preponderance of the evidence that the items seized are not contraband.

(D) If the Superior Court determines that the items seized by the Tribe are not contraband, the Court shall order the return of the items to the claimant after the time for filing an appeal has elapsed. If the Superior Court determines that the items seized are contraband, the Court shall declare the items to be contraband and the Tribe may dispose of the contraband as it deems fit after the time for filing an appeal has elapsed.

(E) The Tribe may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court. Filing of the notice of appeal by the Tribe shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

(F) The claimant may appeal an adverse decision of the Superior Court under this section to the Appellate Court by filing a notice of appeal within ten calendar days of the date of the decision of the Superior Court and posting an appeal bond in an amount set by the Superior Court. The Superior Court shall set the appeal bond in an amount sufficient to pay for the storage of the items in dispute during the pendency of the appeal and any court costs which may be incurred by the Tribe on the appeal. Filing of the notice of appeal by the claimant and payment of the appeal bond shall automatically stay the decision of the Superior Court. The Appellate Court shall uphold the decision of the Superior Court unless it is clearly erroneous.

Section 8. Exceptions

Section. 8–1–1. Exceptions to this Ordinance

The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(A) For scientific research or manufacturing products other than liquor;

(B) Medical use under the direction of a physician, medical or dental clinic, or hospital;

(C) In preparations not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(D) By persons exempt from regulation in accordance with the laws of the United States; or

(E) For sacramental use such as wines delivered to priests, rabbis, and ministers.

Section 9. Miscellaneous Provisions

Section. 9–1–1. Agreement by Licensee to Grant Access for Inspection Purposes

Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Commission. These inspections shall be conducted by a duly appointed designee of the Commission, or tribal or federal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the Commission.

Section. 9–1–2. Transferability

No license issued pursuant to this Ordinance shall be transferable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for sixty (60) days after the licensee's death, so long as said personal representative shall apply to the Tribe for a new license within said sixty (60) day period.

Section. 9–1–3. Health Warnings

(A) The Health Department of the Cheyenne River Sioux Tribe shall create signs warning of the dangers faced by those who consume alcohol, including warning of the dangers to pregnant women, the dangers of drunk driving and such other warnings as the department shall deem necessary. The language in such signs shall be referred to the Indian Health Service for comments and shall be approved by a licensed physician prior to assurance. The Revenue Department shall issue copies of such signs in a conspicuous manner in close proximity to the area where alcohol is dispensed or sold.

(B) The Health Department of the Cheyenne River Sioux Tribe shall create pamphlets warning pregnant persons of the dangers of alcohol use during pregnancy. The language in such pamphlets shall be referred to the Indian Health Service for comments and shall be approved by a licensed physician prior to issuance. The Revenue Department shall issue copies of such pamphlets to all retail dealers. Each retail dealer shall offer one of these pamphlets to each pregnant person who is refused service pursuant to Sec. 4–1–5.

Section. 9–1–4. Server Training

Every person who serves alcoholic beverages on the premises of an on-sale license shall attend 8 hours of training in a server training program approved by the Alcoholic Beverage Control Commission on the latter of his or her 60th day of employment or within 60 days after the effective date of this Ordinance.

Section. 9–1–5. Tribal Sovereign Immunity

No provision of this Ordinance shall be construed to permit the recovery of money damages against the Tribe. No provision of this Ordinance shall be construed to waive the sovereign immunity of the Tribe, except as expressly provided in Sections 3–1–11, 6–1–5, and 7–1–3.

Section 10. Severability

Section. 10–1–1. Severability

If for any person, or circumstances, and provision(s) or section(s) of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections shall not be affected in the application of the application of this Ordinance or to any person covered by this Ordinance.

Section 11. Effective Date of Ordinance No. 48 as Amended February 7, 1991

Section 11–1–1. Continued Operation Under Existing License

Ordinance No. 48 is hereby amended and said Ordinance is effective as amended sixty (60) days after its publication in the **Federal Register**. Any licensee operating under an existing tribal license may continue to operate thereunder until December 31, 1991, provided that the license complies with all of the provisions contained here, including the provisions relating to hours of operation, prohibited acts and taxation.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92–11717 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–02–M#

federal register

Wednesday
May 20, 1992

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Endangered Status Determined for the Plan Clematis morefieldii (Morefield's Leather Flower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Clematis morefieldii* (Morefield's leather flower), to be an endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Clematis morefieldii* is currently believed extant at only five sites in Madison County, Alabama. Three historical populations have been destroyed and two of the remaining sites are imminently threatened by residential development. The continued existence of this species is also jeopardized due to its limited range, small populations, and reduced vigor at sites which are excessively shaded. This action will extend the Act's protection to *Clematis morefieldii*.

