

upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

4. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedures thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Notice of Proposed Rule Making is not required, consequently the Regulatory Flexibility Act does not apply.

6. Accordingly, it is ordered, that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth in the attached Appendix, effective upon publication in the Federal Register. This action is taken by the Chief, Mass Media Bureau under the authority delegated in §§ 0.61 and 0.283 of the Commission's Rules.

7. It is further ordered, that this proceeding is terminated.

8. For further information on this Order contact Howard Irvin, (202) 632-9660, Mass Media Bureau.

Federal Communications Commission,
James C. McKinney,
Chief, Mass Media Bureau.

Appendix

PART 73—[AMENDED]

Title 47 Part 73 of the Code of Federal Regulations is amended as follows:

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

Authority: Secs. 4 and 303, 48 Statute 1066 and 1082, as amended, (47 U.S.C. 154 and 303).

2. 47 CFR 73.663 is amended by revising paragraph (a); by removing paragraphs (c)(1), (2), and (3), and the Note following; by redesignating paragraphs (d)(1), (2), (3), as paragraphs (c)(1), (2), (3); by revising the caption of the newly designated paragraph (c) and paragraph (c)(3)(i); and by adding a new Note following paragraph (c)(3)(iii) to read as follows:

§ 73.663 Determining operating power.

(a) The operating power of each TV visual transmitter shall normally be determined by the direct method.

(c) Indirect method, visual transmitter.

[3] . . .

(i) Using the most recent measurement data for calibration of the transmission line meter according to the procedures described in paragraph (b) of this section or the most recent measurements made by the licensee establishing the value of F. In the case of composite transmitters or those in which the final amplifier stages have been modified pursuant to FCC approval, the licensee must furnish the FCC and also retain with the station records the measurement data used as a basis for determining the value of F.

Note: Refer to § 73.1560 for aural transmitter output power levels.

3. 47 CFR 73.688 is amended by revising paragraph (a) to read as follows:

§ 73.688 Indicating instruments.

(a) Each TV broadcast station shall be equipped with indicating instruments which conform with the specifications described in § 73.1215 for measuring the operating parameters of the last radio stage of the visual transmitter, and with such other instruments as are necessary for the proper adjustment, operation, and maintenance of the visual transmitting system.

4. 47 CFR 73.1560 is amended by revising paragraph (c)(2) to read as follows.

§ 73.1560 Operating power tolerances.

(c) TV stations. . . .

(2) The output power of the aural transmitter shall be maintained to provide an aural carrier ERP not to exceed 22% of the peak authorized visual ERP.

§ 73.1690 [Amended]

5. 47 CFR 73.1690 is amended by removing paragraph (c)(4) in its entirety.

[FR Doc. 85-14703 Filed 6-26-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Astragalus humillimus* To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Astragalus humillimus* (Mancos milk-vetch), to be an endangered species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. *Astragalus humillimus* is presently known from four populations west of Waterflow, San Juan County, New Mexico. The plant was collected in Montezuma County, Colorado, in 1875; however, the species has not been re-collected there since that time. This species is vulnerable due to a low number of plants, restricted distribution, a low tolerance for disturbance, and close proximity to powerline corridors, roads, and oil wells. This determination of *Astragalus humillimus* to be an endangered species implements the protection provided by the Act.

DATE: The effective date of this rule is July 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Botanist, Region 2 Endangered Species Office, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Astragalus humillimus Gray ex Brandegee is a member of the Fabaceae (pea family). The species was collected once by Brandegee in 1875 and was described by Asa Gray in 1876. Kuntze named this plant *Tragacantha humillima* in 1891. Rydberg (1905) changed the name to *Phaca humillima*, and Barneby recognized it in the genus *Astragalus* in 1964 (Barneby, 1964; Knight, 1981).

Astragalus humillimus has short stems measuring 0.5 to 1 centimeter tall (0.2-0.4 inch). It is a perennial species with compound leaves (having many leaflets) measuring 8 to 15 millimeters long (0.3-0.6 inch). The leaflets are pubescent, 0.7 to 2 millimeters (0.02-0.08 inch) long, light green, and oval. The flowers are lavender with white veins, are about 1 centimeter (0.4 inch) long, and have a sweet pungent smell. The fruit is an oblong pod about 5 millimeters (0.2 inch) long. This species grows in low, tufted mats 31 to 45 centimeters (12-18 inches) in diameter. These clumps are often covered with butterflies, and *Vanessa cardui* (painted lady butterfly) has been identified as a

pollinator of *Astragalus humillimus* (Paul Knight, New Mexico Natural Resources Department, pers. comm., 1983). Flowering occurs only for a short time, between late April and early May. Most fruits ripen by early June.

