

affiliate of a carrier combined with a related finance application for approval of continuation of control; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (d) of this section; except that, directly related applications involving a transfer under 49 U.S.C. 10926 or 10931 and an application on Form OP-1 for gateway elimination and/or a conversion, the sole fee shall be the basic fee for the transfer application.

* * * * *

(49 U.S.C. 10321(a) and 5 U.S.C. 553 and 559)

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam. Agatha L. Mergenovich, Secretary.

[FR Doc. 80-24012 Filed 8-7-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1469, Amdt. 1]

The Atchison, Topeka and Santa Fe Railway Co., Authorized To Operate Over Tracks of St. Louis-San Francisco Railway Co., at Winfield, Kans.

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 1 to Service Order No. 1469.

SUMMARY: This order amends Service Order No. 1469 by extending the time period during which the Santa Fe Railway is authorized to operate over tracks of the St. Louis-San Francisco Railway.

EFFECTIVE DATE: 11:59 p.m., August 5, 1980, and continuing in effect until October 31, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

SUPPLEMENTARY INFORMATION:

Decided: August 4, 1980.

Upon further consideration of Service Order No. 1469, (45 FR 31724), and good cause appearing therefor:

§ 1033.1469 [Amended]

It is ordered, § 1033.1469 *The Atchison, Topeka and Santa Fe Railway Company authorized to operate over tracks of St. Louis-San Francisco Railway Company at Winfield, Kansas.*

Service Order No. 1469 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1980, unless modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 5, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien. Joel E. Burns not participating.

Agatha L. Mergenovich, Secretary.

[FR Doc. 80-24014 Filed 8-7-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Listing the Valley Elderberry Longhorn Beetle as a Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) to be a Threatened species. This action is being taken because alteration of this species' riverside habitat has reduced the known populations of the beetle to a few areas in the California central valley. Critical Habitat in California is included with this final rule. The rule will provide protection to wild populations of this species.

DATE: This rule becomes effective on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

In prior Service correspondence, and in Federal Register documents pertaining to *Desmocerus californicus*

dimorphus, this subspecies was referred to as the "California elderberry longhorn beetle." Since this name would more appropriately apply to the nominate coastal subspecies, *Desmocerus californicus californicus*, the Service intends to use the common name "valley elderberry longhorn beetle" for the subspecies *Desmocerus californicus dimorphus*.

On August 10, 1978, the Service published a proposed rulemaking in the Federal Register (43 FR 35636-43) advising that sufficient evidence was on file to support a determination that the valley elderberry longhorn beetle was a Threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That proposal summarized the factors thought to be contributing to the likelihood that this species could become Endangered within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State or Territory within which a resident species of wildlife is known to occur be notified and be provided 90 days to comment before any such species is determined to be a Threatened species or an Endangered species. A letter was sent to the Governor of California on August 16, 1978, notifying him of the proposed rulemaking for the valley elderberry longhorn beetle. On August 14, 1978, a memorandum was sent to other interested parties notifying them of the proposal and soliciting their comments and suggestions. On May 2, 1980, the Service published a proposed rule in the Federal Register (45 FR 29373-75) repropounding Critical Habitat for the valley elderberry longhorn beetle, to comply with the 1978 Endangered Species Act amendments. A letter notifying the Governor of California of this action, and letters to other interested parties were sent on March 31, 1980. A public meeting and a public hearing on the reproposal of Critical Habitat for the valley elderberry longhorn were held at Davis, California on May 22 and June 12, 1980, respectively.

Official comment was received from the Governor of California, Sacramento County, Solano County, and the U.S. Water and Power Resources Service (formerly the U.S. Bureau of Reclamation).

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register prior to adding any species to the list of Endangered and Threatened Wildlife and Plants.

