without notice overlooks the circumstances under which the center high mounted stop lamp was made subject to a prohibition against flashing. Although the preamble to the proposed rule did not raise the issue and the commenters did not address it, the specific text of the amendment, taken in context with the other requirements of the standard, required the center high mounted stop lamp to be steady-burning. However, the agency recognizes that it was a reasonable reading of the proposal for the commenters to believe that the light could be flashing. Thus, in order to avoid imposing a burden on vehicle manufacturers due to their interpretation, the May 1984 amendment allowed the lights to flash on vehicles manufactured before September 1, 1986.

The factual situation differs greatly from that of *Wagner*. Before the amendment complained of by Wagner, flashers were required to be "designed to conform" to Standard No. 108, but the burden of certification was upon vehicle manufacturers as aftermarket equipment was not covered until January 1, 1972. NHTSA amended the standard without sufficient notice to apply it to all flashers, for whatever purpose manufactured, thus placing the certification responsibility entirely upon flasher manufacturers. Further, the flashers were required to "conform", not merely be "designed to conform". In the instant case, the effect upon flasher manufacturers is a remote one. In order to facilitate early adoption of a safety device with demonstrable public benefits, at a minimum cost, the agency has allowed vehicle manufacturers to continue to use existing wiring systems for a limited time, if they so choose. There is no requirement that the new lamp flash when the hazard warning signals do, there has been no change to existing Federal or SAE materials applicable to flashers, and given the perceived limited use of the new lamp during 1985 model production, there would appear to be minimal impact upon original equipment and aftermarket requirements for flashers of existing designs. Nor can NHTSA provide an interpretation that certification for flashers may exclude the center mounted lamp. That permission is already implicitly contained in Standard No. 108 which allows the manufacturer to specify the design load at which its flasher is intended to operate. Accordingly the agency has decided to deny Parker Hannifin's petition.

NHTSA has considered the potential impacts of this rule and has determined that the rule is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation guidelines. The conclusions in the original regulatory evaluation for the final rule are not affected by the adoption of this rule. A free copy of that evaluation is available from the Docket Section.

The agency has also considered the impacts of these amendments under the Regulatory Flexibility Act. I certify that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by this amendment, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small organizations and governmental units which purchase cars equipped with center high-mounted stop lamps will not be significantly affected. The increase in new car prices for vehicles manufactured by companies which opt for early compliance will be negligible.

Because motor vehicle manufacturers must make timely decisions with respect to plans for the 1985 model year and because this amendment will facilitate the early introduction of a safety device, the agency finds that an effective date, earlier than 180 days after issuance of the final rule, is in the public interest. The change adopted in this notice relieves restrictions. Additional notice and comment on the August 1, 1984 early compliance date is unnecessary because of the minor nature of the change from the proposal.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing, 49 CFR 571,108 Motor Vehicle Safety Standard No. 108, is amended as follows:

1. A new paragraph S4.1.42 is added to read:

S4.1.1.42 A passenger car manufactured between August 1, 1984, and September 1, 1985, may be equipped with a high-mounted stop lamp that conforms to S4.3.1.8.

2. Paragraph (b) of paragraph S4.6 is amended by changing the date "September 1, 1985" to "August 1, 1984".

The engineer and attorney primarily responsible for this rule are Kevin Cavey and Taylor Vinson, respectively.

(Secs. 103, 119 Pub. L. 89-563; 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued: August 24, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-23045 Filed 8-29-84; 11:16 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1220

[No. 38849]

Review of Preservation of Records Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; notice of effective date.

SUMMARY: The purpose of this Notice is to specify the effective date of the final rules published at 49 FR 3477, January 27, 1984. The effective date has been pending due to review and approval by the Office of Management and Budget. The effective date is June 6, 1984.

The objective of the Commission's review in the original order was to determine the relevance of each record, the appropriateness of the prescribed retention periods, and the purpose for which each record is needed for the Commission's regulatory mission. For many records, the retention periods were reduced or the recordkeeping requirements were eliminated.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, (202) 275-7448.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1220

Preservation of records.

Authority: 49 U.S.C. 10321 and 11145 and 5 U.S.C. 553.

James H. Bayne,

Secretary.

[FR Doc. 84-23169 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Yaqui Chub To Be an Endangered Species with Critical Habitat, and To Determine the Beautiful Shiner and the Yaqui Catfish To Be Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Yaqui chub (*Gila purpurea*) to be an endangered species, and the beautiful shiner (*Notropis formosus*) and the Yaqui catfish (*Ictalurus pricei*) to be threatened species. Critical habitat on the San Bernardino National Wildlife Refuge (NWR) is designated for these three fishes. A special rule is included to allow take of the threatened species for educational, scientific, and conservation purposes in accordance with Arizona State laws and regulations. This determination is being made because populations of these species have been seriously reduced by habitat modifications including arroyo cutting, water diversion, impoundment construction, development of canal systems for irrigated agriculture, and excessive pumping of underground aquifers. An imminent threat to the remaining populations of Rio Yaqui fishes is the possible release of exotic fish such as the red shiner and channel catfish, which may result in intense competition and/or genetic swamping. The Rio Yaqui fishes occur in the Rio Yaqui Basin which drains western Sonora and portions of eastern Chihuahua in Mexico, and the extreme southeastern corner of Arizona. The Yaqui chub also has been recorded from the Rio Sonora and Rio Matape on the Pacific slope of Mexico, and the beautiful shiner formerly inhabited small drainages in the closed Guzman Basin, including Rio Mimbres in New Mexico, and the Casa Grandes, Santa Maria, and Del Carmen, just east of the Rio Yaqui. This action provides the protection of the Endangered Species Act of 1973, as amended, to these species.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

FOR FURTHER INFORMATION CONTACT: Dr. James E. Johnson, Regional Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972) or 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

All of the Rio Yaqui fishes addressed in this rule were first collected and described from San Bernardino Creek, just south of the Arizona-Sonora border, in the latter half of the 19th century (Girard, 1856; Rutter, 1896). Adult Yaqui chubs are known to inhabit pools and undercut banks in permanent streams. The beautiful shiner is found in a variety of habitats, but the largest populations occur in the riffles of small streams. Yaqui catfish are usually found in large streams in areas of medium to slow current. Besides the above information on basic habitat preferences, little is known about the biology of the Rio Yaqui fishes. The biology of the beautiful shiner and the Yaqui catfish is thought to be similar to that of the red shiner and the channel catfish, respectively.

In the past, these fishes were found throughout the Rio Yaqui basin and in a few smaller adjacent drainages (Branson, 1960; Contreras-Balderas, 1975; Hendrickson, 1980; Koster, 1957; McNatt, 1974; Miller, 1977; Miller and Simon, 1943; Minckley, 1973). The range of these species has been significantly reduced, primarily due to habitat destruction. Remaining populations are in danger of being subjected to intense competition and genetic swamping through the indiscriminate release of closely related exotics (e.g., red shiner and channel catfish).