EFFECTIVE DATE: June 19, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address or telephone (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Clematis morefieldii is a perennial vine in the buttercup family (Ranunculaceae) and is a north Alabama endemic. It was first collected by Morefield in the early 1980's from Round Top Mountain in Madison County, Alabama, and later described by Kral (1987). This species is a member of the *Viornae* subsection of *Clematis*, which is noted for its narrow endemics (Kral 1987). *Clematis* in this subsection are distinguished by urn-shaped flowers which occur singly, or in few-flowered groups, in leaf axils. Their primary flower stalks (peduncles) are subtended by leafy bracts. *Clematis morefieldii* is closely related to *C. viorna*, a more variable species, but *C. morefieldii* has dense white hairs on the shoot, velvety lower leaf surfaces, and stouter, usually shorter (15-25 millimeters (mm) or 0.6 to 1.0 inch long) peduncles with sessile to nearly sessile bracts at the base (Kral 1987). *Clematis morefieldii* attains heights up to 5 meters (16 feet) and its compound leaves may attain lengths of 2 decimeters (8 inches). Leaves have 9 to 11 leaflets and the terminal 1 to 3 leaflets form tendrils. The flowers are pinkish and 20 to 25 mm (0.8 to 1.0 inch) long. Fruits are clusters of achenes. *Clematis morefieldii* flowers from late May to early July.

Extensive surveys have been conducted for *C. morefieldii*. Currently, it is known from only five locations in Madison County, Alabama. The vines are rooted in basic clay-loam soils in rocky limestone woods on the south and southwest facing slopes of mountains. Plants often sprawl over shrubs and boulders or climb understory shrubs. (Kral 1987). *Clematis morefieldii* occurs locally near seeps within a juniper-hardwoods community with *Cotinus obovatus* (smoketree) as the principal indicator species. Other associate hardwoods include *Carya ovata*, oaks (*Quercus shumardii, Q. muhlenbergia, Q. alba, Q. stellata*), *Ulmus*, and *Fraxinus americana*.

Four of the five populations are within 0.3 to 1.7 kilometers (km) (0.2 to 1.1 miles) of one another on the Huntsville—Monte Sano Mountain complex. A single vine is one site, two sites have approximately 20 plants, and the fourth site has several hundred vines. The fifth site (on Keel Mountain) is disjunct, approximately 8 km (6 miles) from the other sites, and has an estimated 300 vines. On all sites, the plants are clustered within a small area (0.1 hectare (0.25 acre) or less) (Weber 1991). Two populations are located on public land currently owned by the City of Hunstville. The other sites are on private property.

Of the total eight reported populations (including historic and extant sites), three populations are believed to have been destroyed, and two of the remaining five extant sites are imminently threatened by residential development. The continued existence of this species is also jeopardized due to its limited range, small populations, and reduced vigor at sites that are heavily shaded. Management may be necessary to maintain appropriate habitat.

Federal actions involving *Clematis morefieldii* began with field surveys in 1989, after the Service had been alerted to a newly described species of *Clematis* which appeared to be rare and facing imminent threats. In the February 21, 1990, publication of a notice of review for native plants in the **Federal Register** (50 FR 6184), *Clematis morefieldii* was included as a category 2 species (the specific name was misspelled in the notice). Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. The Service contracted for additional surveys in 1990 to further assess this species' rarity and threats to its existence. The contractor submitted a final report on this species' status in 1991. This report (Weber 1991) and other information supported the proposed listing. The data demonstrated a limited distribution and continuing threats to the species. On October 21, 1991, the Service published a proposal (56 FR 52503) to list *Clematis morefieldii* as an endangered species.

Summary of Comments and Recommendations

In the October 21, 1991, 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 Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting public comment, was published in the *Huntsville News*, Huntsville, Alabama, on November 9, 1991.

