; Review of Technical Parameters for FM Allocation, FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission establishes a uniform protection level (36 mV/m) to serve as a basis for the intermediate frequency minimum distance separation requirements applicable to FM broadcast stations, and amends 47 CFR Part 73 by (1) adjusting the existing requirements to meet the uniform protection level and (2) establishing a new requirement to address a previously unidentified potential source of interference. These actions will result in more reasonable and consistent treatment of FM station applications, and will provide appropriate protection from interference for FM receivers.

EFFECTIVE DATE: May 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Following is a summary of Commission's *Third Report and Order* in MM Docket No. 86-144, adopted February 15, 1989 and released April 10, 1989. The full text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Third Report and Order

1. This order addresses the last of a number of technical rule revisions that became necessary as a result of the creation of three new FM broadcast station classes in BC Docket 80-90 (*Report and Order*, 48 FR 29486, June 27, 1983). It amends 47 CFR Part 73 to provide a uniform level of protection from intermediate frequency ("IF") interference. IF interference degrades FM reception, and in severe cases can prevent reception by a susceptible receiver of most or all of the FM stations in the area.

2. Specifically, this order adjusts the required minimum separation distances for IF-related FM stations to prevent overlap of their predicted 36 mV/m median field strength contours, regardless of the station classes. Two FM stations are IF-related if their assigned frequencies are 10.6 or 10.8 MHz (53 or 54 channels) apart. Also, a new separation requirement applicable only to FM Channel 253 (98.5 MHz) and TV Channel 6 is adopted, based on the same protection criterion, because the aural carrier (at 87.75 MHz) from a TV station on Channel 6 is IF-related to FM channel 253 (98.5 MHz).

3. This proceeding was initiated in 1986 by a *Notice of Proposed Rule Making (Notice)* (51 FR 15927, April 29, 1986) to refine certain rules that were affected by previous action in BC Docket No. 80-90. A *First Report and Order* (52 FR 8259, March 17, 1987) resolved two issues raised in the *Notice*. Five remaining proposals were addressed in a *Second Report and Order (Second Report)* (52 FR 37786, October 9, 1987). Four of these were resolved in the *Second Report*, but action on the fifth, concerning IF distance separation requirements for the newly created station classes, was deferred until

additional information could be obtained.

4. If distance separation requirements are contained in 47 CFR 73.207, which specifies, by station class, the minimum distance that each FM station must be separated from other IF-related FM stations. The distances specified for Classes A, B, and C (the original classes) were intended to avoid the overlap of 20 mV/m field strength contours (see *Report and Order* in Docket No. 15934, 30 FR 8680, July 9, 1965). However, the specified distances are insufficient to prevent such overlap. Nevertheless, lack of evidence of IF interference suggests that the existing lesser separations have provided adequate protection.

5. In BC Docket 80-90, the Commission applied the existing IF separation distances for the large Class B and C stations to the new intermediate size classes B1, C2, and C1. Consequently, stations in these new classes must currently meet the same requirements as the largest stations, even though they generally operate with lower effective radiated power and antenna height above average terrain. Therefore, in the *Notice* it was proposed to reduce the separations for the new classes to those necessary to provide a 30 mV/m protection level. (Preventing overlap of two stations' 30 mV/m contours is referred to herein as a "30 mV/m protection level.") This proposal was based on the current rules for the old classes, which provide protection levels varying approximately from 24 mV/m to 36 mV/m (30 being halfway between 24 and 36). The purpose of this proposal was simply to provide approximately the same protection level for these new classes as has existed for Class A, B and C stations since 1965. However, in the *Second Report*, the Commission found the record developed in response to the *Notice* with regard to the issue of IF separations to be inconclusive, and concluded that adoption then of distances based on the 30 mV/m protection level would have been premature.

6. In March 1988, the Commission issued a *Further Notice of Proposed Rule Making (Further Notice)* (53 FR 10259, March 30, 1988) with the goal of developing a more comprehensive record concerning the IF issue. The *Further Notice* also expanded the scope of the proposal to include consideration of existing IF distance separation requirements applicable to the pre-BC Docket 80-90 FM station classes (A, B and C) and possible new IF minimum distance separation requirements applicable to TV Channel 6 allotments

and assignments in the vicinity of FM Channel 253 allotments and assignments (and vice versa).