Astragalus humillimus is known only from a ridge west of Waterflow, New Mexico. The four populations occur on Bureau of Land Management (BLM) and Navajo Indian Reservation lands and contain approximately 7,000 plants. The plants are restricted to Point Lookout and Cliff House sandstones, tan Cretaceous sandstones of the Mesa Verde series, at an elevation of 1,545 to 1,645 meters (5,068–5,396 feet). The *Astragalus* forms rings in depressed pockets of sandy soil. Two of the populations are on Point Lookout sandstone mesas, one is on island outcrops of Point Lookout sandstone, and the other appears to occur on Cliff House sandstone (O'Sullivan and Beikman, 1983). Dominant associated plants are *Oryzopsis hymenoides*, *Gutierrezia sarothrae*, *Yucca angustissima*, and *Artemisia tridentata*. *Astragalus humillimus* occurs in the vicinity of utility corridors, drilling pads, oil wells, pipelines, and roads; additional construction and maintenance of these could destroy or severely affect the populations.

Astragalus humillimus was first collected in 1875 in Montezuma County, Colorado, but no plants have ever been relocated at the type locality. The first Federal action involving *Astragalus humillimus* was on June 16, 1976, when the Service published a proposed rule in the Federal Register (41 FR 24524) to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. *Astragalus humillimus* was included in the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, Federal Register (43 FR 17910).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals which had expired (44 FR 70796).

Astragalus humillimus was included as a category-1 species in a list of plants under review for threatened or endangered classification, published in the December 15, 1980, Federal Register (45 FR 82480) plant notice of review. Category 1 comprises taxa for which the Service presently has sufficient biological information to support the

biological appropriateness of their being proposed to be listed as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, plant notice of review were considered to have been petitioned, and the deadline for a finding on those species, including *Astragalus humillimus*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Astragalus humillimus* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, Federal Register (49 FR 2485). Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. The Service published a proposed rule to list *Astragalus humillimus* as an endangered species on June 28, 1984 (49 FR 26610). This proposed rule constituted the finding that the petitioned action was warranted and proposed to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the June 28, 1984, proposed rule (49 FR 26610) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Farmington Daily Times* on July 24, 1984, which invited general public comment. Six comments were received and are discussed below. No public hearing was requested or held.

The international Union for Conservation of Nature and Natural Resources had no specific comments on *Astragalus humillimus*, but supported the proposal. The National Park Service stated that it had no comments since the species does not occur on its lands.

The San Juan County Commission opposed the listing because of the belief that it will cause "additional complications in completing environmental impact assessments for economic development projects" and because it is "non-beneficial vegetation for sheep and wildlife grazing, and . . . it would be more beneficial if it were supplanted by more nutritious and palatable varieties of plants." The

Service responds that the determination to list *Astragalus humillimus* was made solely on the basis of the best scientific and commercial data available and not on the basis of whether the plant is beneficial forage for sheep and wildlife nor on the basis of whether the plant listing may cause complications for development.

The BLM had no objection to the listing. However, it did state that the listing "may cause a conflict between its [*Astragalus humillimus*] protection and programs currently authorized by the Bureau of Land Management (BLM)," specifically "rights-of-way for transmission line and leases for the development of oil and gas and other minerals." The BLM stated that care will have to be taken to consider the species and recommended that it and the Service work closely in "devising species protection measures, authorizing resource development and managing previously authorized land uses." The Service agrees with BLM's comments. The BLM also stated that there is a small population of the Mancos milk-vetch on BLM-administered lands. This information has been incorporated into the final rule.

The Bureau of Indian Affairs (BIA) raised a number of issues concerning surveys, habitat, and managing agency jurisdiction, and concluded "that too little information has been provided to warrant supporting this action at this time" and suggested that the Service conduct more extensive surveys of the species and its habitat. Considering the low number of plants and the easy accessibility to them it would be detrimental to the species to publish specific locality data. Extensive surveys by helicopter and ground have been conducted by Betty Kramp and Paul Knight (New Mexico Natural Resources Department), Rupert Barneby (New York Botanical Garden), Stanley Welsh (Brigham Young University), and William Weber (University of Colorado). The Service believes that sufficient information was obtained from these surveys to warrant listing the species. Locality data and management information will be provided to the Bureau of Indian Affairs.