The Yaqui chub was considered by the Service for listing in 1966 and 1973, but no action was taken because its status in Mexico was undetermined (Bur. Sport Fish. Wildl. Res. Publs. 34 and 114). A list published in March of 1979 by the Endangered Species Committee of the American Fisheries Society recommended special concern for the status of the beautiful shiner and the Yaqui catfish, and described the Yaqui chub as endangered (Deacon *et al.*, 1979).

In 1978, the Fish and Wildlife Service contracted with biologists from Arizona State University and the University of Michigan to survey the status of fishes in the Rio Yaqui system of Mexico (Hendrickson *et al.*, 1980). These workers found only one specimen of the Yaqui chub after extensive collection efforts throughout the Rio Yaqui drainage. They also noted range reductions for the beautiful shiner and the Yaqui catfish and expressed concern for the status of these species.

The Yaqui chub, beautiful shiner, and Yaqui catfish were included on the December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 includes those taxa for which the Service has substantial information on hand to support the appropriateness of proposing to list the species as endangered or threatened. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list the Yaqui chub. Evaluation of this petition by the Service found that substantial information had been presented indicating that the petitioned action may be warranted. A notice of this finding was published on June 14, 1983 (48 FR 27273). Finding on the merits that the petitioned action was warranted, the Service on July 15, 1983, published a proposed rule to determine the Yaqui chub to be an endangered species with critical habitat, and the beautiful shiner and Yaqui catfish to be threatened species with critical habitat (48 FR 32527).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32527) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, foreign governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in "The Douglas Daily Dispatch" in Douglas, Arizona, on October 8, 1983, which invited general public comment. A total of five written comments were received on the proposal, one each from the Arizona Game and Fish Department, the Arizona Department of Water Resources, the Bureau of Land Management (BLM), the U.S. Forest Service, and the Mexico Direccion de Flora y Fauna Silvestre (Directorate of Wild Flora and Fauna). No public hearing was requested or held.

The Arizona Game and Fish Department submitted comments supporting the proposal and expressing concern about proposed geothermal exploration on the BLM lands in the San

Bernardino Valley and its possible adverse effects on the waters of the San Bernardino NWR. The Service responded that, while leasing of such resources has occurred, any further actions, such as drilling, would be subject to consultation with the Service under Section 7 of the Endangered Species Act.

The Arizona Department of Water Resources and the BLM submitted comments stating that they knew of no activities that would be affected by the proposal. The U.S. Forest Service responded that they had no opposition to the proposal, and commented that they knew of no potential habitat on their lands for suitable reintroduction of any of the three species.

The Mexico Direccion de Flora y Fauna Silvestre submitted comments expressing their concern for these species and their support for the Service's conservation efforts for these species. These comments also outlined problems these species face in Mexico.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Yaqui chub (*Gila purpurea*) should be classified as an endangered species, and that the beautiful shiner (*Notropis formosus*) and the Yaqui catfish (*Ictalurus pricei*) should be classified as threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) 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 these species are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All three species of Rio Yaqui fish are seriously affected by a variety of habitat modifications. These species existed in San Bernardino Creek, Arizona, until the spring flows supporting the creek diminished and the remaining aquatic habitat was destroyed by cattle. Arroyo cutting, diverting stream headwaters, construction of impoundments, and excessive pumping of underground aquifers are responsible for the reduction of permanent stream habitat and for failing springs. The remaining U.S. populations of Yaqui chub are limited to a few springs on the San Bernardino NWR (USFWS, 1979) and to Leslie Creek (Silvey, 1975), both in southeastern Arizona, and are threatened by a gradually dwindling spring flow. The shiner and Yaqui catfish have been extirpated from the United States. Many river systems in Mexico, especially in lowland areas, have been highly modified into canal systems for irrigation agriculture. These alterations destroy pool habitats and have adverse impacts on fish populations.

The San Bernardino Valley is known to have potential geothermal energy resources (Hahman, 1979), although the area is not a Known Geothermal Resource Area (KGRA). The BLM has issued leases for geothermal resources on some of their lands adjacent to the San Bernardino NWR. Exploration and development of these leases could potentially cause depletion or pollution of the underground aquifers that supply water to the springs of the refuge, and could thereby result in loss of pollution of the flows of those springs. However, if exploration and development are properly designed and regulated, such effects are not expected (Cheremisinoff and Morresi, 1976).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These fishes are not used for any commercial purposes, and past scientific collecting has had no impact on existing populations.

C. *Disease or predation.* Introduced predatory fishes, such as largemouth bass, bluegill, black bullhead, channel catfish, and green sunfish are present in some portions of the remaining range of the Rio Yaqui fishes, and probably prey opportunistically on them. The threat of such predation will continue to increase in the remaining habitats of these species in Mexico. This threat is minor at present in U.S. habitats, and steps are already being taken to alleviate it.

D. *The inadequacy of existing regulatory mechanisms.* The Yaqui chub is listed as a Group II species on the threatened and unique wildlife list of Arizona (Ariz. Game and Fish Comm., 1982). Species listed as Group II are defined as beign endangered of being eliminated from the State. Arizona law allows take of Yaqui chub under a scientific collecting permit, or under a valid fishing license by angling. The beautiful shiner and the Yaqui catfish are listed in Group I of the Arizona list of threatened native wildlife (species extirpated from Arizona that still exist elsewhere, and which may possibly be reestablished in Arizona). Because Group I species do not exist in the State, Arizona law does not officially protect them. However, if reestablished, these fishes would probably be relisted as Group II species and their take would be regulated by the State. Arizona law does not provide protection of essential habitat. The Rio Yaqui fishes receive no protection in Mexico.

E. *Other natural or manmade factors affecting its continued existence.* Extant populations of the beautiful shiner and the Yaqui catfish are seriously threatened by the introduction of closely related exotic species. Future releases of the red shiner, *Notropis lutrensis* (currently, widely established in Arizona), into the Rio Yaqui system may reduce beautiful shiner populations through competition or by genetic swamping. The Yaqui catfish may be similarly affected by expanding populations of the channel catfish (*Ictalurus punctatus*) and blue catfish (*Ictalurus furcatus*) that are already established in the Rio Yaqui drainage. This type of interaction has been shown to be detrimental to other native fishes, as illustrated by the rapid elimination of native Yaqui topminnow (listed as endangered and found in the same drainage) populations after introduciton of the closely related common mosquitofish (*Gambusia affinis*), documented by Minckley (1973), Schoenherr (1973) and others. The introduction of exotics in Mexico is expected to continue at an increased rate as the interior portions of Sonora and Chihuahua are developed. The establishment of exotic species in Mexico may also result in intense competitive pressure on existing populations of the Yaqui chub.