In the August 10, 1978, proposal (43 FR 35636-43) to list the valley elderberry longhorn beetle as a Threatened species, the May 2, 1980, proposal of Critical Habitat (45 FR 29373-75), and the respective press releases, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All comments received from August 10, to November 7, 1978, regarding the proposal to list the valley elderberry longhorn beetle as Threatened were considered. Comments regarding the reproposal of Critical Habitat received from May 2, to June 30, 1980, were considered. Additional opportunity for public comment was provided by the May 22, 1980, public meeting and the June 12, 1980, public hearing.

In response to the August 10, 1978, proposal, four comments were received. The Commissioner of Reclamation stated that the beetle should not be listed because exhaustive distributional data were not available. The Director of the California Department of Fish and Game suggested that additional field data be obtained before listing the beetle. Dr. John Chemsak, an entomologist at the University of California at Berkeley, stated that the valley elderberry longhorn beetle had always been rare and restricted in distribution, and supported Critical Habitat designation. Dr. Robert Pyle, representing the Survival Service Commission of the International Union for Conservation of Nature and Natural Resources, supported the proposal.

In response to the May 2, 1980, reproposal of Critical Habitat for the valley elderberry longhorn beetle, seven comments were received. Mr. Douglas Peterson, Environmental Analyst for the Sacramento County Planning Department, supported the proposal and suggested that the host plant elderberry was *Sambucus mexicana caerulea*, not *Sambucus glauca*. Dr. Arthur Shapiro of the Department of Zoology of the University of California at Davis supported the proposal, pointed out that the taxonomy of *Sambucus* was confused, and suggested that *Desmocerus californicus dimorphus* be called the "Sacramento Valley elderberry longhorn beetle" to distinguish it from the coastal

subspecies *Desmocerus californicus californicus*. Mr. Wallace Brazelton objected to Critical Habitat designation for the beetle, because the beetle was not " * * * important to the general welfare of Solano county or the Nation." Mr. Brazelton also objected to the locality of the public meeting and hearing on the beetle, and felt that insufficient time had been allowed for review of the proposal. Mrs. Amza Petersen and Mrs. Claire Davis opposed listing and Critical Habitat designation for the beetle. Mrs. Davis suggested that the beetle be transplanted to the Suisun Game Refuge. Dr. John Chemsak, an entomologist at the University of California at Berkeley, supported the proposal. Mr. Philip A. Stohr, an attorney representing a landowner within the Critical Habitat, objected to Critical Habitat designation on land owned by his client. Mr. Stohr contended that such designation threatened economic damage to the property, and that Critical Habitat designation would be academic, and to no purpose, if Federal activities were not involved in the area. Mr. Stohr also objected to the Critical Habitat designation on the grounds that the beetle occurs in sites other than those proposed as Critical Habitat, and suggested that the beetle was already protected by State law through the California Environmental Quality Act and the California Subdivision Map Act.

At the June 12, 1980, public hearing two statements relating to the beetle were made. Mr. Stohr presented statements similar to those already discussed above under responses to the reproposal. Mr. John Anderson, of the Sacramento Audubon Society, supported the listing proposal and designation of Critical Habitat.

Conclusion

The Services recognizes the fact that additional populations of the valley elderberry longhorn beetle may be located, but does not believe that the beetle will ever be found to occupy all areas where the host plant, *Sambucus*, occurs. Although exhaustive distributional studies would contribute additional data to the knowledge of the beetle, the Endangered Species Act requires that the Service make decisions based on the best available data. There is no evidence that additional studies would yield a different distributional pattern. Regarding Dr. Shapiro's comments, the Service has changed the common name of the beetle to the "valley elderberry longhorn beetle" to better reflect the distribution of this subspecies. Since confusion on the specific and subspecific identity of the