In an October 18, 1984, telephone conversation with Mark Porter of Ecosystem Environmental Services, the Service was informed of a new population of approximately 100 plants. The population occurs 10.5 kilometers (6.5 miles) northwest of the northernmost previously known population and extends about 90 meters (300 feet) along a south-facing cliff. This population is on Navajo Indian

Reservation land and the new information has been incorporated into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus humillimus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; 49 FR 38900, October 1, 1984) 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 *Astragalus humillimus* Gray ex Brandegee (Mancos milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Astragalus humillimus* was collected in 1875 in Montezuma County, Colorado, near Mancos Canyon; however, it has not been collected there since 1875. Rupert O. Barneby, an authority on *Astragalus*, has searched for the species in the Four Corners area and was unable to locate the population at the type locality or any other populations of the plant. William C. Weber and S.L. Welsh also conducted extensive searches for this species (Knight, 1981). The species had not been seen or collected until Betty Kramp collected it on the Hogback, area west of Waterflow, New Mexico, in 1980. Paul Knight surveyed similar habitat from Mancos Canyon, Colorado, south to the southern end of the Hogback. He discovered two more populations north of Kramp's population. The plant is restricted to the Point Lookout and Cliff House sandstones, although it is not known what chemical or physical properties of these substrates the species is responding to (Paul Knight, New Mexico Natural Resources Dept., pers. comm., 1983).

Presently, *Astragalus humillimus* occurs along a 10-mile section of the Hogback. The northernmost population consists of approximately 100 plants and extends along a south-facing cliff on Navajo Indian Reservation land (Mark Porter, Ecosystem Environmental Services, pers. comm., 1984).

The second and largest population with approximately 5,000 plants is located on an extensive mesa top of Point Lookout sandstone in an area being actively explored and drilled for

energy-related minerals. The estimated area of this population is approximately 8.5 hectares (21 acres). The Navajo Indian Tribe owns the land and the surface rights to it; the leasable mineral rights are privately owned. The *Astragalus humillimus* population is situated in an oil field and is flanked on three sides by active oil wells. The number of roads, oil wells, and pipelines is increasing. The entire area is dissected by an unorganized assemblage of roads associated with the oil development.

A third population occurs on the west side of the Hogback about 2 miles south of the second population. There are approximately 1,000 plants scattered throughout this population, which is situated on island outcrops of Point Lookout sandstone. This population is bisected by the Glen Canyon-Shiprock 230 kV and the Curicanti-Shiprock 230 kV transmission lines, which were constructed in 1962 and 1963, respectively. The U.S. Bureau of Reclamation contracted the construction of both lines and transferred ownership, operation, and maintenance responsibilities to Western Area Power Administration (WAPA) in 1977 when the Department of Energy was organized (Gabiola, WAPA, pers. comm., 1983).

During construction of these two transmission lines, the National Environmental Policy Act (NEPA) was not in effect, and impacts to the environment were mitigated only as deemed prudent during construction (Gabiola, WAPA, pers. comm., 1983). *Astragalus humillimus* is a very localized species and does not tolerate disturbance well. The land directly under the powerline towers was extensively disturbed during the original construction, and the plant has not repopulated the disturbed areas of suitable habitat during the past 20 years.

The plants underneath the powerline have been driven over by either maintenance vehicles or off-road recreational vehicles. The damage caused by the vehicles is not yet extensive, but could become so in the future. An upgrading of the transmission line is scheduled to be in service by 1987. This would involve the addition of two more legs for each tower along the line and reconductoring of the entire line. Work will probably begin in 1985 (McBride, WAPA, pers. comm., 1983). The Western Area Power Administration is aware of the presence of *Astragalus humillimus* in the right-of-way and is considering the species in its planning process.

Some of the land upon which the third population occurs is owned by the Navajo Indian Tribe and the remainder

is public land administered by BLM. The BIA is the surface managing agency on Indian lands. The BLM grants leases for the development of oil and gas and other minerals on its public lands. At present, there are no existing oil wells.