This action is the result of careful assessment of the best scientific information available, as well as the best assessment of the threats faced by these fishes. Based on this evaluation, it was determined that the beautiful shiner and Yaqui catfish are threatened species, and the Yaqui chub is an endangered species. as defined by section 3 of the Act. Threatened status for the beautiful shiner and Yaqui catfish seems appropriate based on their status and distribution in Mexico and because of the threats to their remaining habitat in the U.S. and Mexico. The Yaqui chub faces similar threats and has a more restricted distribution in Mexico. Endangered status for the Yaqui chub is most appropriate. If these fishes are not listed their status could continue to decline.

Critical Habitat

The Act and 50 CFR Part 424 define critical habitat as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of the Act, upon determination by the Secretary that such areas are essential for the conservation of the species.

The Act in section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the Rio Yaqui fishes as follows: Arizona, Cochise County: All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S R30E.

The known constituent elements for the Rio Yaqui fishes include clean, small, permanent streams and spring pools without any exotic fishes. The streams should have deep pool areas separated by riffles and flowing areas with moderate current. Backwater areas of stream and springs with overgrown cut banks and accumulations of detritus are necessary for feeding and shelter. The Service has determined that these physical or biological features are essential to the conservation of these species.

Section 4(b)(8) of the Act requires that any proposed or final regulation which designates critical habitat be accompanied by a brief description and evaluation of those activities which may adversely modify such habitat if undertaken, or may be affected by such designation. Any activity which would lower the ground water level to the extent that the water flow from springs on San Bernardino NWR would be reduced could adversely impact the critical habitat. Such activities include, but are not limited to, pumping of ground water for agricultural purposes, and drilling activities associated with geothermal exploration. Any activity which would significantly alter the water chemistry of springs on San Bernardino NWR could adversely impact the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into surface or underground waters at a point source or by dispersal release. An additional activity which could adversely impact critical habitat is the release of exotic or nonnative fishes. Predation and competition from these introductions could reduce or eliminate populations of the endangered and threatened fishes.

The aquatic habitats of San Bernardino NWR, designated as critical habitat, provide habitat for one of the two existing populations of Yaqui chubs. Additionally, the aquatic habitats on San Bernardino Refuge provide expansion habitat for the Yaqui chub and are considered prime reintroduction sites for the beautiful shiner and Yaqui catfish.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the proposed critical habitat designation for the Rio Yaqui fishes, taking into consideration all additional information and comments received. The information brought forward on economic or other impacts did not warrant adjustment of the proposed critical habitat designation. Activities that may be affected by the designation of critical habitat are discussed in the Available Conservation Measures section of this rule.

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 land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Recovery actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Yaqui chub, beautiful shiner and Yaqui catfish, and requires them to ensure that their actions do not result in the destruction or adverse modification of these critical habitats which have been determined by the Secretary. If a "may affect" determination is made, the Federal agency must enter into consultation with the Service. Regulations implementing this interagency cooperation provision are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983).

The only possible activity with Federal involvement that may potentially affect the designated critical habitat is geothermal exploration. This activity is beyond the boundary of the San Bernardino NWR, but could possibly affect underground aquifers supplying surface waters to the critial habitat. Geothermal exploration in the San Bernardino Valley is subject to Federal regulation and licensing by the BLM. It should be emphasized that critical habitat designation may not affect geothermal exploration activities in the vicinity. The designation of critical habitat for these species does not specifically preclude geothermal development in the area. Exploration activities will be allowed to proceed in the vicinity of critical habitat as long as artesian and surface water supplies at San Bernardino NWR are adequately protected.

The Act and implementating regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions which apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations codified at 50 CFR 17.22, 17.23, and 17.32 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not avaiable. In addition, the two species proposed as threatened, the Yaqui catfish and beautiful shiner, have a special rule which will allow take for educational, scientific, or conservation purposes in accordance with applicable State laws and regulations. Any violation of applicable State law would be a violation of the Endangered Species Act. At present no State laws or regulations are applicable to the Yaqui catfish or beautiful shiner, because neither species is presently found in Arizona. When the reintroduction of

these species into Arizona waters occurs, the State will regulate taking in accordance with already existing laws and regulations regarding fishes. This special rule will allow these fishes to be managed as threatened species, thus allowing for more efficient management of the species, and enhancing their conservation. Without the special rule, all prohibitions of an endangered species status would apply.

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, implemented through section 8(A)(e) of the Act, and whether they should be considered for other international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these fishes will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on a Determination of Effects which is available at the U.S. Fish and Wildlife Service Regional Office (see **ADDRESS** section).

The following information was considered in determining the economic and other impacts that might result from the determination of critical habitat.

Agriculture, primarily cattle production, constitutes the primary product of the areas surrounding the critical habitat. These activities are not expected to affect or be affected by the critical habitat designation on the San Bernardino NWR.

Some interest had been shown in potential geothermal resources in the vicinity of San Bernardino NWR. Geothermal drilling might possibly affect the underground aquifer supplying surface waters at San Bernardino NWR, the critical habitat of the Rio Yaqui fishes. Any exploration activities, however, are subject to regulation and licensing by the BLM. The adjacent area is not a KGRA and there are currently no leases or any interest in that area that would affect or be affected by the critical habitat designation.

The final critical habitat designation for the threatened and endangered Rio Yaqui fishes should cause no additional impacts upon the present economic status of Cochise County.

The final rule designating critical habitat for three fish species contain no recordkeeping or information collection requirements as defined by the Paperwork Reduction Act of 1980.

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Authors

The primary authors of this rule are Mr. Jim Bednarz, Ms. S.E. Stefferud, and Dr. James Johnson, U.S. Fish and Wildlife Service, Regional Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

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

Regulations 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 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following entry in alphabetical order under "FISHES" 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						
Fishes							
*	*	*	*	*	*	*	*
Catfish, Yaqui	*Ictalurus pricei*	U.S.A. (AZ), Mexico	Entire	T	157	17.95(e)	17.44(g)
Chub, Yaqui	*Gila purpurea*	U.S.A. (AZ), Mexico	Entire	E	157	17.95(e)	N/A
Shiner, beautiful	*Notropis formosus.*	U.S.A. (AZ, NM), Mexico.	Entire	T	157	17.95(e)	17.44(g)
*	*	*	*	*	*	*	*

3. Amend § 17.95(e) by adding critical habitat of the Yaqui chub after chub, Spotfin:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Yaqui Chub *(Gila purpurea)*