Sambucus host of the beetle exists, the Service considers that one or more species of the *Sambucus* may be suitable hosts. With respect to Mr. Brazelton's comments, the Endangered Species Act does not require that economic value for a species be established in order for it to be listed. The Service has complied with the regulations concerning location of the public meeting and hearing and provision of comment periods. Regarding Mrs. Davis' comments, the Service has no indication that the Suisun Game Refuge would serve as an appropriate habitat to transfer the beetles to. In response to Mr. Stohr's comments, the definition of Critical Habitat is based primarily on biological information, although economic impacts are considered in its delineation. The Service knows of no specific Federal involvement which would presently affect the landowner's activities in the area. Future Federal involvement will not be prohibited in the Critical Habitat. Federal agencies will be required to consider the impacts of their actions, should such actions appear likely to jeopardize the continued existence of this species, or to destroy or adversely modify the Critical Habitat. If Federal involvement is likely to result in jeopardy to the species, the Secretary would be required to suggest reasonable and prudent alternatives that would avoid the conflict. Critical Habitat need not include all the areas where the species is known to occur. The Service realizes California law requires certain environmental considerations to be taken into account when land use planning occurs, but believes that Federal listing may increase the consideration given the species by the State of California, because attention will be drawn to a little-known, but unique, biological attribute of the environment which might otherwise be overlooked.

After a thorough review and consideration of all the information available, the Director has determined that the valley elderberry longhorn beetle is likely to become endangered throughout all of its range. Two of the five factors described in Section 4(a) of the Act, and affecting the beetle, were outlined in the August 10, 1978, proposal (43 FR 35636-43) to list this beetle as Threatened. The five criteria as described in that proposal are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range. The valley elderberry longhorn beetle originally occurred in elderberry thickets in moist valley oak woodland along the margins

of the Sacramento and San Joaquin Rivers in the Central Valley of California. The beetle is presently known from less than 10 localities in Merced, Sacramento, and Yolo Counties. The habitat of this insect has now largely disappeared throughout much of its former range due to agricultural conversion, levee construction, and stream channelization. Today, remnant populations are found in the few remaining natural woodlands and in some State and county parks. However, in parks the clearing of undergrowth (including elderberry) and planting of lawns has resulted in further habitat degradation.

2. Overutilization for commercial, sporting, scientific, or educational purposes. Not applicable to this species.

3. Disease or predation. This factor is not known to affect the present status of this species.

4. The inadequacy of existing regulatory mechanisms. There currently exist no State or Federal laws protecting this species or its habitat.

5. Other natural or manmade factors affecting its continued existence. None.

Critical Habitat

Subsection 4(a)(1) of the Act states in pertinent part:

At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

50 CFR Part 424 defines Critical Habitat as:

- (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
- (ii) Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service has concluded that two areas in Sacramento County, California should be designated as Critical Habitat for the valley elderberry longhorn beetle. These areas include the densest known populations of the beetle. Due to lack of information on the beetle from one of the areas proposed as Critical Habitat for the beetle in Solano County (Putah Creek Zone), this area has not been designated as Critical Habitat. The designated Critical Habitat areas include the known biological constituent elements essential to the conservation of

the valley elderberry longhorn beetle. These elements are described below in the description of Critical Habitat for this species.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are insignificant for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.31 pertaining to threatened wildlife will apply to the valley elderberry longhorn beetle. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, 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 this species. It also will be illegal to possess, sell, deliver, carry, transport or ship any specimens illegally taken. Certain exceptions will apply to agents of the Service and State conservation agencies. Permits for specified purposes will be available in accordance with 50 CFR 17.32.

Section 7(a) of the Act provides:

Federal Agency Actions and Consultations—(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption of such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation

on the commitment of resources as described in subsection (d).

Provisions for Interagency Cooperation were published in the Federal Register on January 4, 1978 (43 FR 870-876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued will require Federal agencies to satisfy these statutory and regulatory obligations with respect to the valley elderberry longhorn beetle. These agencies will be required not only to insure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of this species, but also to insure that their actions do not result in the destruction or adverse modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the valley elderberry longhorn beetle.

(1) Modification of riparian habitats by river channelization.

(2) Construction of buildings, roads, bridges, or parking lots, directly eliminating the beetle's host plant, elderberry (*Sambucus sp.*).