The fourth and southernmost population of *Astragalus humillimus* is on the east side of the Hogback south of Highway 550. This population occurs on sandstone ledges of the Navajo Reservation. Some of the mineral rights in the area in which this population occurs are under the jurisdiction of BLM; however, there are currently no oil wells in the area. It is possible that the area will be explored within the next year prior to the expiration date of the leases that have been granted by BLM.

The BLM must be notified before exploration, drilling, or construction occurs on lands leased by it. Most of the land around all the *Astragalus* populations is leased; thus, the possibility of future exploration and drilling is high (Knight, 1981, and pers. comm., 1983; Moore, BLM, pers. comm., 1983).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Astragalus humillimus* is not currently sought for commercial, recreational, or educational purposes. The species is sought for scientific purposes. To date, this has not been shown to be a significant problem but the potential for a problem is great. This species has eluded the repeated searches of many botanists and there are very few good specimens in herbaria throughout the country. The species' existence is very vulnerable because of the low number of plants, and taking would be detrimental to the populations. The plants are easily accessible by road to collectors and vandals.

C. *Disease or predation.* There is no evidence that disease, predation, or grazing have adverse impacts on *Astragalus humillimus*. Sheep are grazed in the vicinity of three of the populations, but grazing of the plants themselves probably does not occur because of the spinescent nature of the petioles (Paul Knight, New Mexico Natural Resources Dept., pers. comm., 1983).

D. *The inadequacy of existing regulatory mechanisms.* *Astragalus humillimus* is not protected by New Mexico State law. A permit is needed, however, from the Navajo Tribe for plant study or collection on the Reservation. Tribal protection is not enough to ensure survival since it offers no habitat protection.

E. *Other natural or manmade factors affecting its continued existence.* The

low number of plants in only four known populations increases the possibility that one catastrophic disturbance could destroy a significant portion of the species. The disturbance could result from natural or manmade causes, such as a construction project (Knight, 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Astragalus humillimus* as endangered. Endangered status seems appropriate because there are only four populations of this species and they exist in an area being developed intensively for energy resources (Paul Knight, New Mexico Natural Resources Dept., pers. comm., 1983). Also, *Astragalus humillimus* is not afforded any protection by the State of New Mexico. Critical habitat is not being determined for this species (see Critical Habitat section).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. No benefit to *Astragalus humillimus* can be identified that would outweigh the threats of taking or vandalism that might result from the required publication of detailed critical habitat descriptions. The Navajo Indian Tribe, BLM, BIA, and WAPA are aware of the locations of the populations, have acknowledged the threats to the Mancos milk-vetch, and are actively considering the species during planning. Therefore, no further benefits would accrue to *Astragalus humillimus* by critical habitat designation. Because of the low number of plants, the easily accessible populations, and the scientific curiosity regarding *Astragalus humillimus*, it would be detrimental to the species to publish critical habitat descriptions and maps.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 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.

Astragalus humillimus is known to occur only on Navajo Indian Reservation and BLM lands. Known Federal activities that may be affected by this determination are maintenance of existing transmission lines and authorization of the planned upgrading of the existing 230 kV transmission lines by WAPA, Department of Energy. The BLM grants rights-of-way for transmission lines, and leases for the development of oil and gas and other minerals in the area; such activities would be subject to section 7 consultation. The BIA is the surface managing agency on Indian lands and would be subject to section 7 consultation if any of its actions may affect *Astragalus humillimus*.

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 *Astragalus humillimus*, 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. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the

issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commerce in *Astragalus humillimus* is not known to exist. It is anticipated that few trade permits will ever be sought or issued, since this plant is 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 possession of endangered plant species from areas under Federal jurisdiction. The prohibition now applies to *Astragalus humillimus*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Astragalus humillimus* is known only from the Navajo Indian Reservation (BIA) and BLM lands. It is anticipated that few collecting permits for 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).

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).

Literature Cited

- Barneby, R.C. 1984. Atlas of North American *Astragalus*. Memoirs of the New York Botanical Garden. Vol. 13. Part II.
- Knight, P.J. 1981. Rare, threatened, endangered, and other plants of concern in the BLM Chaco-San Juan Planning area of northwestern New Mexico. Department of Natural Resources, Heritage Program, Santa Fe, New Mexico.
- O'Sullivan, R. B., and H.M. Beikman. 1963. Geology, Structure, and Uranium deposits of the Shiprock Quadrangle, N.M. & Az. U.S.G.S. Miscellaneous Geologic Investigation Map I-345.
- Rydberg, P.A. 1905. *Astragalus* and its segregates in Colorado. Bulletin of the Torrey Botanical Club. 32: 657-665.