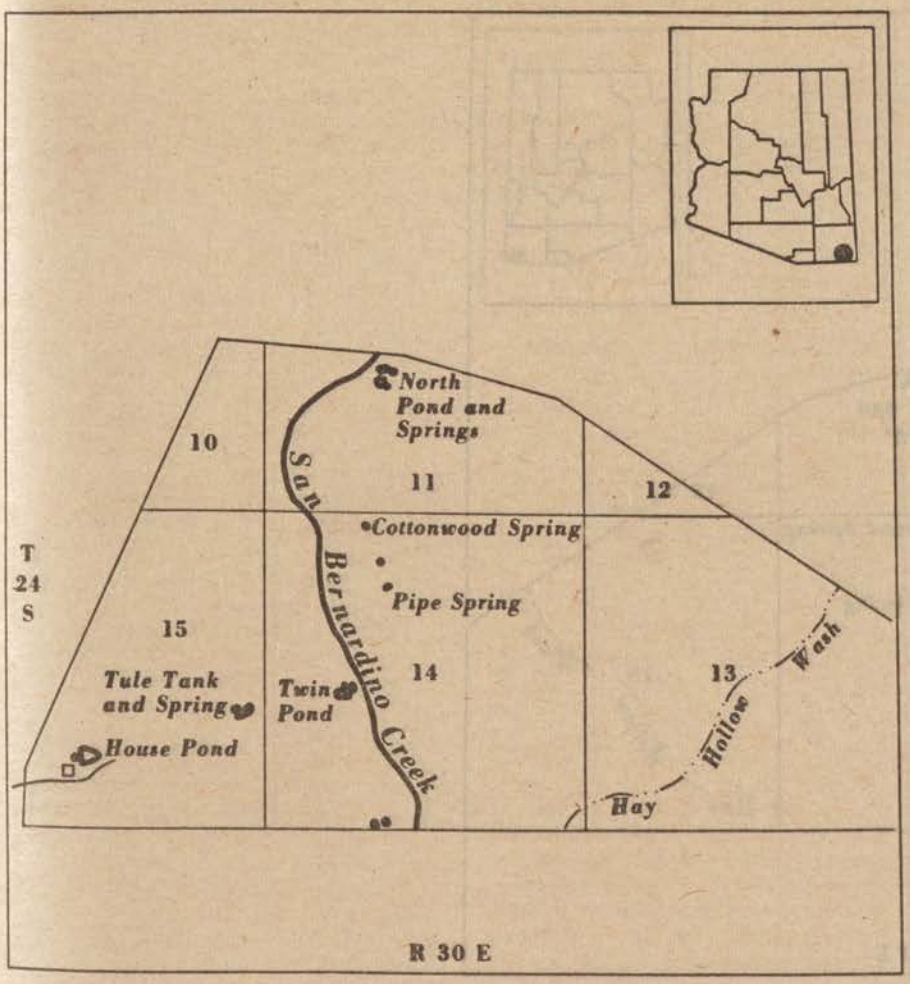
Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean permanent water with deep pools and intermediate areas with riffles, areas of detritus or heavily overgrown cut banks in the Rio Yaqui drainage, and the absence of introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA



* * * * *

4. Amend § 17.95(e) by adding critical habitat of the beautiful shiner after Pupfish, Leon Sprinep:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Beautiful Shiner *(Notropis formosus)*

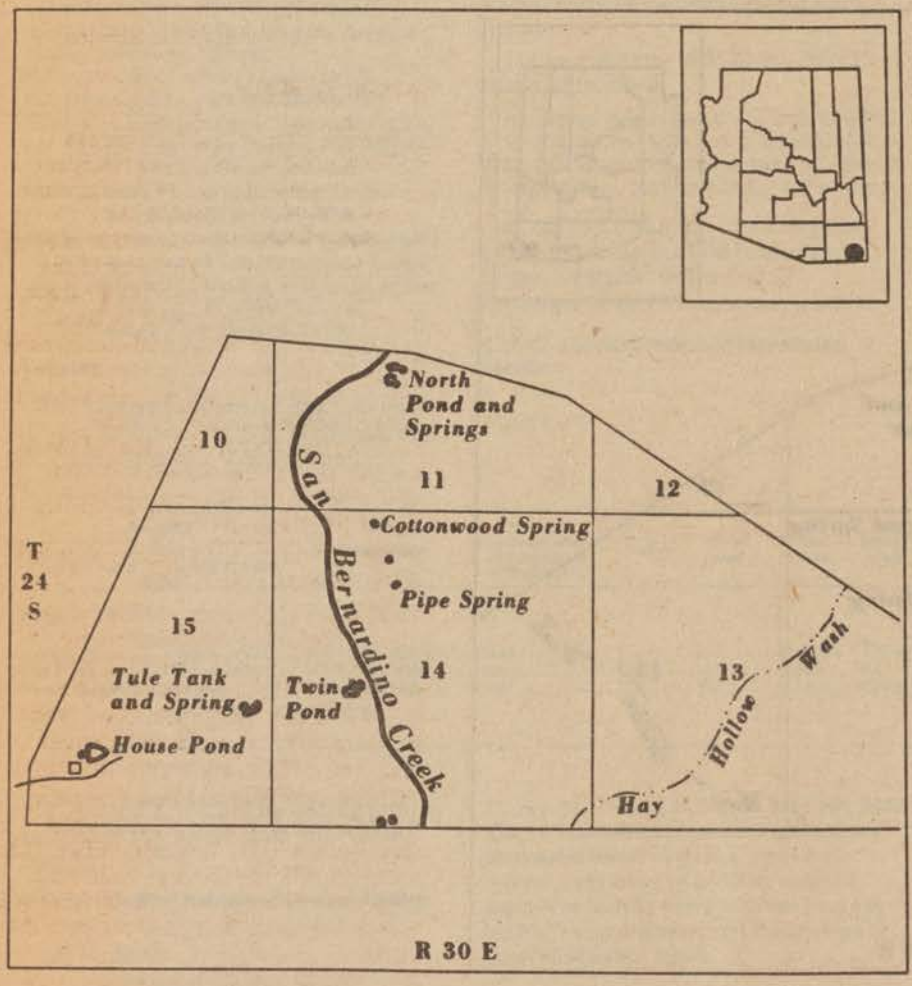
Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include small permanent streams with riffles, or intermittent creeks with pools and riffles in the Rio Yaqui drainage with clean unpolluted water. These waters should be free of introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA



* * * * *

5. Amend § 17.95(e) by adding critical habitat of the Yaqui catfish before Cabefish, Alabama:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Yaqui Catfish *(Ictalurus pricei)*