(3) Human disturbance, such as vandalism or fire, resulting from increased recreational use, which adversely affects the beetle.

No present Federal involvement in the above activities is known. In 1978, an informal consultation between the U.S. Coast Guard and the U.S. Fish and Wildlife Service was carried out; no conflict was found with a proposed plan to build a pedestrian bridge over the American River. Further recreational development in the American Parkway Zone is not expected to involve Federal agencies, and the Sacramento Department of Parks and Recreation intends to protect most of the riparian areas remaining in the Parkway. Future development in the Sacramento Zone of the Critical Habitat could involve Federal funding or permits such as Small Business Administration loans and federally subsidized sewage collection, according to the landowner's attorney. However, no development proposals are available to provide an estimate of future impact.

Effect Internationally

The Service will review the status of the valley elderberry longhorn beetle to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment

within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The Primary author of this rule is Dr. Michael M. Bentzien, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., 20240 (703/235-1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations promulgation

Accordingly, Subparts B and I of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

§ 17.11 [Amended]

1. Section 17.11 is amended by adding the valley elderberry longhorn beetle to the list, alphabetically, under "Insects" as indicated below:

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|------------------------------------|--|---------------------|--|--------|-------------|------------------|---------------|
| Common name | Scientific name | | | | | | |
| Beetle, valley elderberry longhorn | <i>Desmocerus californicus dimorphus</i> | U.S.A. (California) | NA | T | 100 | § 17.95(i) | NA |

§ 17.95 [Amended]

2. Section 17.95(i) is amended by adding Critical Habitat for the valley elderberry longhorn beetle, alphabetically, as follows:

Valley elderberry longhorn beetle

(*Desmocerus californicus dimorphus*)

California. Sacramento County.

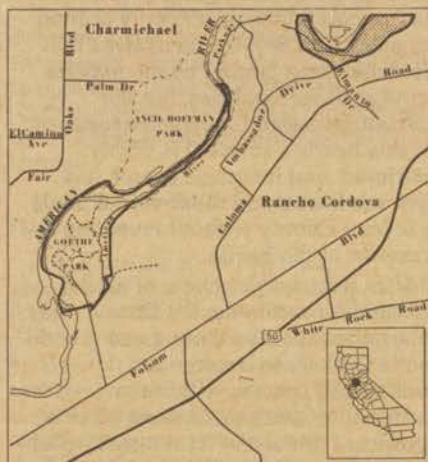
(1) *Sacramento Zone*. An area in the city of Sacramento enclosed on the north by the Route 160 Freeway, on the west and southwest by the Western Pacific railroad tracks, and on the east by Commerce Circle and its extension southward to the railroad tracks.

California Elderberry Longhorn Beetle
(Sacramento Zone) Sacramento County, Calif.



(2) **American River Parkway Zone.** An area of the American River Parkway on the south bank of the American River, bounded on the north by latitude 30°37'30"N, on the west and southwest by Elmanto Drive from its junction with Ambassador Drive to its extension to latitude 38°37'30"N, and on the south and east by Ambassador Drive and its extension north to latitude 38°37'30"N. Goethe Park, and that portion of the American River Parkway northeast of Goethe Park, west of the Jediah Smith Memorial Bicycle Trail, and north to a line extended eastward from Palm Drive.

California Elderberry Longhorn Beetle (American River and American River Parkway Zones) Sacramento County, Calif.



Dated: July 31, 1980.

Robert B. Cook,
Deputy Director, Fish and Wildlife Service.
[FR Doc. 80-23899 Filed 8-7-80; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Delta Green Ground Beetle as a Threatened Species With Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the delta green ground beetle (*Elaphrus viridis*) to be a Threatened species. This action is being taken because known populations of the beetle are small, highly restricted in range, and threatened by agricultural practices. The delta green ground beetle is known to

occur only at two sites in Solano County, California. Critical Habitat in California is also included with this final rule. The rule will provide to the species the protections provided by the Endangered Species Act.