7. In the *Further Notice*, revised IF minimum distance separation requirements were proposed for all FM station classes and for TV Channel 6 and FM Channel 253 stations based on a uniform protection level of 36 mV/m, which is the least restrictive of the current protection levels. Interested parties, particularly receiver manufacturers and organizations representing them, were invited to submit any additional data or test results either supporting or opposing on technical grounds the choice of 36 mV/m, or to suggest an alternative protection level.

8. Fourteen parties filed formal comments in response to the *Further Notice* and five submitted replies. The majority support the proposal generally, but several oppose it or suggest modifications.

9. *Discussion.* Currently, FCC rules and policies with regard to FM IF interference result in arbitrarily varying levels of protection and thus are technically inconsistent. The minimum spacings now required in 47 CFR 73.207 for IF-related stations provide different protection levels for various FM station class combinations. The distances for Classes B1 and C1 were not based on any calculated standard but were simply taken from the next larger classes (Class B and C, respectively) as a temporary measure in BC Docket 80-90. Licensees of grandfathered short-spaced stations and other applicants requesting a waiver of the IF distance separation requirements currently must show, among other things, that a proposed modification would not cause the overlap of the 20 mV/m predicted median field strength contours of IF-related stations. Finally, there are currently no requirements at all for the TV Channel 6-FM Channel 253 IF relationship, which presents at least as much potential for IF interference as do the pure FM requirements.

10. In the *Further Notice*, the Commission stated that no technical justification could be found for the disparate treatment of these similar situations. Furthermore, the Commission has seen nothing in the record in this proceeding to persuade it otherwise. An FM receiver does not need more protection from two IF-related Class B1 stations than from two IF-related Class A stations. Nor does this same receiver need less protection from TV 6-Channel 253 IF interference than it does from two IF-related Class C1 stations. The Commission believes that its technical

allotment and assignment requirements should be based upon reasonably derived and consistently applied technical standards. In cases involving unique or unusual circumstances the Commission may consider waivers of technical rules, however, even in these cases the Commission believes that a clear understanding by all parties of the technical principles underlying the rule for which the waiver is sought is essential to the proper disposition of such requests. The Commission concludes that one specific protection level for IF interference should be selected and applied uniformly.

11. Obviously, there is a trade-off between protection level and site flexibility. That is, a lower level of protection permits shorter separations, which in turn allow a greater number of potential transmitter sites. Some commenters allege that this trade-off should never favor site flexibility unless it is proven that service to the public has been reduced. Others argue that the benefits to be gained, in terms of site flexibility, are limited. However, the Commission believes that licensees of certain classes of FM stations should not be unnecessarily constrained by an inconsistent technical standard, while others, operating under a less restrictive standard, do not appear to have experienced any significant problems over the years.

12. In view of years of actual operation by some classes of FM stations under requirements resulting in a protection level of 36 mV/m, the Commission believes that this level is sufficient to protect receivers currently in use. Receiver manufacturers are encouraged to design receivers that are immune to IF interference, as the record indicates this can be done without making such receivers significantly more expensive. Although some commenters recommend that the current distances be retained, the Commission sees no public benefit to retaining the technically inconsistent distances. Accordingly, the Commission is revising the required minimum FM IF spacings as proposed in the *Further Notice*. Furthermore, because the aural transmitter of a TV station operating on Channel 6 is similar to an FM station with regard to potential for IF interference, the Commission is adding a new requirement to address this interference potential.

13. In view of the recent proposal to increase the maximum permitted effective radiated power of Class A FM stations (see *Notice of Proposed Rule Making* in MM Docket 88-375, 53 FR 38743, October 3, 1988), licensees of these stations should be aware that,

although the minimum IF distance separation requirements for Class A stations is not increased herein, the Commission will do so in order to maintain the 36 mV/m protection level if the proposed power increase is ultimately adopted.