Authors

The primary authors of this final rule are Peggy Olwell and Alisa Shull, Endangered Species Office, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The editor was E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975). Status information was provided by Mr. Paul J. Knight, New Mexico Department of Natural Resources, Heritage Program, Santa Fe, New Mexico 87501.

List of Subjects in 50 CFR Part 17

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

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family.						
<i>Astragalus himileus</i>	Mancos milk-vetch	U.S.A. (CO,NM)	E	186	NA	NA

Dated: June 18, 1985

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-15390 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule Listing the Tar River Spiny Mussel (*Elliptio (Canthytia) Steinstansana*) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Tar River spiny mussel (*Elliptio (Canthytia) Steinstansana*) to be an endangered species. The species is currently known to be restricted to approximately 12 miles of the Tar River in Edgecombe County, North Carolina. Since the species has a restricted distribution, any factor that degrades water or substrate quality in this short river reach, such as land use changes, chemical spills, and increases in agricultural and urban runoff, could threaten the mussel's survival. This action will implement the protection provided by the Endangered Species Act

Regulation Promulgation

PART 17—[AMENDED]

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

1. The authority citation for Part 17 continues to read as follows:

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

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

§ 17.12 Endangered and threatened plants

(h) * * *

of 1973, as amended, for the Tar River spiny mussel.

EFFECTIVE DATE: The effective date of this rule is July 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Tar River spiny mussel was first discovered in the Tar River, Edgecombe County, North Carolina, by Dr. Carol B. Stein in 1966. The species was subsequently recorded from the Tar River in Nash, Edgecombe, and Pitt counties, North Carolina (Shelley, 1972; Johnson and Clarke, 1983). The species was described by Johnson and Clarke

(1983) as *Elliptio (Canthytia) Steinstansana*.

Data on the historical distribution of the Tar River spiny mussel are limited. However, it can be inferred from available records that the species inhabited the Tar River from Pitt County near Falkland, North Carolina, upstream through Edgecombe County to Spring Hope, Nash County, North Carolina as recently as 1966. According to recent Service-funded survey of the Tar, Neuse, and Roanoke Rivers in North Carolina, the known Tar River spiny mussel population (estimated at 100 to 500 individuals) is restricted to about 12 miles of the Tar River in Edgecombe County, North Carolina.

Aside from the Tar River spiny mussel, only two other freshwater spined mussels are known to exist: a small-shelled and short-spined species, *Fusconaia collina*, found only in the James River system in Virginia, and a large-shelled and long-spined species, *Elliptio (Canthytia) spinosa*, collected only from the Altamaha River system in Georgia. The shell size and spine length of the Tar River species is intermediate between these two species.

Because of its rarity, little is known of the Tar River spiny mussel's biology. The species has been collected on sand and mud substrates, and it has been suggested that the mussel's spines help it maintain an upright position as it moves through the soft substrate. Like other freshwater mussels, it feeds by filtering food particles from the water. Related species have a complex reproductive cycle in which the mussel larvae attach for a short time to a host fish species. The life span, the time of spawning, the host fish species, and many other aspects of the life history of the Tar River spiny mussel are still unknown.

The Tar River spiny mussel may have always existed in low numbers. However, the apparent recent reduction in its distribution and the extremely small population size make it vulnerable to extinction from a single catastrophic event, such as a tank-truck accident involving toxic chemical spill. The North Carolina Department of Natural Resources and Community Development (1983) reports of the Tar River: "Agricultural erosion rates are low, but loadings of nutrients and pesticides are above average." A hydroelectric project proposed for an upstream reservoir, a navigation and flood control project under consideration by the U.S. Army Corps of Engineers, and a stream obstruction removal project being conducted by the U.S. Soil Conservation Service could also impact the species if

the mussel's welfare is not considered during planning and implementation of these projects.

On March 5, 1982, the Service published a notice in the *Federal Register* (47 FR 9483) that a status review was being conducted for the Tar River spiny mussel. The notice requested data on the species' status and solicited information on environmental and economic impacts, plus the effects on small businesses that could result if the species were listed and its critical habitat were designated. A total of 24 letters were received by the Service in response to the notice of review. Only two respondents totally opposed the listing of the species, while five respondents felt more information was needed before further decisions were made on listing. Three of the comments involved questions concerning potential economic impacts of designating critical habitat, but these letters provided no information that the Service could use in making economic projections. Four comments identified potential projects and ongoing activities that could impact the species; ten responses stated they were aware of no project that might impact the species.