DATE: This rule becomes effective on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service Washington, D.C. 20240 (703/235-2771).

Background

SUPPLEMENTARY INFORMATION: The delta green ground beetle is a metallic green and golden predaceous member of the family Carabidae. It is known to occur only near two vernal pools south of Dixon, Solano County, California. The beetle is threatened by agricultural practices in these areas.

On August 10, 1978, the Service published a proposed rulemaking in the *Federal Register* (43 FR 35636-43) advising that sufficient evidence was on file to support a determination that the delta green ground beetle was a Threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*). That proposal summarized the factors thought to be contributing to the likelihood that this species could become Endangered within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. A letter was sent to the Governor of California September 1, 1978, notifying him of the proposed rulemaking for the delta green ground beetle and requesting his views on the proposed action. The Critical Habitat portion of that proposal was withdrawn by the Service on March 6, 1979 (44 FR 12384-84), because of procedural and substantive changes in prior law made by the Endangered Species Act Amendments of 1978. On May 2, 1980, the Service published a rulemaking in the *Federal Register* (45 FR 29371-73) reproposing Critical Habitat for the delta green ground beetle, to comply with the 1978 Endangered Species Act Amendments. A letter to the Governor of California and letters to other interested parties were sent on March 31, 1980. A public meeting and a public hearing on the reproposal of Critical Habitat for the delta green ground beetle were held at Davis, California, on May 22, and June 12, 1980, respectively.

Official comment was received from the Governor of California, the

California Department of Parks and Recreation, the California State Water Resources Control Board, the Department of the Army (Corps of Engineers), and the Solano County Board of Supervisors.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the *Federal Register* prior to adding any species to the list of Endangered and Threatened Wildlife and Plants.

In the August 10, 1978, proposal to list the delta green ground beetle as a Threatened species, the May 2, 1980, reproposal of Critical Habitat and the respective press releases, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All comments received from August 10 to October 8, 1978, regarding the proposal to list the delta green ground beetle as Threatened were considered. Comments regarding the reproposal of Critical Habitat received from May 2 to July 3, 1980, were considered. Additional opportunity for public comment was provided by the May 22, 1980, public meeting and the June 12, 1980, public hearing.

In response to the August 10, 1978, proposal, three comments were received. Dr. Robert Pyle, representing the Survival Service Commission of the International Union for Conservation of Nature and Natural Resources, supported the proposal. Dr. W. James Barry, plant ecologist for the California Department of Parks and Recreation, also supported the proposal, and submitted the preliminary draft of a report, the "Jepson Prairie Project," which provided information about the vernal pool habitats in the area where the delta green ground beetle occurs. The Director of the California Department of Fish and Game, representing the Governor, supported the listing and Critical Habitat designation.

Nine comments were received following the reproposal of Critical Habitat for the delta green ground beetle. The Director of the California Department of Fish and Game, responding for the Governor of California, recommended including an additional area in the Critical Habitat for the beetle. The California Water Resources Control Board indicated that potential effluent discharge through Barker Slough would not be likely to affect the vernal pool habitat of the delta green ground beetle. This agency

also suggested alteration of the proposed Critical Habitat area. The Department of the Army (San Francisco District, Corps of Engineers), which is processing a permit application for Phase II of the North Bay Aqueduct in Solano County, stated that a Biological Assessment concerning this project would be submitted to the Fish and Wildlife Service for review. Mr. Wallace L. Brazelton, Chairman of the Solano County Board of Supervisors, objected to the location of the public meeting and hearing concerning the delta green ground beetle, and expressed doubt that the beetle was "critical to the general welfare of Solano County or of the nation." Mr. Brazelton suggested that more effort be given to coordination with local officials, and hoped that no determination would be made without review by County personnel and agencies. Claire P. Davis, an owner of land near the proposed Critical Habitat, objected to possible restrictions on the use of Federal funds in the area, and suggested that the delta green ground beetle be established in the nearby Suisun Game Refuge. Amza Petersen, a private citizen, objected to the proposal, believing that the Federal government would confiscate State land. Dr. Terry L. Erwin, Curator of Coleoptera at the National Museum of Natural History, supported the proposal and indicated that other rare insect species were restricted to vernal pool habitats. Mr. James Day, an attorney representing private landowners in the proposed Critical Habitat area, opposed listing of the beetle and designation of Critical Habitat. Mr. Day feared that listing and Critical Habitat designation could destroy the development potential of the land, particularly with regard to oil and gas exploration and development. Mr. Day stated that the economic value of the delta green ground beetle did not justify the economic effects of listing and Critical Habitat designation on his clients' land, and that insufficient search had been made for the beetle in other areas. He also included a report prepared by Mr. Patrick W. Weddle, a consulting entomologist, who stated that the delta green ground beetle was of no economic value and that little effort had been made to search other areas for the beetle.