14. An analysis of FCC FM licensing records reveals that there are currently 22 pairs of IF-related licensed FM stations that are short-spaced under the current rule. Under the revised rule, 12 of these 22 station pairs will no longer be short-spaced, and will be subject to applicable IF distance separation requirements. The remaining short-spaced stations may continue to operate as authorized, however, applications to modify these stations in ways that increase the area of overlap of the stations' 36 mV/m median field strength contours will not be accepted.

15. A similar analysis using both the TV and FM engineering databases reveals 7 locations where a TV Channel 6 and FM Channel 253 are short-spaced under the new requirement. These stations may continue to operate as authorized, however, applications to modify these stations in ways that increase the area of overlap of the FM

station's 36 mV/m median field strength contour and the 36 mV/m contour of the TV station's aural transmitter will not be accepted.

16. The Commission has previously determined that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because it will not have a significant economic impact on a substantial number of small entities.

17. The actions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and they will not increase or decrease burden hours imposed on the public.

18. Authority for the action taken herein is contained in sections 4(i), 303(f) and 303(r) of the Communications Act of 1934, as amended. Accordingly, *It is ordered* That Part 73 of the Commission's Rules and Regulations are amended, as set forth below. *It is further ordered*, That this proceeding is terminated.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

List of Subjects in 47 CFR Part 73

Radio Broadcasting, FM Broadcast stations, Minimum distance separation requirements.

For the reasons set forth in the preamble, 47 CFR Part 73 is amended as follows:

PART 73—[AMENDED]

1. The authority citation for 47 CFR Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 is amended by revising Table A in paragraph (b)(1), and by adding a new paragraph (c). In Table A, the first three columns, entitled "Co-channel", "200 kHz", and "400/600 kHz" remain unchanged. The fourth column, entitled "10.6/10.8 MHz", is revised to read as follows:

§ 73.207 Minimum distance separation between stations.

- * * * * *
- (b) * * *
- (1) * * *

Table A—Minimum Distance Separation Requirements in Kilometers (Miles)

| Relation | Co-channel | 200 kHz | 400/600 kHz | 10.6/10.8 MHz |
|----------|------------|---------|-------------|---------------|
| A to A | *** | *** | *** | 8(5) |
| A to B1 | *** | *** | *** | 11(6) |
| A to B | *** | *** | *** | 14(9) |
| A to C2 | *** | *** | *** | 14(9) |
| A to C1 | *** | *** | *** | 21(13) |
| A to C | *** | *** | *** | 28(17) |
| B1 to B1 | *** | *** | *** | 14(9) |
| B1 to B | *** | *** | *** | 17(11) |
| B1 to C2 | *** | *** | *** | 17(11) |
| B1 to C1 | *** | *** | *** | 24(15) |
| B1 to C | *** | *** | *** | 31(19) |
| B to B | *** | *** | *** | 20(12) |
| B to C2 | *** | *** | *** | 20(12) |
| B to C1 | *** | *** | *** | 27(17) |
| B to C | *** | *** | *** | 35(22) |
| C2 to C2 | *** | *** | *** | 20(12) |
| C2 to C1 | *** | *** | *** | 27(17) |
| C2 to C | *** | *** | *** | 35(22) |
| C1 to C1 | *** | *** | *** | 34(21) |
| C1 to C | *** | *** | *** | 41(25) |
| C to C | *** | *** | *** | 48(30) |

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in

kilometers) from any TV Channel 6 allotment or assignment are not met:

Minimum Distance Separation From TV Channel 6 (82-88 MHz)

| FM Class | TV Zone I | TV Zones II & III |
|----------|-----------|-------------------|
| A | 16 | 20 |
| B1 | 19 | 23 |
| B | 22 | 26 |

| FM Class | TV Zone I | TV Zones II & III |
|----------|-----------|-------------------|
| C2 | 22 | 26 |
| C1 | 29 | 33 |
| C | 36 | 41 |

3. 47 CFR 73.213 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 73.213 Grandfathered short-spaced stations.

(b) Stations at locations authorized prior to May 17, 1989, that did not meet the IF separation distances required by § 73.207 and have remained short-spaced since that time may be modified or relocated provided that the overlap area of the two stations' 36 mV/m field strength contours is not increased.