On May 22, 1984, the Service announced in a general notice of review of invertebrate wildlife published in the *Federal Register* (49 FR 21664) that substantial information was available to support proposing the Tar River spiny mussel for protection under the Act. On September 17, 1984, the Service published in the *Federal Register* (49 FR 36418) a proposed rule to list the Tar River spiny mussel as an endangered species. That proposal provided information on the species' biology, status, threats, and the potential implications of listing. The proposal also solicited comments on the species' status and threats to its continued existence.

Summary of Comments and Recommendations

In the September 17, 1984, proposed rule (49 FR 36418) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted (the U.S. Soil Conservation Service, Edgecombe County Government, and Region L Council of Governments were also contacted in person) and requested to comment. A newspaper notice summarizing the proposed rule was published in the *Daily Southerner*, Tarboro, Edgecombe

County, North Carolina, on October 4, 1984; a news release on the proposal was issued; and interviews of Service personnel on the proposed action were conducted by a local newspaper and a radio station. A total of 14 written comments were received. The comments are discussed below:

The Corps of Engineers (CoE), Department of the Army, stated that it had recently received a request from Pitt County, North Carolina, to enhance navigation and flood control on the Tar River in Pitt and Edgecombe Counties, North Carolina. CoE has requested our assistance in evaluating the potential impacts of this project on the spiny mussel. CoE further stated, "Although the listing of this species will have the effect of making our planning in the Tar River basin more time-consuming and would likely restrict some activities, we support the listing of this species due to its documented rapid decline, its severely restricted range, and the severity of the threat posed by the introduced Asiatic clam (*Corbicula fluminea*)." The Service believes that a navigation and flood control project through the Tar River spiny mussel's habitat could have severe impacts on the species. The Service has been in contact with CoE to assist it in its evaluation of effects on the mussel. The Service concurs with the CoE assessment that listing will increase the time required for planning and that some activities may be restricted. However, the Service has conducted thousands of consultations on listed species and has found that alternative methods for meeting project objectives that are compatible with protecting species are usually developed.

The Soil Conservation Service (SCS), U.S. Department of Agriculture, alerted the Service to a proposed stream obstruction removal project in Edgecombe County, North Carolina, that may impact the Tar River spiny mussel. This project is designed to provide for small-boat access to tributaries of the Tar River and is not expected to result in substantial habitat alterations. However, the Service agrees that the project could potentially impact the Tar River and the mussel. The Service has met with SCS and local governmental representatives to discuss the project's design. Through these meetings, the Service has learned that a pilot project will be conducted on a Tar River tributary that enters the river below spiny mussel habitat. Evaluation of this project by SCS and the Service will allow for needed modifications of future work.

The Federal Energy Regulatory Commission (FERC) reported on a hydroelectric facility proposed for the Tar River upstream of the spiny mussel's habitat. It stated that a license application had been received but was found deficient and returned to the applicant. The Service has been in contact with FERC and the applicant concerning this project and both parties are aware of potential impacts on the spiny mussel.

The U.S. Geological Survey, U.S. Department of the Interior, commented that it anticipated no conflict with any of its projects or studies.

The U.S. Nuclear Regulatory Commission stated that it had no facilities currently licensed or under review that would impact the Tar River spiny mussel.

The North Carolina Department of Natural Resources and Community Development, North Carolina Wildlife Resources Commission, two conservation groups, and one individual stated that they supported the listing.

The North Carolina Department of Transportation responded: "We do not anticipate any major conflicts between the U.S. Fish and Wildlife Service proposal and the transportation programs being planned by our agency." The Service concurs with this assessment.

The North Carolina State Clearinghouse reported that the proposed rule was submitted to the North Carolina Inter-governmental Review Process and no comments had been received.

The Region L Council of Governments, Rocky Mount, North Carolina, which provides regional planning for five North Carolina counties, including Edgecombe County, commented that it had received no negative comment on the information that it distributed on the Tar River spiny mussel. Its comments further stated: "You may use this letter to show no negative comments were received and thus there was no expressed opposition to the project."