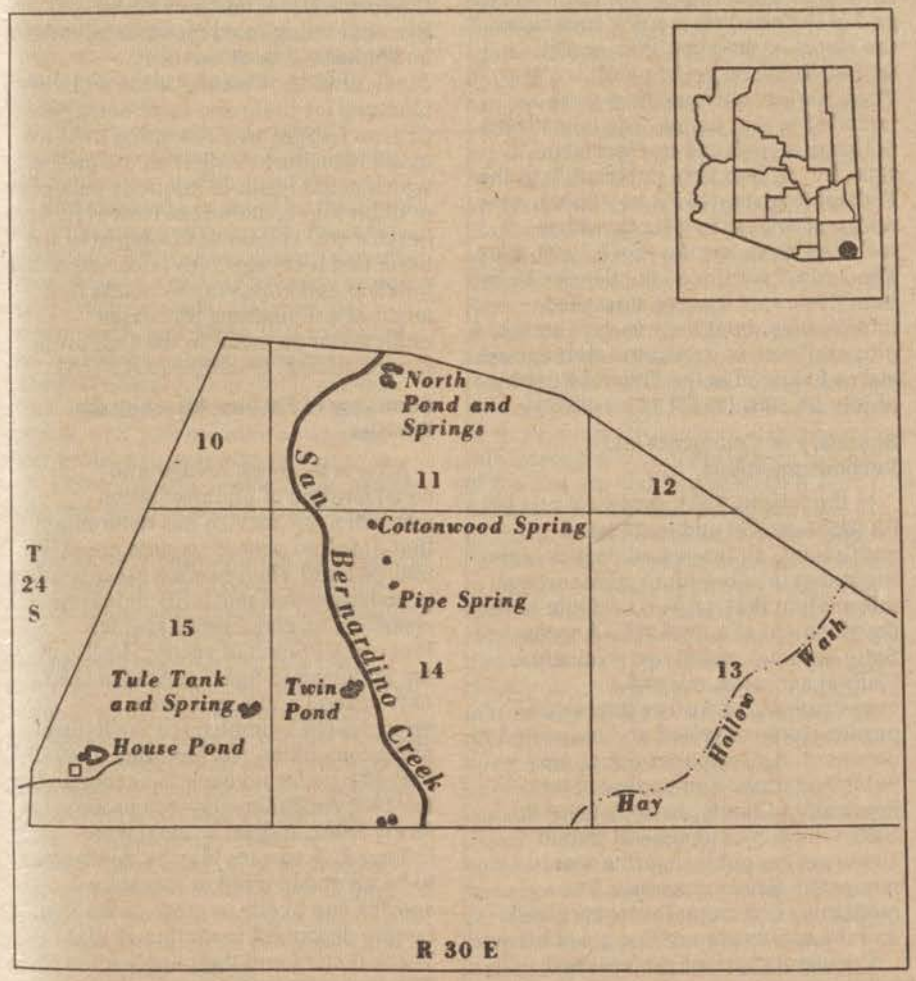
Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean unpolluted permanent water in streams with medium current with clear pools in the Rio Yaqui drainage. These waters should be without introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA



* * * * *

6. Amend § 17.44 by adding a new paragraph (h) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(h) Yaqui catfish (*Ictalurus pricei*) and beautiful shiner (*Notropis formosus*).

(1) All provisions of § 17.31 apply to these species, except that they may be taken for educational, scientific, or conservation purposes in accordance with applicable Arizona State laws and regulations.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-22933 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Thelypodium stenopetalum (slender-petaled mustard) and Sidalcea pedata (pedate checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thelypodium stenopetalum* (slender-petaled mustard) and *Sidalcea pedata* (pedate checker-mallow) to be endangered species. This action is being taken because over 85 percent of the historic meadowland habitat for these plants has been eliminated by dam construction and urban and commercial development. Most of the remaining habitat in their limited range is subject to development and/or adverse modification. The designation of these species as endangered provides the protection of the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Specialist, Regional Office, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea pedata (pedate checker-mallow) is a multi-stemmed, perennial herb of the mallow family. Asa Gray first described this species in 1887 from "Bear Valley in the San Bernardino Mountains, southern California." It grows from a fleshy taproot. The leaves are predominately basal with 3-5 lobes. The few cauline leaves are three-parted, each part biternately dissected into linear segments. The flowers are clustered into loosely spicate racemes

up to 25 cm long with deep pinkish-rose petals. *Thelypodium stenopetalum* (slender-petaled mustard) is an herbaceous short-lived perennial. Sereno Watson described this mustard in 1887 from "Bear Valley, San Bernardino Mountains, on stony hillsides near the upper lake." It has simple decumbent to subdecumbent stems 3–8 dm tall. The cauline leaves are oblong-lanceolate, 1–5 cm long, 0.5–0.9 cm wide and sagittate at the base. The inflorescence is a 1–2 dm long raceme. The flower petals are mostly lavender or whitish and crisped above. The sessile fruits are straight or slightly incurved, 3–5 cm long and ascending. Both of these plant species are localized in the moist alkaline meadows of the Big Bear Basin of San Bernardino County, California.

Although these species were once more abundant locally, the impoundment of Big Bear Lake in the late 1800's and subsequent urbanization have eliminated nearly all of the natural meadowlands of Big Bear Valley, an estimated reduction from more than 7,000 acres to about 1,000 acres. Most of the known stands of checker-mallow and mustard plants were destroyed by these activities. Almost all of the former wet meadow habitats necessary to the continued existence of these species have been eliminated. Both species now exist as very reduced populations having severly restricted distributions.

Studies supported by the U.S. Forest Service (Krantz, 1979) and later studies (Krantz, 1982) have estimated total occupied acreage for the pedate checker-mallow (including scattered residual plants) at about 14.5 acres. Total acreage of slender-petaled mustard populations has been estimated at approximately 16 acres divided among six sites in four general areas (Krantz, 1979, 1980, 1982).

At present the pedate checker-mallow remains in significant numbers only at three locations near Bluff Lake, Baldwin Lake, and the south shore of Big Bear Lake, all of which are under private ownership. Scattered individuals can also be found in a few other areas, mostly vacant lots or remnant meadows surrounded by housing or commercial developments. Such scattered plants apparently do not reproduce and are expected to die out.

The slender-petaled mustard is now known from only four locations, the south shore of Big Bear Lake, near Baldwin Lake, near Erwin Lake, and in Holcomb Valley. The first three are privately owned and under consideration for additional development. The fourth site, Holcomb Valley on National Forest land, was threatened by off-road vehicle (ORV) use. The Forest Service is aware of this population and has implemented protective measures at the site.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congresss on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the 1973 Act, and of its intention thereby to review the status of the plant taxa named within. *Sidalcea pedata* and *Thelypodium stenopetalum* were included in that notice. The July 1, 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new notice of review for plants, which included these species. On July 28, 1982, Tim Krantz petitioned the Service to list both these species, and furnished information about their current status. A proposed rule to determine endangered status followed in the **Federal Register** of July 15, 1983 (48 FR 32522–32525).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32522–32525) and associated notifictions, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Sun paper of San Bernardino County on September 9, 1983, which invited general public comment. No public hearing was requested. Seven responses (six containing comments) were received, and the comments are discussed below.