4. 47 CFR 73.610 is amended by adding a new paragraph (f) to read as follows:

§ 73.610 Minimum distance separations between stations.

(f) The distances listed below apply only to allotments and assignments on Channel 6 (82-88 MHz). The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any FM Channel 253 allotment or assignment are not met:

Minimum Distance Separation From FM Channel 253 (98.5 MHz)

| FM Class | TV Zone I | TV Zones II & III |
|----------|-----------|-------------------|
| A | 16 | 20 |
| B1 | 19 | 23 |
| B | 22 | 26 |
| C2 | 22 | 26 |
| C1 | 29 | 33 |
| C | 36 | 41 |

[FR Doc. 89-8913 Filed 4-13-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status of *Hexastylis naniflora* (Dwarf-flowered Heartleaf)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Hexastylis naniflora* to be a threatened species under authority of the Endangered Species Act of 1973, as amended (Act). This species is known only from a small portion of the upper piedmont of southern North Carolina and adjacent South Carolina. Most of the known populations are threatened

by residential and industrial development, conversion of habitat to pasture or small ponds, timber harvesting, or cattle grazing. This action will implement the protection of the Act.

EFFECTIVE DATE: May 15, 1989.

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.

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

SUPPLEMENTARY INFORMATION:

Background

Hexastylis naniflora is a rare low-growing herbaceous plant in the birthwort family (Aristolochiaceae). The species was described by Blomquist (1957) in his revision of the North American members of the genus *Hexastylis*. The plant's heart-shaped leaves are dark green in color, evergreen and leathery, and are supported by long thin petioles from a subsurface rhizome. Maximum height rarely exceeds 15 centimeters (6 inches). The jug-shaped flowers are usually beige to dark brown in color and appear from mid-March to early June. The flowers are small and inconspicuous and are found near the base of the petioles. The fruit matures from mid-May to early July (Blomquist 1957, Gaddy 1980, 1981). *Hexastylis naniflora* grows in acidic soils along bluffs and adjacent slopes, in boggy areas next to streams and creekheads, and along the slopes of nearby hillsides and ravines (Gaddy 1980, 1981). The species is distinguished from other members of the genus *Hexastylis* by its small flowers and its distinctive habitat.

Hexastylis naniflora is known only from an eight-county area in the upper piedmont of North Carolina and adjacent South Carolina. There are 24 known populations of this species. The following summary of the known distribution of *Hexastylis naniflora*, by State and county, is extracted primarily from Gaddy (1980, 1981). Additional information was supplied by Rayner (South Carolina Wildlife and Marine Resources Department, personal communication, 1986, 1987), Mansberg (North Carolina Department of Natural Resources and Community Development, personal communication, 1986, 1987), and Newberry (University of South Carolina at Spartanburg, personal communication, 1987).

South Carolina

Cherokee County supports only one population of approximately 150 plants. The plants are growing in an area which has been adversely impacted by siltation from road construction.

Greenville County supports eight populations of *Hexastylis naniflora*. The populations vary in size from 50 to several hundred individuals. Most of the populations are adjacent to the rapidly expanding Greenville urban area or its suburbs and are threatened by loss of habitat to residential, commercial, or industrial construction. Agricultural activities, such as conversion of woodlands to pasture or construction of small ponds, also threaten the species. Timber harvesting, except for small, selective cuts, would also adversely impact the species.

Spartanburg County supports three populations of the species. One of these contains 2 individuals, one contains 75 individuals, and the last contains approximately 1,400 individuals. The largest population in the county once contained over 4,000 plants; however, 64 percent of the population was destroyed by reservoir construction. Most of the remaining plants in this population are being protected from further destruction by the City of Spartanburg (commissioners of public works). The smallest population (two plants) is within the right-of-way of the planned relocation of an interstate highway. The population of 75 plants has been adversely impacted by soil erosion caused by grazing cattle.

North Carolina

Cleveland County contains three populations. One of these supports only 10 plants and occurs on a poor quality site. The other 2 populations contain about 200 plants each. These two larger populations are threatened by timber harvesting, conversion of their habitat to pasture or small ponds, and cattle grazing.