One comment was received from an individual who thought that the species might inhabit a pond adjacent to the Tar River in Pitt County. The Service contacted this individual, and gave him a physical description of the Tar River spiny mussel. The individual then concluded that the mussel in the pond was not the spiny mussel.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined

that the Tar River spiny mussel (*Elliptio* (*Canthytia*) *steinmansana*) should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 38900, October 1, 1984; codified at 50 CFR Part 424) 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 Tar River spiny mussel (*Elliptio* (*Canthytia*) *steinmansana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of a recent Service-funded survey of the Tar, Neuse, and Roanoke rivers indicate that the Tar River spiny mussel (with an estimated total population size of 100 to 500 individuals) exists only in approximately 12 miles of the Tar River in Edgecombe County, North Carolina. This represents a significant reduction in known range, as historic records show the species was once also found both upstream (Nash County, North Carolina) and downstream (Pitt County, North Carolina) of its present range.

The species' restricted range makes it vulnerable to toxic chemical spills, which could result from traffic accidents involving trucks or any of the major highways that cross the Tar River. A single such event could cause total extinction of the species. The mussel is also threatened by other factors. A feasibility study is not being conducted of the possibility of hydroelectric power production at an upstream dam in Rocky Mount, North Carolina. Some alternatives being considered would restrict river flows on a daily basis to store water for peak power demands. Fluctuating river flows could impact the species by stranding individuals on sand bars and, if the river flows are reduced substantially, by affecting the species' water quality requirements.

Pitt County, North Carolina, has requested the CoE study the feasibility of enhancing navigation and flood control in the Tar River. River and stream modification to achieve these ends could cause direct impacts on the species and its habitat, unless full consideration is given the spiny mussel's requirements.

SCS is removing obstructions to provide for passage of small boats in some tributaries of the Tar River. This project could have an impact on the mussel fauna of the Tar River if erosion and siltation related to the project are

not controlled prior to an after project completion.

In a report prepared by the North Carolina Department of Natural Resources and Community Development (1983), the Tar River was characterized as having low agricultural erosion rates, but loadings of nutrients and pesticides were above average. The North Carolina Wildlife Resources Commission, in response to the Service's notice or review, stated that pumping large volumes of water from the Tar River during drought periods could threaten the species by decreasing water quality.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* The species has recently been described and its approximate range delineated (Johnson and Clarke, 1983). This notoriety for such a unique and rare mussel can be expected to increase collection pressure from shell dealers and collectors. As the population is small, the removal of any individuals could seriously impact the species survival.

C. *Disease or predation.* There is no evidence of threats from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (subsection 113-272.4) prohibits collecting wildlife, which includes freshwater mussels, without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal projects. Federal listing will provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The Tar River has become infested by the Asiatic clam (*Corbicula fluminea*)—a species introduced from Asia. This non-native species may have an adverse effect on the Tar River spiny mussel's survival. The feeding activity of the Asiatic clam (which has densities estimated at 1,000 individuals per square meter (10.8 square feet) in some places) could reduce the availability of phytoplankton needed as a food source for the Tar River spiny mussel.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Tar River spiny mussel as endangered. The

mussel's small population and present restricted range (12 river miles) make it extremely vulnerable to a single catastrophic event, and its range has greatly contracted within the immediate past. Threatened status would therefore not be appropriate. Critical habitat designation would not be prudent (see following Critical Habitat section). A decision to take no action would exclude the Tar River spiny mussel from needed protection available under the Endangered Species Act.

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 the Tar River spiny mussel at this time. This rare mussel is very unusual, being one of only three known species of spined freshwater mussels. There is a small but significant demand by amateur and professional collectors for this species. Because of this, the Service believes a detailed description of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase law enforcement problems. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the Tar River spiny mussel and risk depletion of an already limited population.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. 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.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated.

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.

Federal activities that could impact the Tar River spiny mussel include, but are not limited to, the following: issuance of permits for hydroelectric facilities, stream alterations, enhancement of navigation, reservoir construction, wastewater facility development, flood control projects, and road and bridge construction on the Tar River. Three specific projects having Federal involvement have been identified that could impact the species: a hydroelectric project on the Tar River at Rocky Mount, North Carolina; a navigation and flood control project on the Tar River; and a stream obstruction removal project on Tar River tributaries. These projects and potential impacts on the species are discussed above. Modifications of these planned or ongoing activities may be necessary to protect the Tar River spiny mussel. It has been the experience of the Service that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife.