At the May 22 public hearing, a Solano County representative questioned the adequacy of the notification procedures regarding the proposal. This comment was identical to that summarized below for the public hearing.

At the June 12 public hearing concerning the delta green ground

beetle, one statement relating to this species was made. Mr. Richard Brann, a Solano County Supervisor, objected to the locality of the public meeting and hearing, to the Service's public notification procedures, and to the Service's failures to contact public officials in the listing process and to prepare an economic analysis of the effects of Critical Habitat designation.

Conclusion

The Service has considered changes in Critical Habitat boundaries suggested by the California Department of Fish and Game and State Water Resources Control Board, and has incorporated these changes into its final Critical Habitat designation. These changes involve including a portion of Olcott Lake outside the proposed Critical Habitat boundaries, and elimination of two areas which appear to be unsuitable as habitat for the beetle. Regarding the proposed wastewater project for the city of Vacaville, and Phase II of the North Bay Aqueduct, the Service is in contact with the State and Federal personnel involved with these projects and anticipates little, if any, conflict based on current proposals and planning for the projects. With respect to Mr. Brazelton's and Mr. Brann's comments, the Service has complied with all procedural requirements of the Endangered Species Act. Specifically, in reference to the points raised by the comments, the Service prepared a draft economic analysis at the time of the reproposal of Critical Habitat, and this document was sent to local governments adjacent to the proposed Critical Habitat area. The anticipated economic effects were also summarized in the reproposal of Critical Habitat for the beetle. This document has been made final and concludes that the action taken here will have no significant economic effect in the foreseeable future. Regarding Mrs. Davis' proposal to transplant the beetle to a game refuge, the Service notes that the Endangered Species Act generally intends conservation of the listed species within its ecosystem. As a practical matter, transplantation is usually not biologically feasible. With respect to Mrs. Petersen's comments, the Service has no intent to confiscate State lands and notes that nearly all the land within the designated Critical Habitat is in private ownership. Critical Habitat designation does not involve seizure of land; it is essentially a notification to Federal agencies of the presence of an Endangered or threatened species in the area. In response to the comments and information provided by Mr. Day, the Service notes that the economic value of

a species is not a criterion for listing the species as Endangered or Threatened. The Service does not believe that Critical Habitat designation will significantly affect the rights of his clients to exercise the mineral rights which they hold on a quarter-section of land within the Critical Habitat. The Service knows of no Federal authorization or funding involving oil and natural gas exploration in this area. Should Federal involvement arise, the relevant agencies would be required to insure that their actions would not be likely to jeopardize the continued existence of the beetle. Federal agencies already have this responsibility in the areas surrounding Olcott Pond due to the presence of the federally Endangered Orcutt's grass (*Orcuttia mucronata*) which occurs only around the pond. The Service recognizes that the delta green ground beetle may be found at other localities, but the specialized habitat believed necessary for this beetle's survival is highly restricted, and intensive search has been made at many other vernal pools in Solano County without revealing the presence of the beetle.