Comments by four professional botanists and one geologist strongly supported the listing of both plant species. A botanist with a State native plant society indicated that habitat conditions have deteriorated further since the status surveys of 1978–80. A university botanist also mentioned additonal documented habitat loss and present peril of these plants. A representative of a botanical journal pointed out that mountain meadows tend to be fragile and to recover their full floristic complement quite slowly after being overused. He considered protection of such areas to be essential. A professional geologist discussed the distinctive "pavement" soil profile in the Big Bear area and its concomitant unique flora. Because deep disturbances of the soil profile can permanently destroy the pavement habitat, he suggested that other rare pavement endemics be listed as well. No particular species were named by this commentor, but the Service presently has several species restricted to that general area under review, and would appreciate additional information regarding any of them.

An additional comment by the California Department of Water Resources suggested that critical habitat be designated to allow early consideration of these species in future planning for State and local activities. Critical habitat was not designated to avoid focusing attention on the plants, which could result in injurious collection or other taking activities. However, the Service will endeavor to keep affected State and local agencies informed of the location and status of the plants that might affect planning processes undertaken pursuant to the California Environmental Quality Act (CEQA).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard) should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) 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 *Sidalcea pedata* A. Gray (pedate checker-mallow) and *Thelypodium stenopetalum* Watson (slender-petaled mustard) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* These two plant species are both restricted in range to the few remaining wet alkaline meadows of the Big Bear Lake Basin. Both species occur in very low numbers and most of the wet meadows necessary for their continued existence have been eliminated by urban and commercial developments. About 80 percent of the

remaining habitat is subject to development, much of it anticipated in the next few years. In a few areas, off-road vehicle activity has also eliminated colonies and damaged habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to either of these species.

C. *Disease or predation.* Historically, cattle grazing in the Big Bear Lake basin probably affected the species composition of many of the meadow areas formerly supporting these plants. A few of the remaining colonies of both species still suffer possible adverse impacts from cattle grazing, but this threat appears less imminent than the development threats mentioned in Factor A above.

D. *The inadequacy of existing regulatory mechanisms.* Although the pedate checker-mallow and slender-petaled mustard are listed by the State of California as endangered, State law principally addresses salvage of plants when there is a change in land use and restrictions on trade, and does not provide sufficient protection to ensure survival of the species in its natural habitat. Federal listing would provide some additional protection for both species, and provide new options for their protection and management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the pedate checker-mallow and the slender-petaled mustard as endangered. Urban and commercial development threaten to eliminate wet meadow habitats that support the plants. These listing actions will increase the protection of both plant species. Critical habitat is not being designated for either species because it may focus attention on the plants and might encourage taking.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. All known colonies of pedate checker-mallow and all but one colony of slender-petaled mustard occur on private lands, where direct Federal involvement is minimal. Critical habitat designation would probably focus attention upon the listed plants and their rare and vulnerable status, and might encourage collection for private or commercial purposes. The danger thus posed to these species by the designation of critical habitat outweights the minimal protections that would be provided.

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 conservation actions be carried out for all listed species. Such actions are initiated by the Service following listing.

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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some consultation involving actions on Forest Service lands is anticipated. A consultation will be conducted for issuance of a special use permit for a permanent pipeline carrying wastewater from the Big Bear Basin to Lucerne Valley that now crosses Forest Service property. No other actions are presently known that would require a consultation under section 7.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the pedate checker-mallow and slender-petaled mustard, 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, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activites involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued since these species are not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to posession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to the slender-petaled mustard on U.S. Forest Service lands in the Holcomb Valley. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). Permits for exceptions to this prohibition are available through section 10(a)(1)(A) of the Act. It is anticipated that few permits for the removal and reduction to possession of the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether they should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined in regulations implementing 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).

Literature Cited

Krantz, T.P. 1979. A botanical investigation of *Sidalcea pedata*. Prepared for the San Bernardino National Forest. 24 pp. unpubl. rept.

Krantz, T.P. 1980. *Thelypodium stenopetalum*, the slender-petaled mustard: a botanical survey of the species throughout its range.

Prepared for the San Bernardino National Forest. 43 pp. + appendices, unpubl. rept.
Krantz, T.P. 1982. Petition for listing as Endangered-*Sidalcea pedata* and *Thelypodium stenopetalum*. Petition to U.S. Fish and Wildlife Service, dated 22 July 1982. 10 pp.

Authors

The primary authors of this rule are Mr. Monty D. Knudsen and Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, Sacramento, California (916/440–2791). Dr. George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

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

Regulations 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 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order by family and genus, 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					
* *	*	*	*	*		*
Brassicaceae—Mustard family:						
* *	*	*	*	*		*
Thelypodium stenopetalum	Slender-petaled mustard	U.S.A. (CA)	E	158	NA	NA
* *	*	*	*	*		*
Malvaceae—Mallow family:						
* *	*	*	*	*		*
Sidalcea pedata	Pedate checker-mallow	U.S.A. (CA)	E	158	NA	NA
* *	*	*	*	*		*

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23156 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Deregulate the Bahama Swallowtail Butterfly and To Reclassify the Schaus Swallowtail Butterfly From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service make a final determination to remove the Bahama swallowtail butterfly (*Heraclides (Papilio) andraemon bonhotei*) from the U.S. List of Endangered and Threatened Wildlife, and to reclassify the Schaus swallowtail butterfly (*Heraclides (Papilio) aristodemus ponceanus*) from threatened to endangered status. The action is taken under the authority of the Endangered Species Act of 1973, as amended. Both species occur in Dade and Monroe Counties, Florida, and were listed as threatened species in 1976. A recent review of the status of each of these species indicates that the Bahama swallowtail is only a sporadic resident of the United States. It is not subspecifically distinct from the non-threatened Bahaman population of this species and does not presently qualify for listing under the Endangered Species Act, as amended. The Schaus swallowtail has declined in numbers and range since the time of its listing. This action is consistent with a petition filed with the Service on March 9, 1983, by the Florida Game and Fresh Water Fish Commission, and also follows the recommendations of the approved Schaus swallowtail butterfly recovery plan. This rule removes the protection of the Endangered Species Act from the Bahama swallowtail, and affords the Schaus swallowtail the protection of endangered status. Neither species remains eligible for a special rule at 50 CFR 17.47 that permits non-commercial take of adults, so that special rule is deleted.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.–4:30 p.m.) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Bahama (*Heraclides (Papilio) andraemon bonhotei*) and Schaus (*Heraclides (Papilio) aristodemus ponceanus*) swallowtail butterflies are representatives of tropical species which reach their northern limits of distribution in southern Florida. The Bahama swallowtail was described by Sharpe in 1900. It has dark brown wings with a median yellow band and has two pairs of tails on the hindwings. The Schaus swallowtail was described by Schaus in 1911. Adults have blackish-brown wings with broad rusty patches under the hindwings. Only one pair of tails is present. The primary food of the larval Schaus swallowtail is torchwood (*Amyris elemifera*), while the larval Bahama swallowtail feeds on key lime (*Citrus aurantifolia*) and various *Ruta* and *Xanthoxylum* species.