Four written responses to the proposed rule were received, including two from private individuals, one from a private conservation organization (Center for Plant Conservation), and one from a Federal agency (Tennessee Valley Authority). The Federal agency requested site specific information, without expressing an opinion on the proposed rule. The individuals and the Center for Plant Conservation (CPC) supported the proposal. The CPC additionally expressed their interest in assisting in recovery activities for this species. One of the individuals stated that further destruction had occurred at several of the sites.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Clematis morefieldii* 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 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 *Clematis morefieldii* Kral (Morefield's leather flower) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

This species' range is currently recognized as limited to five sites in northern Alabama, all in Madison County. While surveying potential habitat for additional populations, it was noted that residential development had destroyed or adversely modified similar habitats. Residential development on mountains in the Huntsville area is increasing. Two of the existing populations are imminently threatened due to their precarious location on lots in a residential area. Clearing has already impacted habitat and individuals on these sites. Destruction of these two sites would result in approximately a 55 percent loss of total known individuals. At this time, only two of the five sites (22 and 300 plants, respectively) appear to be secure. Within the last few years, three populations have been destroyed by road building, clearing, and herbicide use associated with residential development (Weber 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This recently discovered species is currently not known to be a significant component of the commercial wildflower trade; however, it is attractive and has horticultural potential. Publicity from its listing could generate an increased demand. Taking and vandalism pose threats because of its visibility when flowering and the accessibility of many of the sites. Over-collecting for any purposes could extirpate populations, especially at sites with only a few plants.

C. Disease or Predation

Seed predation by insects was noted in several populations (Weber 1991) and requires further investigation.

D. The Inadequacy of Existing Regulatory Mechanisms

Although it is considered endangered in Alabama (Gunn, Alabama Heritage Program, pers. comm., 1991), there are no State or Federal laws protecting *Clematis morefieldii* or its habitat. Two populations (totalling less than 25 plants) occur on public land (City of Huntsville) and are currently protected. However, ownership, thus protection, for one of these sites is tenuous. There is a possibility that public ownership will revert to private landowners if sufficient funds are not available to complete payment (Weber 1991). The Act will strengthen existing protection, provide additional protection and encourage active management for *Clematis morefieldii* when it is added to the Federal list of endangered and threatened species (see "Available Conservation Measures").

E. Other Natural or Manmade Factors Affecting its Continued Existence

This species is extremely vulnerable because it has a limited range and low numbers of plants at many of the sites. One population has one plant, two have approximately 20 plants, and all sites occupy less than an acre in area. A single unnatural or natural disturbance could destroy a significant percentage of the known populations. In addition, the small number of individuals at three sites may indicate a limited gene pool and, without infusion of gene flow, it is questionable if these smaller populations can survive.

Clematis morefieldii appears to have restricted ecological requirements. Plants are locally distributed and seem to require areas where shale seeps are moist for a good part of the year (Weber 1991). One population, located under a closed canopy, appeared to be stressed. Individuals were smaller and fewer flowers were observed, when compared to populations where the canopy was somewhat "open". This species may require habitat management to curtail succession.

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 *Clematis morefieldii* as endangered. Endangered status is appropriate due to the species' restricted range and imminent threats facing several populations. An endangered species, as defined by the Act, is threatened with extinction throughout all or a significant portion of its range. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that 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 presently not prudent for this species. This recently discovered *Clematis* occurs in limited numbers at only five locations; three of which are easily accessible. Publication of critical habitat maps in the **Federal Register** and local newspapers would increase public interest and possibly lead to additional threats for this attractive species.

Take is regulated by the Act with respect to endangered plants only in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. However, the known populations of *Clematis morefieldii* are located only on private and city land. Although the species is considered to be endangered in the State, there are no State laws which provide protection from collecting or vandalism. While listing under the Act increases the public's awareness of the species' plight, it can also increase the desirability of a species to collectors. As stated previously, this *Clematis* is an attractive vine which may be desirable to the wildflower trade or novelty collectors. Discovery and elimination of even one population would compromise the survival of the species. It also could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation.

As discussed above, it is not now prudent to determine critical habitat for *Clematis morefieldii*. All involved parties, including appropriate City and State agencies, and key private landowners, have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 consultation process.

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. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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 affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All presently known populations are on private or city-owned land. The only currently known activity to be authorized, funded, or carried out by a Federal agency that would affect *Clematis morefieldii* is consideration of this species by the Environmental Protection Agency relative to pesticide (herbicide) registration.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general 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, 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 to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203 (703/358–2104).

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

Kral, R. 1987. A new "Viorna" *Clematis* from northern Alabama. Ann. Missouri Bot. Gard. 74:665–669.

Weber, S.F. 1991. Status report on *Clematis morefieldii*. Unpublished report to U.S. Fish and Wildlife Service, Southeast Region, Jackson, Mississippi. 10 pp. + appendix.