After a thorough review of all the information available, the Director has determined that the delta green ground beetle is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range. Two of the five factors described in section 4(a) of the Act, and affecting the beetle, were outlined in the August 10, 1978, proposal (43 FR 35636-43) to list the beetle as Threatened. The five criteria and their application to this species are described below:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The delta green ground beetle was first collected in 1876 from an unknown locality in California and was not rediscovered until 1974. Its habitat is precariously small, limited to the edges of two vernal pools in Solano County, California. Vernal pools, which are filled by winter rains and dry out by late summer, were once widespread throughout California, but only a few remain. Many vernal pools have been lost to river channelization (loss of overflow), dam construction, and the agricultural conversion of natural habitats. The Service believes that the delta green ground beetle had a more extensive range in historical time. Elimination of the two vernal pools by agricultural conversion or other causes may cause the beetle's extinction. Plowing and land levelling may have

already adversely affected the beetle at one of the vernal pools.

2. *Overutilization for commercial sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation.* This factor is not known to affect the present status of this species.

4. *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws which insure the conservation of this species and its habitat.

5. *Other natural or manmade factors affecting its continued existence:* None.

Critical Habitat

Subsection 4(a)(1) of the Act states in pertinent part:

At the time any such regulation (to determine a species to be Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

50 CFR Part 424 defines Critical Habitat as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service had concluded that two areas in Solano County, California should be designated as Critical Habitat for the delta green ground beetle. These areas include the only two known sites where populations of the beetle occur. The known biological and physical constituent elements in the Critical Habitat which are essential to the conservation of the delta green ground beetle are included below in the description of Critical Habitat for this species. As noted above, the Critical Habitat originally proposed has been modified in the manner suggested by State agencies.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are minor for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.31 pertaining to Threatened Wildlife will apply to the delta green ground beetle. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, 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 this species. It also will be illegal to possess, sell, deliver, carry, transport or ship any specimen illegally taken. Certain exception will apply to agents of the Service and State conservation agencies. Permits for specified purposes will be available in accordance with 50 CFR 17.32.

Section 7(a) of the Act provides:

Federal Agency Actions and Consultations:

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption of such action by the Committee pursuant to Subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 or result in the destruction or adverse modification of Critical Habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in Subsection (a).

Provisions for Interagency Cooperation were published in the *Federal Register* on January 4, 1978 (43 FR 870-876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued will require Federal agencies to satisfy these statutory and regulatory obligations with respect to the delta green ground beetle. These agencies will be required not only to

insure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of this species, but also to insure that their actions are not likely to result in the destruction or adverse modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the delta green ground beetle:

1. Agricultural practices threaten this species. Bulldozing and plowing near one of the vernal pools where the beetle has been collected may have eliminated it at this site.

2. Phase II of the North Bay Aqueduct and wastewater disposal for the city of Vacaville could adversely affect the Critical Habitat of the beetle if the needs of this species are not considered. There is Federal involvement with both of these projects. The agencies planning these activities are aware of the presence of the delta green ground beetle and the federally Endangered Orcutt's grass in the area, and are considering possible impacts of their proposed actions on these species. As noted above, the Service anticipates little, if any, conflict based on current proposals and planning for these projects.

3. Oil or natural gas exploration and exploitation, if conducted without regard for the ecosystem represented in the Critical Habitat, could adversely affect the area. The Service has no information indicating that Critical Habitat designation will prevent these activities within or adjacent to the Critical Habitat.

Effect Internationally

The Service will review the status of the delta green ground beetle to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. Michael M. Bentzien, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

Note.—Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, Subparts B and I of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

§ 17.11 [Amended]

1. Section 17.11 is amended by adding the delta green ground beetle to the list alphabetically, under "Insects" as indicated below:

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|----------------------------|-------------------------|---------------------|--|--------|-------------|------------------|---------------|
| Common name | Scientific name | | | | | | |
| Beetle, delta green ground | <i>Elaphrus viridis</i> | U.S.A. (California) | N/A | T 99 | § 17.95(i) | N/A | |