Catawba County supports one large, healthy population of over 1,000 plants. This site has been protected to a limited extent through the Natural Areas Registry Program of the North Carolina Natural Heritage Program. This program alerts cooperative landowners to the significance of natural features on their property. It does not, however, provide long-term protection from the threats facing most populations of *Hexastylis naniflora*.

Burke County contains 3 populations, varying in size from 10 to approximately 500 individuals. The smallest population is on a poor quality site that is littered

with trash. The two larger populations remain vulnerable to loss or adverse modification of their habitat.

Rutherford County currently contains three populations of *Hexastylis naniflora*. A fourth population was recently destroyed by road construction. The largest population, containing over 1,000 plants, is a registered natural area and thereby receives limited short-term protection. The smaller populations, 60 and 250 individuals respectively, are threatened by the same activities previously mentioned.

There are three records of *Hexastylis naniflora* from Lincoln County. One population has not been recently verified and may be lost, one has been destroyed, and the last contains about 160 healthy plants. The site supporting these plants has been selectively logged and remains vulnerable to destruction by clear-cutting of timber and other previously referred to activities.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), 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 (40 FR 27823) which formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Hexastylis naniflora* was included in the Smithsonian report and the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Hexastylis naniflora* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. In 1979 the Service also funded a status survey for this species with the final status report being completed in 1980. Based upon the information provided in the status report, *Hexastylis naniflora* was included as a category 1 species in the December 15, 1980, revised notice of review for native plants (45 FR 82480). *Hexastylis naniflora* was again included as a category 1 species in the September 27, 1985, publication of an updated

notice of review for native plants (50 FR 39526). Category 1 species are those for which the Service currently has on file information to support the proposed addition of the species to the Federal list of endangered and threatened species. Publication of proposed rules for some of these species has been delayed because of the large number of species within this category.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Hexastylis naniflora* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Hexastylis naniflora* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered.

On April 21, 1988, the Service published (53 FR 13223) a proposal to list *Hexastylis naniflora* as a threatened species. That proposal constituted the final finding as required by the 1982 amendments to the Endangered Species Act.

Summary of Comments and Recommendations

In the April 21, 1988, proposed rule 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 public comment were published in the *Greenville News* (Greenville County), *Spartanburg Herald* (Spartanburg County), *Gaffney Ledger* (Cherokee County), *Shelby Star* (Cleveland County), *Hickory Daily Record* (Catawba County), *Lincoln Times* (Lincoln County), *News Herald* (Burke County), and *Daily Courier* (Rutherford County). One comment was received in response to the proposed rule. The Catawba County manager's office stated that it knew of no conflicts between county projects and protection of the Catawba County site. They outlined several protective measures that may be applicable to the population and stated that the county did not object to designation of *Hexastylis naniflora* as a threatened species. The States of

North Carolina and South Carolina had previously expressed their support for the addition of the species to the Federal list.

The Service concurs with the conclusion that *Hexastylis naniflora* merits protection under the Act. The Service has evaluated the available information on the status of, and threats to, this species and believes that threatened status is appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hexastylis naniflora* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act 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 *Hexastylis naniflora* Blomquist (dwarf-flowered heartleaf) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Gaddy (1981) found that much of the habitat that *Hexastylis naniflora* prefers has been destroyed by peach orchards, pastures, housing developments, and ponds. During searches for additional populations of the species, Gaddy (1981) discovered that many small ponds had been constructed at what were formerly springy creekheads. Many of these areas may have supported the species prior to being impounded.

A large number of the known *Hexastylis naniflora* populations occur near expanding urban areas and are threatened by the residential, commercial, and industrial development associated with this growth. Populations occurring in more rural areas are threatened by habitat alteration or loss from land conversion to pasture or other agricultural uses, cattle grazing, intensive timber harvesting, residential construction, and construction of small ponds. Only four populations currently receive some form of protection. The City of Spartanburg, South Carolina, through a policy statement issued by the commissioners of public works, has agreed to protect most of the largest South Carolina population. Two of the larger North Carolina populations are registered natural areas under the North Carolina Natural Heritage Program, and one South Carolina population is registered by The Nature Conservancy.