Author

The primary author of this rule is Cary Norquist (see **ADDRESSES** section), 601/965–4900 or FTS 490–4900.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

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: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Ranunculaceae, 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					
Ranunculaceae—Buttercup family:						
*	*	*	*	*	*	*
Clematis morefieldii	Morefield's leather flower	U.S.A. (AL)	E	468	NA	NA
*	*	*	*	*	*	*

Dated: May 4, 1992.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11826 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Mitchell's Satyr Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Mitchell's satyre butterfly (*Neonympha mitchellii mitchellii*) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973,

as amended (16 U.S.C. 1531 *et seq*). Collecting pressure on this butterfly has resulted in the loss of several populations and is believed to immediately threaten the survival of several more populations. Human-caused degradation and destruction of the species' habitat has also substantialy reduced the number of sites occupied by this butterfly. Due to the need to immediately decrease collection of the species by protecting it under the Act, the Service exercised its emergency listing authority on June 25, 1991, by publishing an emergency rule which gave this species immediate and temporary endangered status and the resulting protection under the Act. The emergency rule provided Federal Protection for 240 days during which the Service initiated the normal listing procees to ensure long-term protection for the species. This rule provides the long-term protection that the Service believes is necessary to ensure the continued existence of the butterfly. This rule does not include the North Carolina subspecies, *N. m. francisci*, which may be extinct.

EFFECTIVE DATE: May 20, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species, at the above address (telephone 612/725–3276 or FTS 725–3276).

SUPPLEMENTARY INFORMATION

Background

N. m. mitchellii is the nominate subspecies of one of two North American species of *Neonympha*. It was described by French in 1889 from a series of ten specimens collected by J. N. Mitchell in Cass County, Michigan (French 1889). It is a member of the family Nymphalidae (over 6,400 species worldwide), subfamily Satyrinae (estimated 2,400 species).

(The Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife * * *" (section 4.(15)). Therefore, although taxonomically recognized as a subspecies, *N. m. mitchellii* will be referred to as a "species" throughout the remainder of this rule. This legal, as opposed to biological, use of the term "species" should not be understood to mean that this rule covers the entire species *Neonympha mitchellii*. This rule covers only the northern subspecies *N. m. mitchellii*, and does not include the North Carolina subspecies *N. m. francisci*.

Mitchell's satyr is a medium sized (38–44 millimeter wingspan) butterfly with an overall rich brown coloration. A distinctive series of submarginal yellow-ringed black circular eyespots (ocelli) with silvery centers are found on the lower surfaces of both pairs of wings. The number of ocelli on the forewing varies between the sexes, with males generally having 4 (range 2–4) and females having 6 (range 5–6). The eyespots are accented by two orange bands along the posterior wing edges, as well as two fainter orange bands across the central portion of each wing. It is distinguishable from its North American congener *N. areolata* by the latter's well-marked ocelli on the upper wing surfaces, as well as the lighter coloration and stronger flight of *N. areolata* (French 1889; McAlpine et al 1960; Wilsmann and Schweitzer 1991).

N. m. mitchellii is one of the most geographically restricted butterflies in North America. Historical records exist for approximately 30 locations in four States, ranging from southern Michigan, adjacent counties of northern Indiana, and a single Ohio county, with several disjunct populations in New Jersey. The species has been documented from a total of 18 counties (Badger 1958; Martin 1987; Pallister 1927; Rutkowski 1968; Shuey et al 1987b; Wilsmann and Schweitzer 1991).

A second *Neonympha mitchellii* subspecies was discovered at Ft. Bragg, North Carolina in 1983 (Parshall and Kral 1989). This subspecies, *N. m. francisci*, is only known from that single site, and may have been collected to extinction since its discovery. Although additional suitable habitat probably exists on, and adjacent to, Ft. Bragg, no additional populations have been discovered (Schweitzer 1989). This rule does not include *N. m. francisci*.

Although *N. m. mitchellii* has been reported from Maryland, the lack of suitable habitat makes it more likely that those 1940's specimens were misidentified members of a *Neonympha areolatus* subspecies. Suitable habitat may exist in New York, Connecticut, Massachusetts, and Pennsylvania. However, searches in these States have failed to locate any *N. m. mitchellii* populations (Schweitzer 1989; Wilsmann and Schweitzer 1991).