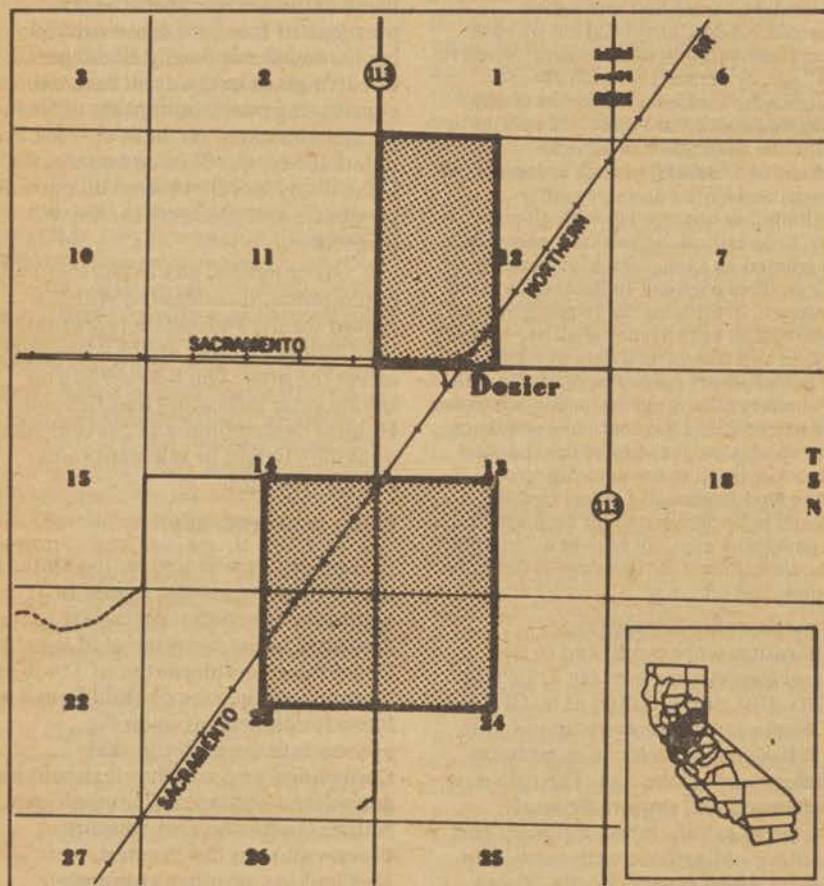
§ 17.95 [Amended]

2. Section 17.95(i) is amended by adding Critical Habitat for the delta green ground beetle, alphabetically, as follows:

Delta Green Ground Beetle

Elaphrus Viridis

California. Solano County. T.5N. R.1E. West ½ Sec. 12, southwest ¼ Sec. 13, southeast ¼ Sec. 14, northeast ¼ Sec. 23, northwest ¼ Sec. 24.



Known constituent elements essential to the continued existence of the delta green ground beetle are the vernal pools with their surrounding vegetation, and the land areas which surround and drain into these pools.

Dated: August 1, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

[FR Doc. 80-23900 Filed 8-7-80; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 653

Atlantic Herring Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/Commerce.

ACTION: Promulgation of Final Regulations.

SUMMARY: These final regulations implement Amendment No. 3 (Amendment) to the Fishery Management Plan for the Atlantic Herring Fishery of the Northwest Atlantic (FMP).

The major provisions of the Amendment are as follows:

- (1) Redefinition of the fishery management unit;
- (2) Establishment of new optimum yields (OYs);
- (3) Allocation of the Gulf of Maine OY;
- (4) Establishment of new area/period harvest allocations.

Proposed regulations and the Amendment were published March 12, 1980 (45 FR 15955); public comment was invited for a 60-day period.

EFFECTIVE DATE: August 27, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts, 01930, Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: The FMP for the Atlantic Herring Fishery was prepared by the New England Fishery Management Council (Council) and approved in December, 1978 by the Assistant Administrator for Fisheries,