These populations thereby receive short-term protection from loss or alteration. Registry agreements are, however, nonbinding; and these three populations remain vulnerable to destruction in the long-term.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Hexastylis naniflora* is not currently a significant component of the commercial trade in native plants; however, the species has potential for horticultural use, and publicity surrounding the listing of the species could generate an increased demand.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms.* *Hexastylis naniflora* is listed as an endangered species in North Carolina and is afforded legal protection in that State. North Carolina General Statute 19-B, 202.12-202.19, provides State-listed plants protection from intrastate trade without a permit and provides for monitoring and management of populations of listed species. Although unofficially recognized as an endangered component of South Carolina's flora by the South Carolina Wildlife and Marine Resources Department, *Hexastylis naniflora* has no official protection status in the State. Section 404 of the Clean Water Act could potentially provide some protection for the dwarf-flowered heartleaf's habitat; however, most of the sites where it occurs do not meet the wetlands criteria of the Clean Water Act. The Endangered Species Act will provide additional protection for *Hexastylis naniflora*.

E. *Other natural or manmade factors affecting its continued existence.* Several of the known populations of *Hexastylis naniflora* occur on steep ravine slopes which also support stands of mixed hardwoods with an understory of mountain laurel (*Kalmia latiflora*) or *Rhododendron* spp. These stands are often very dense and reduce the amount of light reaching the *Hexastylis naniflora* plants growing below. Under these conditions the plants often show reduced vigor and reduced flower and fruit production. Careful, selective logging or natural tree fall and limited understory removal would open up these populations to more light. Additional light, if not accompanied by increased siltation from the intensive soil disturbances associated with forest clear-cutting, probably would benefit these populations (Gaddy 1981).

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 *Hexastylis naniflora* as a threatened species. Threatened status seems appropriate because of the number of populations that currently exist and the protection provided to several of the larger populations. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking of listed plants is only regulated by the Act in case of removal, reduction to possession, and malicious damage or destruction from lands under Federal jurisdiction; and removal, cutting, digging up, or destroying in knowing violation of any state law or regulation, including state criminal trespass law. Publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Hexastylis naniflora* will be made aware of the plant's location and of the importance of protecting the plant and its habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Hexastylis naniflora*.

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

prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is 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 such a 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 consultation with the Service. All of the known populations of *Hexastylis naniflora* are on privately or municipally owned land. The only known Federal activity that may affect this species is the relocation of an interstate highway in South Carolina. A small population consisting of two clumps of plants may be lost during construction of this project. It is not expected that this loss, if it should occur, will significantly affect the survival and recovery of *Hexastylis naniflora*.

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 threatened plants. 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 to remove and reduce it to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants the 1988 amendments (Pub. L. 100-478) to the Act prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass law. 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. It is anticipated that few trade permits will ever be sought or issued, since *Hexastylis naniflora* 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 20038-7329 (202/343-4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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

Blomquist, H.L. 1957. A revision of *Hexastylis* of North America. *Brittonia* 8(4):255-281.
 Gaddy, L.L. 1980. Status report on *Hexastylis naniflora* Blomquist. Unpublished report prepared under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, GA. 32 pp.
 Gaddy, L.L. 1981. The status of *Hexastylis naniflora* Blomquist in North Carolina. Unpublished report prepared under contract to the Plant Conservation Program, North Carolina Department of Agriculture. 63 pp.

Author

The primary author of this proposed rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-6321).

List of Subjects in 50 CFR Part 17

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

Regulation 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:

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; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Aristolochiaceae, 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 | | | | | |
| Aristolochiaceae—Heartleaf family: | | | | | | |
| <i>Hexastylis naniflora</i> | Dwarf-flowered heartleaf | U.S.A. (NC, SC)..... | T | 347 | NA..... | NA |

Dated: March 14, 1989.
 Becky Norton Dunlop,
 Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 89-8899 Filed 4-13-89; 8:45 am]
 BILLING CODE 4310-55-M