These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, 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 has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

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

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].

Literature Cited

Johnson, R.L. and A.H. Clarke. 1983. A new spiny mussel, *Elliptio (Canthyria) steinstansana* (Bivalvia: Unionidae), from

the Tar River, North Carolina. Occasional Papers on Mollusks, 4(6):289-298. North Carolina Department of Natural Resources and Community Development, Division of Environmental Management. 1983. Biological classification of streams and ponds in North Carolina—Documentation of impaired water use, July 1983, 335 pp.

Shelley, R.M. 1972. In defense of mollusks. Wildlife in North Carolina, 36:4-8, 26-27.

Author

The primary author of this final rule is Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

1. The authority citation for Part 17 continues to read as follows:

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

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

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species	Common name	Scientific name	Historic range	Vertebrate population whose endangered or threatened	Status	When listed	Critical habitat	Special rules
Clams								
Mussel, Tar River spiny		<i>Elliptio (Canthyria) steinstansana</i>	U.S.A. (NC)	NA	E	187	NA	NA

Dated: June 10, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-15388 Filed 6-26-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 50, No. 124

Thursday, June 27, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1050

Milk in the Central Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend the "reload point" definition of the Central Illinois order. The action would permit milk to be reloaded on the premises of a milk plant without the operations of both the "reload station" and the milk plant being combined and considered a single supply plant under the order. Prairie Farms Dairy, Inc., a cooperative association that represents about one-half of the producers who supply milk to the market, requested the action to facilitate the efficient assembly of milk from distant farms for movement to distributing plants.

DATE: Comment are due on or before July 12, 1985.

ADDRESS: Comment (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure efficient milk marketing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the

suspension of the following provisions of the order regulating the handling of milk in the Central Illinois marketing area is being considered as follows:

Section 1050.19 (Reload point) in its entirety.

All persons who want to send written data, views or arguments about the proposed action should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 15th day after publication of this notice in the Federal Register.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative the "reload point" definition of the order.

Under the current definition of a reload point, if milk is reloaded on the premises of a milk plant the reloading operations are considered to be a part of the supply plant's total operations, i.e., the reloading operations are combined with the processing operations of the milk plant and considered a single business unit.

Suspension of this provision was requested by Prairie Farms Dairy, Inc., a cooperative that represents about one-half of the producers who supply the market. A cooperative that represents most of the other producers on the market, indicated that it would not oppose the proposal.

Prairie Farms contends that the present provision will not allow the cooperative to market efficiently the milk of 65 producers who are located in the vicinity of Preston, Iowa, and whose milk has been delivered to the cooperative's bottling plant in Peoria, Illinois, for many years. Because of the distance involved, the milk of such dairy farmers is pumped from the smaller farm tankers into larger over-the-road tankers at an assembly point near the production area for further shipment to such distributing plant. The only such facility that is available to provide such services for the cooperative is a plant equipped to manufacture cheese.

However, if the milk is reloaded on the premises of the cheese plant, the reloading operations would be considered to be a part of such plant's total operations for the purpose of

applying the other provisions of the order. Without the suspension, proponent states that the cooperative would have to locate an appropriate site, and construct a new separate reload station of its own. Prairie Farms claims that its proposed action would eliminate the need for such costly adjustments and facilitate the efficient assembly of milk from distant farms for movement to distributing plants.

Proponent asked that the suspension be effective as soon as possible but not later than August 1, 1985, and that it be continued indefinitely. Suspension of the order provision for an indefinite period should not be considered. Absent a specific date for expiration of a suspension based on marketing conditions that are expected to be temporary, the more appropriate action would be to terminate the provision. If a suspension is appropriate it should be effective for a specified period of time.

In view of marketing conditions in this particular situation, interested parties should have an opportunity to comment on whether the "reload point" definition should be suspended, and if so, what period of time should be covered by the suspension. Commentors also are invited to express their views about whether such definition should be terminated, in light of the current marketing practices of handlers.

List of Subjects in 7 CFR Part 1050

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1050 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, D.C., on June 24, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs
[FR Doc. 85-15443 Filed 6-26-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563 and 584

[No. 85-460]

Industry Conflict-of-Interest Regulations

Dated: June 10, 1985.

AGENCY: Federal Home Loan Bank Board.