The habitat occupied by *N. m. mitchellii* consists solely of wetlands known as fens. This is an uncommon wetland habitat type characterized by calcareous soils and fed by carbonate-rich water from seeps and springs. Fens are most frequently components of larger wetland complexes. Due to the superficial resemblance of fens to bogs, the habitat of Mitchell's satyr has sometimes been erroneously described in earlier literature as acid bogs (McAlpine et al 1960; Shuey 1985; Shuey et al 1987a; Wilsmann and Schweitzer 1991).

From 1985 through 1990 the Service sponsored intensive searches of over 100 sites that had suitable habitat for the species throughout its known range. The sites visited were either known historical locations for the species, or were chosen because of the presence of a fen. All historical locations were checked if they could be relocated and if the fen habitat still existed. Survey results indicated the species occurred at only 16 sites, of which two were not historically known, and one was subsequently destroyed by over-collection. Therefore, the species has disappeared from approximately one-half of its historical locations. No extant populations have been found in Ohio, and the only New Jersey population that remained in 1985 is believed to have been extirpated by collectors subsequent to the survey. In 1991, searches in New Jersey failed to locate any additional populations (Breden, New Jersey Natural Heritage Program, 1991, pers. comm.). Thus, the species is currently believed to exist in nine counties in Indiana and Michigan. Due to the extent of these and other recent surveys, finding additional sites is unlikely, although survey efforts will be continued.

A letter from Charles L. Remington, dated November 19, 1974, asked the Service to protect *N. m. mitchellii* (letter from Charles L. Remington to Dr. Paul A. Opler, U.S. Fish and Wildlife Service, dated November 19, 1974). That letter was treated as a petition to list the species as threatened or endangered. The Service subsequently found (49 FR 2485, January 20, 1984) that insufficient data was available to support listing at that time. The Service's May 1984, Animal Notice of Review (49 FR 21664–21675) listed *Neonympha mitchellii* as a category 3C species, indicating that at that time the species was believed to be

too abundant for consideration for addition to the endangered and threatened species lists. In a subsequent January 6, 1989, Animal Notice of Review (54 FR 554–579) the species was upgraded to a category 2 candidate for listing, indicating renewed concern for the species' welfare and encouraging further studies into the status of the species. The most recent status survey indicates that the species has experienced significant range reduction and should receive the protection of the Act (Wilsmann and Schweitzer 1991). The Service analyzed the status survey and determined that the species should be protected from over-collection by an emergency listing as an endangered species. The emergency listing was published, and became effective, on June 25, 1991 (56 FR 28825–828), and provided protection under the Act until February 20, 1992.

Summary of Comments and Recommendations

In the September 11, 1991, proposed rule, as well as in the December 3, 1991, notice reopening the comment period, 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, landowners, and other interested parties were contacted and requested to comment. Newspaper notices were published in 18 papers across the four-state historical range of the species during the period October 11 through October 23, 1991, inviting public comment. Forty-two comments were received and are discussed below. These comments came from the state conservation agencies of the four states with historical sites for the species, one Michigan county commission, a Michigan wetland preservation organization, three professional and amateur lepidopterists, and 32 private citizens. The private citizen letters included 2 from the owners of two Michigan sites currently occupied by the species, and 25 letters from elementary students who live in the vicinity of one of the extant Indiana sites. One commenter opposed the listing; all other commenters supported the listing.

Letters supporting the Federal listing of the species were received from the four state conservation agencies within its historic range. A letter from an amateur entomologist responding for the Barry County Board of Commissioners supported the listing and offered assistance in conservation measures. A letter with 12 signatures from the Wetland Conservation Association, located in Berrien County, Michigan, urged the Service to list the species and expressed concern over potential adverse impacts to the species from a proposal to realign U.S. Highway 31. All 32 letters from private citizens supported the listing.

Professional and amateur lepidopterists sent three letters containing additional data and scientific comments. Two of these letters expressed strong support for Federal protection for the species, while the third letter strongly opposed Federal listing as endangered. Both supporting letters (from Dr. Dale Schweitzer, The Nature Conservancy, and John C. Calhoun, Southern Leipidopterists' Society) stressed the need for additional surveys for *N. m. francisci* before the Service assumes it to be extinct. Accordingly, the wording of this final rule has been adjusted to recognize that *N. m. francisci* might be extinct, but that additional surveys are waranted before that conclusion is final. The service is funding additional surveys in North Carolina for *M. m. francisci* in the hope that extant populations can be located.

Mr. Calhoun stated the likelihood of a second historical population in Ohio at a site that has experienced habitat destruction. He also pointed out severe adverse impacts from intensive collecting at one Michigan site that previously had a "very strong" Mitchell's satyr population.

The sole letter opposing the Federal listing of *N. m. mitchellii* as an endangered species was submitted by Mr. Mogens Nielsen. Mr. Nielsen's letter contained a number of assertions that fall into four categories; the species is not declining, collection is not a threat, the 1985–90 searches were inadequate, and Federal listings as endangered will curtail further surveys and research on the species. These points are discussed individually below.

Mr. Nielsen describes personal observations made at the type locality for the species over a 34-year period. He states that he never detected any significant population change at that site. He did not describe his observation methods, nor submit any data supporting his assertion. Thus, the Service is unable to evaluate this comment regarding population trends for one of the extant populations. However, the service believes that the documented loss of one-half of the known historical populations is sufficient reason for listing the species even if the population is stable at one or more of the individual sites.

The Service has received numerous accounts, including a 1991 report from Service law enforcement personnel, describing evidence of probable collection activity at *N. m. mitchellii* sites. The Service also has reports of incidents of earlier collections that many knowledgeable lepidopterists accept as factual. The Service remains confident that *N. m. mitchellii* is threatened by collection pressure despite the absence of successful court prosecutions of collectors.

The Service disagrees with Mr. Nielsen's characterization of the recent rangewide surveys, and believes the 1985–1990 searches for *N. m. mitchellii* provided an accurate index of the status of the species. Although not all fens were checked, those fens judged to be of moderate to high habitat quality were checked, and all existing and locatable fens with historical occurrences of the species were checked. The surveys focussed on the most likely sites for the species, yet *N. m. mitchellii* was found at only 16 of the 103 sites surveyed, with one of those subsequently being eliminated by over-collection. While the Service recognizes that additional populations might be found, these are likely to be at sites with lower quality habitat and low population levels. The findings of a few such sites will do little to alter the probability of extinction for *N. m. mitchellii.*

The Service recognizes and appreciates the contributions made by lepidopterists in obtaining data on rare species occurrences and population trends. Subsequent to this listing the Service intends to allow research and survey activities on *N. m. mitchellii* to continue if they will promote the conservation of the species. Permits for such activities will be available from the Service. Federal listing as endangered will curtail only detrimental research and other activities.

In addition to these comments, a January 6, 1992, phone inquiry was received from the office of Congressman Gallo (NJ), asking if the Service has any firm plans for site preservation in New Jersey. Site preservation activities, as well as other recovery actions, will be recommended by a recovery plan to be developed by experts on the species. There currently are no site-specific preservation plans.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *N. m. mitchellii* 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 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 *N. m. mitchellii* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Fen habitat is being destroyed and degraded by human activities and by natural succession. Human-induced destruction of historical sites has been documented in at least three cases. One Michigan site has been destroyed by urban development. Sites in Michigan and Ohio have been lost by conversion to agriculture. Another extant population in Michigan has had a portion of its habitat destroyed by hog farming activities and all terrain vehicle use. These activities constitute ongoing threats to other sites with extant populations of *N. m. mitchellii* (Shuey et al 1987a; Schweitzer 1989; Martin 1987; Wilsmann and Schweitzer 1991).

One Michigan site is bisected by a highway which is scheduled for realignment. Mitchell's satyr habitat will be destroyed or degraded by the project as originally designed. Consultation under section 7 of the Act is underway among Service, Michigan Department of Transportation, and Federal Highway Administration officials to have the plans modified to diminish or eliminate adverse effects on the species.

Although natural succession in fens is not completely understood, it appears that human activities adjacent to a fen can speed succession and subsequent loss of Mitchell's satyr habitat. For example, nearby drainage ditches may alter the hydrologic regime of a fen, resulting in lowered water levels, more xeric soil conditions, and increased invasion of brush and trees into the fen. There is evidence that this is occurring at one Michigan site (Wilsmann, Michigan Natural Features Inventory, 1991, pers. comm.).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Mitchell's satyr has long been sought by butterfly collectors and there is evidence that collection of the species has continued despite its endangered or threatened classifications under Michigan, Indiana, and New Jersey rare species laws. Subsequent to the 1985 survey of New Jersey fens, it is believed that the State's last remaining *N. m. mitchellii* population was eliminated by collectors. A collector's glassine envelope was found at the site during one survey. Another New Jersey *N. m. mitchellii* site, which was well known to butterfly collectors, was extirpated in the 1970's by over-collection. The other subspecies of *Neonympha mitchellii, N. m. francisci*, is believed to have been collected to extinction at its only known location (Wilsmann and Schweitzer 1991; Breden 1991, pers. comm.; Schweitzer, The Nature Conservancy, 1991, pers. comm.).

Well-worn human paths have been seen at the sites of several extant populations in Michigan during status surveys and law enforcement activities over the last few years. These paths wind through *N. m. mitchellii* habitat in the manner that would be expected of knowledgeable collectors and are viewed as evidence that collecting is continuing, despite the species being listed and protected by State statute. Subsequent to the June 25, 1991, emergency listing, several butterfly collectors were encountered by Service Law Enforcement personnel at one well known Michigan site—fresh trails through prime Mitchell's satyr habitat were seen at nearly every other site being patrolled. At least five Michigan sites are sufficiently well known to collectors and/or have sufficiently small Mitchell's satyr populations to be extremely vulnerable to local extinction from overcollection (Wilsmann 1991, pers. comm.). All known *N. m. mitchellii* sites are believed vulnerable to local extinction by overcollection (Schweitzer 1991, pers. comm.).

C. Disease or Predation

Little is known about these factors, but there are no indications at this time that they might be contributing to the decline of *N. m. mitchellii*.

D. The Inadequacy of Existing Regulatory Mechanisms

N. m. mitchellii is currently listed under State statutes as endangered in Indiana, Michigan, and New Jersey, and extirpated in Ohio.

Endangered status in Michigan prohibits the collection of the species without a Michigan scientific collection permit. However, the threat of State prosecution apparently has not ended collectors' illegal activities. Michigan Department of Natural Resources officials believe the threat of Federal prosecution will be a more effective deterrent (Weise, Michigan Department of Natural Resources, Endangered Species Program, 1991, pers. comm.; Wilsmann 1991, pers. comm.).

Endangered status in Indiana provides official recognition of species' rarity, but the State's endangered species regulations do not prohibit taking listed insects unless they are also on the Federal endangered and threatened species list. Thus, the State classification provides no effective legal deterrent to continued collection. The ability to legally collect the species under Indiana statutes makes the species a target for heavy collecting pressure and possible extirpation in that State (Bacone, Indiana Natural Features Inventory, 1991, pers. comm.).

New Jersey regulations provide total protection for any *N. m. mitchellii* that may be rediscovered within the State (Frier-Murza, New Jersey Endangered Species Program, 1991, pers. comm.). The Ohio classification of extirpated provides no legal protection. However, if the species is rediscovered in the State, an emergency order can be invoked to list it as endangered and grant it full protection under State statutes (Case, Ohio Department of Natural Resources, Division of Wildlife, 1991, pers. comm.).

E. Other Natural or Manmade Factors Affecting its Continued Existence

N. m. mitchellii has only a single flight period annually, which lasts approximately two weeks for an individual, and for about three weeks for a population as a whole. It exhibits relatively sedentary behavior and slow, very low level flights. Due to these characteristics the species seems to have a limited ability to colonize new habitat patches, to recolonize historical sites, or to provide significant gene flow among extant populations. Therefore, the isolation of small populations makes them susceptible to local extinction if habitat degradation and/or collection pressure are also occurring (Wilsmann and Schweitzer 1991).

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 final rule. Based on this evaluation, the preferred action is to list *N. m. mitchellii* as endangered. The species has experienced a severe decrease in the number of extant populations over its historical range, as well as probable extirpation from two of the four States with historical populations. Due to its continuing appeal to a segment of butterfly collectors, as well as its narrow and well known habitat requirements, approximately one-third of the remaining populations are extremely vulnerable to overcollection and local extinction, and all populations are believed susceptible to collection-induced extirpation.

The Service concluded that conducting the normal listing process would not have protected the species until after the 1991 Mitchell's satyr flight period, thus subjecting the species to an additional year of excessive collecting pressure. Overcollection of one or more populations during the 1991 flight period might have severely reduced the likelihood of species survival. Therefore, the Service listed the species as endangered on an emergency basis to provide maximum protection to all known populations during the 1991 flight period. At this time the Service is concluding the normal listing process by determining the species to be endangered.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that 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 presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the Species, *N. m. mitchellii* is threatened by illegal collecting. Publication of critical habitat descriptions and maps would make this species more vulnerable to collection, would increase the difficulty of protecting the species from illegal take, and significantly increase the likelihood of extinction. All involved parties and most landowners already have been notified of species locations and the importance of protecting this species' habitat. Habitat protection will be addressed through the recovery process, including individual landowner contacts, through the section 7 jeopardy standard, and section 9 prohibitions.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the 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 Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act 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) of the Act 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 affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. 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.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

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).