The Bahama swallowtail has been recorded from Miami and Elliott Key, Dade County, and from Key Largo and Long Key, Monroe County. Most of the records are from Elliott Key. The best available evidence indicates that this species is not a permanent resident of the U.S., nor is it subspecifically distinct from the resident *Heraclides andraemon bonhotei* population in the Bahamas. This species has occasionally reproduced in the U.S., but apparently soon dies out. The most recent known breeding in the U.S. was on Elliott Key in 1972 (U.S. Fish and Wildlife Service, 1982).

The Schaus swallowtail originally occurred from the Miami area south through the Florida Keys as far as Lower Matecumbe Key. The last records from Miami were in 1924. Presumably, urban development eliminated the habitat of the species there. The last records for Upper and Lower Matecumbe Keys were in the mid-1940's.

The disappearance of the species from these Keys apparently coincided with heavy collecting pressure, although collecting is not known to have caused the decline. In the early 1970's, the butterfly was relatively abundant on north Key Largo, but appears to be rare there now. The known range of the Schaus swallowtail is now Elliott and Old Rhodes Keys in Biscayne National Park, Dade County, and north Key Largo, Monroe County (Loftus and Kushlan, 1982; U.S. Fish and Wildlife Service, 1982).

Both the Bahama and Schaus swallowtail butterflies are restricted to tropical hardwood hammocks, which constitute the climax vegetation of upland areas in the Florida Keys. Formerly, this vegetation type occurred more widely in south Florida, but has been largely eliminated on the mainland. The hammocks are closely related floristically to the West Indies, and constitute the only tropical upland

plant community found in the continental U.S. The Florida Keys contain the largest remaining hammocks, but many of the areas are highly subject to development pressures because of restrictions on development in the surrounding lowland (mangrove) areas. Local, State, and Federal laws presently limit development on these wetlands. The hammocks contain a large number of plant species rare to Florida, many of which are considered threatened or endangered by this State. The tropical hardwood hammock plant community is considered to be one of the most restricted and vulnerable habitat types in the U.S.

Both butterflies were proposed for listing as federally threatened on April 22, 1975 (40 FR 17757). The proposal was made final on April 8, 1976 (41 FR 17736). The final regulation included a special rule at 50 CFR 17.47(a) exempting both species from some of the protective provisions available to threatened species under 50 CFR 17.31. Non-commercial take of adults was allowed, provided that other local, State, and Federal regulations were complied with. Chapter 39–27 of the Florida Administrative Code, however, presently lists the Bahama and Schaus swallowtail butterflies as threatened, and prohibits take, possession, sale or transport of all life stages of these species, except by permit. The Federal special rule is superseded by Florida State legislation, because the special rule allows take of adults only where the take would be in compliance with all other local, State, and Federal regulations. Section 6(f) of the Endangered Species Act allows State taking prohibitions to be more restrictive than those imposed by the Act or its implementing regulations.

Section 4(c)(2) of the Endangered Species Act, as amended, requires that a 5-year review of the List of Endangered and Threatened Wildlife be carried out to determine whether any species should be removed from the list or changed in status. A 5-year review notice for the Bahama and Schaus swallowtail butterflies was published by the Service in the February 27, 1981, **Federal Register** (46 FR 14652).

At the time the Bahama swallowtail was listed, the Endangered Species Act allowed protection for distinct population segments of all types of wildlife. The 1978 Amendments to the Act restricted protection at the population level to vertebrates. Since the U.S. populations of the Bahama swallowtail are not subspecifically distinct from the Bahaman populations, and since the subspecies *bonhotei* is not in danger of extinction throughout all or a significant portion of its range, the Act, as amended, requires that this species be removed from the List of Endangered and Threatened Wildlife.

The Florida Game and Fresh Water Fish Commission recently carried out research on the status of the Bahama and Schaus swallowtail butterflies. The studies were funded in part with funds provided by the Service under Section 6 of the Endangered Species Act. The results of this research were incorporated into a recovery plan for the Schaus swallowtail butterfly, including recommendations for the Bahama swallowtail (U.S. Fish and Wildlife Service, 1982). The plan recommended that the Bahama swallowtail be delisted, and that the Schaus swallowtail be reclassified from threatened to endangered, based on its decline in numbers and distribution.

In a petition dated February 23, 1983, and received March 9, 1983, the Florida Game and Fresh Water Fish Commission requested that the Schaus swallowtail be reclassified as an endangered species. An administrative finding that the requested action might be warranted was made on May 9, 1983.

On August 29, 1983, the Service published in the **Federal Register** (48 FR 39096) a proposal to delist the Bahama swallowtail and to reclassify the Schaus swallowtail butterfly from threatened to endangered. Publication of this proposed rule signified that the requested action was warranted, and constituted a required finding in accordance with section 4(b)(3)(B)(ii) of the Act as amended in 1982.

Summary of Comments and Recommendations

In the August 29, 1983, proposed rule (48 FR 39096) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Miami, Florida, *Herald* on September 25, 1983, and in the Tavernier, Florida, *Keynoter* on September 22 and 29, 1983; general comment on the proposal was invited. Eight comments were received.

Florida's Department of Natural Resources (Division of Parks and Recreation) and Department of Agriculture and Consumer Services (DACS) supported the proposals. DACS noted, however, that *Heraclides aristodemus* specimens from Andros Island in the Bahamas appeared to be indistinguishable from those in the Florida Keys. Bahaman populations of *Heraclides aristodemus* are presently ascribed to the subspecies *driophilus*. Another commenter, a lepidopterist, also supported the proposal. He indicated that there was evidence that the Cuban population of *Heraclides ponceanus* (presently ascribed to the subspecies *telmenes*), might also be identical to the Florida populations of *ponceanus* but that there is not presently sufficient data to substantiate this. The Service responds that, with respect to the taxonomic status of *Heraclides aristodemus*, the current scientific literature considers *Heraclides aristodemus ponceanus* to be restricted to the Keys of Monroe and Dade Counties, Florida. If at any time revisionary work were to indicate that *ponceanus* should be synonymized with one or more of the other subspecies of *Heraclides aristodemus*, the Service would review the status of the Schaus swallowtail with respect to section 4(a) of the Endangered Species Act. If the taxon were not in danger of extinction throughout all or a significant portion of its range, or likely to become endangered in the foreseeable future, it would no longer qualify for the protection of the Endangered Species Act. For example, if the butterfly were determined to be widespread and abundant in Cuba and the Bahamas, with no serious threat to its continued existence on these islands, the Florida population would not be eligible for the protection of the Act.