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Author

The primary author for this proposed rule is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

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: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Insects" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
*	*	*	*	*	*	*	
Satyr, Mitchell's	Neonympha mitchellii chellii.	U.S.A. (IN, MI, NJ, OH)	NA	E	428E, 469	NA	NA
*	*	*	*	*	*	*	

Dated: May 6, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–11827 Filed 5–19–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Sensitive Joint-Vetch (Aeschynomene virginica)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: *Aeschynomene virginica* is an annual legume that can grow up to six feet tall and has yellow, pea-type flowers growing in racemes on short lateral branches. It requires the unique growing conditions occurring along segments of river systems that are close enough to the coast to be influenced by tidal action, yet far enough upstream to consist of fresh or slightly brackish water. The present distribution of *A. virginica* includes New Jersey (two occurrences), Maryland (one occurrence), Virginia (six occurrences) and North Carolina (three marginal occurrences). The joint-vetch has been extirpated from Pennsylvania and Delaware. Habitat alteration is the primary threat to the species' continued existence. Many of the sites where the species occurred historically have been dredged, filled, or bulkheaded. Extant sites are potentially threatened by a proposed highway expansion and a proposed electricity generating plant in New Jersey, by several proposed residential developments and water supply projects in Virginia, as well as by other factors related to increased population growth, including road construction, commercial development, water pollution, and bank erosion from motorboat traffic.

EFFECTIVE DATE: June 19, 1992.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours, at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Jacobs at the above address, telephone (410) 269–5448, during normal business hours.

SUPPLEMENTARY INFORMATION:

Background

A rare and specialized ecological community type occurs a short distance upstream of where certain rivers in the coastal plain of the eastern United States meet the sea. Referred to as freshwater tidal marshes, these communities are close enough to the coast to be influenced by tidal fluctuations, yet far enough upstream to consist of fresh or only slightly brackish water. Plants that grow in this environment are subjected to a cycle of twice-daily flooding tha most plants cannot tolerate. The sensitive joint-vetch (*Aeschynomene virginica*) is a plant of such freshwater tidal communities.

A. virginica is an annual legume (family Fabaceae) that attains a height of 1 to 2 meters (3–6 feet) in a single growing season. The stems are single, sometimes branching near the top. Leaves are even-pinnate, 2–12 centimeters (0.8–4.8 inches) long, with entire, gland-dotted leaflets. The irregular, legume-type flowers are about 1 cm (0.4 inch) across, yellow, streaked with red, and grow in racemes (elongated inflorescences with stalked flowers). The fruit is a loment with 6–10 segments, turning dark brown when ripe. Flowering begins in late July and continues through September. Fruits are produced from July to frost. Some observations indicate that seedlings may germinate only in "flotsam" (plant material) that has been deposited on the riverbank (Bruederle and Davison 1984).

Aeschynomene virginica has been confused with other members of the genus, particularly *A. indica*, which is an introduced, weedy species, common in wet agricultural areas from North Carolina to Florida, west to Texas and Arkansas. Another introduced member of this genus, *A. rudis*, has also been confused with *A. virginica*. This confusion has resulted in references to *virginica* in numerous weed science publications (e.g., Boyette *et al.* 1979; Hackett and Murray 1986). The picture was clarified by Carulli and Fairbrothers (1988), who showed the three species to be distinguishable based on electrophoretic analysis of allozyme variation. Previous studies had also indicated the morphological distinctiveness of *A virginica*. In her monograph of the genus, Rudd (1955) distinguishes *A. virginica* from *A. indica* based on the sizes of the fruit stipes and the flowers. Numerous other authors, including Fernald (1939), Gleason and Cronquist (1963), and Radford *et al.* (1964) have recognized the taxonomic validity of *A. virginica*. The recently published *Vascular Flora of the Southeastern United States: Volume 3* (Isley 1990) clearly distinguishes these three species of *Aeschynomene*.

At present, the sensitive joint-vetch is extant in New Jersey, Maryland, Virginia, and North Carolina. The plant's status in North Carolina merits special comment. During the mid-1980's, status survey work in North Carolina (Leonard 1985) revealed that the species was no longer extant at any of the five historic localities. Potential visible causes of population loss included