Support for the proposals was also received from the Florida Natural Areas Inventory, the National Park Service (Biscayne National Park), the International Union for Conservation of Nature and Natural Resources (Conservation Monitoring Centre) and two private citizens.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Bahama swallowtail should be removed from the U.S. List of Endangered and Threatened Wildlife, and that the Schaus swallowtail butterfly should be reclassified from threatened to endangered status. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments to the Act—see

proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Bahama swallowtail butterfly (*Heraclides andraemon bonhotei*) and Schaus swallowtail butterfly (*Heraclides aristodemus ponceanus*) are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Bahama swallowtail occurs throughout the Bahama Islands. There is no information indicating any threat to the species throughout its range.

Development for residential and recreational purposes threatens to modify or eliminate tropical hardwood forest hammocks on which the Schaus swallowtail depends. Uplands in the Florida Keys, though limited in area, are of much development interest due to the many wetland (mangrove) areas that are virtually impossible to develop. The entire range of this butterfly is vulnerable to modification or destruction from hurricanes. As the range of the species becomes increasingly limited and fragmented, the likelihood of a single hurricane destroying all or most of the remaining population increases.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Both the Bahama and Schaus swallowtail butterflies are popular with collectors. Although a few individuals of the Bahama swallowtail may occasionally be collected when this species appears in Florida, there is no information indicating that the species is threatened by overutilization in the Bahamas.

At the time of the listing of the Schaus swallowtail as a threatened species, some correspondents believed that collection of this species represented a threat. Since the species was listed, it has decreased in range and numbers. Collecting is now probably a greater threat than at the time of listing.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* This final rule removes the Bahama swallowtail butterfly from the protection of the Endangered Species Act. Federal listing as threatened and similar state listing under Chapter 39–27.04 of the Florida Administrative Code both provide regulatory protections for the Schaus swallowtail butterfly, but its population has generally declined, even subsequent to listing. Reclassification from threatened to endangered will benefit the Schaus swallowtail by giving increased priority to its recovery needs, pursuant to section 4(g)(4) of the Act, as amended.

E. *Other natural or manmade factors affecting its continued existence.* The Bahaman segment of the Bahama swallowtail populations provides it with insurance against the risk of extinction. The Schaus swallowtail could lose a significant portion of its remaining populations from hurricanes or frost. The range of this species has decreased substantially in recent decades. The present restricted range could be greatly reduced or eliminated by a single hurricane. The Schaus swallowtail is near the limits of its cold-tolerance in south Florida, and a single severe freeze could also greatly reduce the population.

Insecticide application may have adverse affects on the Schaus swallowtail. The Monroe County Mosquito Control District applies insecticides to control adult and larval mosquitoes. Both ground and aerial applications are made. The large amount of insecticides applied annually in Monroe County (4–5 thousand gallons of Dibrom and Baytex mixed with 50–60 thousand gallons of diesel fuel) could adversely affect the Schaus swallowtail as well as other insects native to the hardwood hammocks.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify the Schaus swallowtail butterfly from threatened to endangered status and to remove the Bahama swallowtail butterfly from the U.S. List of Endangered and Threatened Wildlife. The Schaus swallowtail has declined since the time it was listed as threatened; the Bahama swallowtail no longer biologically or legally qualifies for the protection of the Endangered Species Act. The reason for not designating critical habitat for the Schaus swallowtail is discussed in the following section. A decision to take no action would leave both species in inappropriate status. Therefore, no action would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time any species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Schaus swallowtail butterfly. Section 4(b) of the Act requires publication of critical habitat maps in the **Federal Register.** Publication of critical habitat descriptions would make this species even more vulnerable to collecting and other pressures and would increase enforcement problems. Though taking prohibitions exist, effective enforcement is difficult, particularly outside Biscayne National Park. For these reasons, the recovery plan for the Schaus swallowtail butterfly expressly recommends that no publicity be given to the remaining colonies of this species. Therefore, it would not be prudent to determine critical habitat for the Schaus swallowtail butterfly at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below. These conservation measures will no longer apply to the Bahama swallowtail butterfly.

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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 9, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service. Since the Schaus swallowtail is already protected by section 7 of the Act by its listing as a threatened species, reclassifying the species to endangered will not affect this requirement.

The Act and its 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, import or export, ship in interstate commerce in the course of 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 had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits my be issued to carry out otherwise prohibited activities involving endangered animal 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. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

A special rule (50 CFR 17.47(a), pursuant to section 4(d) of the Act) previously allowed non-commercial take of both the Bahama and Schaus swallowtail butterflies. These exemptions applied, however, only if concordant with State and local regulations and ordinances. Florida State law presently prohibits collecting these species except by permit, thus overriding the special rule.

This final rule removes all Federal protection for the Bahama swallowtail, and, by deleting the special rule for the Schaus swallowtail butterfly, brings existing Federal regulatory prohibitions into conformance with current State law. Few effects are anticipated from this change; the Bahama swallowtail is an occasional migrant to the U.S. and few specimens could be taken here. No additional effects are expected regarding the Schaus swallowtail, because take is already prohibited by State law except under permit.

National Environmental Policy Act

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

Loftus, W.F., and J.A. Kushlan. 1982. The status of the Schaus swallowtail and the Bahama swallowtail butterflies in Biscayne National Park. National Park Service, South Florida Research Center, Everglades National Park. Report M–649. 18 pp.

U.S. Fish and Wildlife Service. 1982. Schaus swallowtail butterfly recovery plan. U.S. Fish and Wildlife Service, Atlanta, Georgia. 57 pp.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580). Dr. George E. Drewry of the Service's Washington Office served as editor.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by changing the status of the Schaus swallowtail butterfly, under "INSECTS," from threatened to endangered; changing its scientific name, to reflect current usage, and revising the "special rules" column, as follows:

§ 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:	•	•	•	•	•		•
Butterfly, Schaus swallowtail.	*Heraclides (Papilio) aristodemus ponceanus.*	U.S.A. (FL)	NA	E	13,159	NA	NA
•	•	•	•	•	•		•

3. Further amend § 17.11(h) by removing the Bahama Swallowtail butterfly *(Papilio andraemon bonhotei)*, under "INSECTS," from the list of Endangered and Threatened Wildlife.

§ 17.47 [Reserved]

4. Section 17.47 is removed and reserved.

Dated: August 14, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23157 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Key Largo Woodrat and Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Key Largo woodrat and cotton mouse, two small mammals native to Key Largo, Monroe County, Florida. Destruction and alternation of tropical hardwood hammock forest, to which both species are restricted, is a threat to their continued existence. Both were listed as endangered by an emergency rule on September 21, 1983, but that rule expired on May 18, 1984. This final rule restores the protection of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is August 31, 1984 because the Service considers that the period between the expiration of the emergency rule covering the Key Largo woodrat and cotton mouse, and the implementation of this permanent final rule, should be as brief as possible because of the threats facing these species.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.—4:30 p.m.) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Flordia 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered