application of OCATDs for compliance certification is premature. Without reasonably standardized pressure measuring technology, the consistency of the OCATDs' performance can not be properly evaluated.

The agency has made provisions in the advanced air bag rulemaking to allow introduction of new technologies for suppression and the development of low level deployment activation systems. However, agency review of the proposed OCATD technology, based on the Alliance report, indicates that the OCATDs mostly parallel the capabilities of currently specified Hybrid-III test dummies for measuring seating pressures and do not provide additional occupant sensing and discrimination capabilities. The data in the UMTRI technical report indicate that there is very little potential to develop the OCATDs into better or more powerful discriminatory tools without substantial further research. Therefore, it would not be cost beneficial for the agency to initiate the extensive and expensive process incorporating the OCATDs into part 572 merely to have them available as parallel surrogates to the Hybrid-III dummies. However, the agency does not discourage use of the OCATDs by those vehicle manufacturers who are convinced that OCATDs will provide them the needed flexibilities for the development of better functioning suppression systems.

In conclusion, NHTSA denies both parts of this petition for rulemaking based on lack of compelling evidence that adoption of the OCATDs into part 572 and their specification in FMVSS No. 208 would improve the suppression and activation/deactivation of air bag systems and the safety of the motoring public. Furthermore, the agency has no plans to conduct research on design and performance of the OCATDs with the intent purpose either to incorporate them into part 572 or to specify their use for deployment suppression certification tests in FMVSS No. 208.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: March 30, 2004.

Claude H. Harris,

Director, Office of Crash Avoidance Standards.

[FR Doc. 04–7546 Filed 4–2–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ08

Endangered and Threatened Wildlife and Plants; Proposed Removal of *Helianthus eggertii* (Eggert's Sunflower) From the Federal List of Endangered and Threatened Species and Determination That Designation of Critical Habitat Is Not Prudent

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the plant *Helianthus eggertii* (Eggert's sunflower) from the List of Endangered and Threatened Wildlife and Plants pursuant to the Endangered Species Act of 1973, as amended (Act), because recovery actions have secured a number of populations and identified additional populations not previously known. Therefore, the threatened designation no longer correctly reflects the current status of this plant. This action is based on a review of all available data, which indicates that the species is more widespread and abundant than was documented at the time of listing, is more resilient and less vulnerable to certain activities than previously thought, and is now protected on Federal, State, and county lands. Due to the recent development of a management plan for *H. eggertii,* a management plan for the barrens/woodland ecosystem, and an Integrated Natural Resources Management Plan at the U.S. Air Force's Arnold Engineering and Development Center, on whose land a significant number of sites/populations occur, new management practices will include managing for, and monitoring the areas that contain, this species. Occurrences of *H. eggertii* are also found on six other Federal, State, or county lands, three of which now have conservation agreements with us to protect, manage, and monitor the species.

At the time of listing, there were 34 known *Helianthus eggertii* sites occurring in 1 county in Alabama, 5 counties in Kentucky, and 8 counties in Tennessee. The species was not defined in terms of "populations'' at that time. Increased knowledge of *H. eggertii* and its habitat has resulted in increased success in locating new plant sites. Presently, there are 279 known *H. eggertii* sites (making up 68 populations) distributed across 2 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee. Consequently, *H. eggertii* is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range and, therefore, is no longer considered to be threatened. If made final, this rule would remove *H. eggertii* from the list of threatened and endangered species.

In response to a court order, we have also reconsidered whether designating critical habitat for *Helianthus eggertii* would be prudent based on this species' current status. We have determined that such a designation would not be prudent because, as set out in detail elsewhere in this proposal, we believe the species no longer warrants listing under the Act. There is accordingly no area which meets the definition of critical habitat.

DATES: We will consider comments on this proposed delisting if they are received by June 4, 2004. Public hearing requests must be received by May 20, 2004.

ADDRESSES: If you wish to comment on this proposed delisting, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address or fax your comments to 931/528–7075.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, extension 211; facsimile 931/528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposed delisting will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed delisting. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Helianthus eggertii;*

(2) Additional information concerning the range, distribution, location of any

additional populations, and population size of this species; and

(3) Current or planned activities in the species' habitat and these activities' possible impacts on this species.

Comments may be submitted as indicated under **ADDRESSES.** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. A respondent may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

In making a final decision on this proposed delisting, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposed rule. Comments and materials received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at the address indicated in the **ADDRESSES** section.

The Act provides for a public hearing on this proposed delisting, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Field Office (see **ADDRESSES** section).

Background

Helianthus eggertii (Eggert's sunflower) is a perennial member of the aster family (Asteraceae) known only from Alabama, Kentucky, and Tennessee. Although it was originally described in 1897, most collections have been made since 1990, when extensive searches for the species began (Jones 1991, USFWS 1999a). The species is commonly associated with the barrens/woodland ecosystem, a complex of generally subxeric (somewhat dry) plant communities maintained by drought and fire with a grassy ground cover and scattered medium-to-small-canopy trees (USFWS 1999a).

Helianthus eggertii is a tall plant, growing up to 2.5 meters (8 feet), with round stems arising from fleshy rhizomes (lateral storage stems that grow along or just below the soil's surface). The stems and upper leaf surfaces have a blue-waxy coloration, and that and the lower leaf surfaces are conspicuously whitened (Jones 1991). It has opposite (rarely whorled) leaves that are sessile (without a stalk), lanceolate (lance-shaped) to narrowly ovate (egg-shaped) in shape, and are either scabrous (rough) or glabrous (smooth) on the upper surface. Leaf edges are smooth or minutely toothed and the tip is usually pointed. Large yellow flowers 8 centimeters (3 inches) in diameter are borne on the upper third of the stem. Seeds are blackish or grayish and mottled, 5 to 6 millimeters (0.20 to 0.24 inch) long, faintly striated (striped), and with a few scattered hairs. Flowering begins in early August and continues through mid-September and achenes (small, dry, hard, one-celled, one-seeded fruit that stays closed at maturity) mature from early September to early October (Jones 1991). Jones (1991) observed fruit set at between 5 and 25 seeds per flower head. Originally, seed germination rates were thought to be low (rarely exceeding 25 percent), possibly requiring exposure to cold to break dormancy (USFWS 1999a). However, recent data suggest that seed germination rates are relatively high (around 65 percent) if the seeds go through a stratification process (a period of cold weather, moisture, and darkness needed to break dormancy) (Cruzan 2002).

This sunflower develops an extensive rhizome system that may result in the production of dense clusters or patches of stems. These rhizomes can live for many years. Because of this extensive rhizome system, the plant does not have to produce seeds every year to ensure its survival. If environmental conditions change (*e.g.,* increased competition, shading, etc.), it can survive for several years by vegetative means, as Jones (1991) has noted in several populations. Plants may also be established from seeds within these patches, so a mix of different individuals can eventually contribute to these extensive patches (Jones 1991). Cruzan (2002) concluded that the level of genetic diversity in this species appears to be relatively high and that the highest levels of genetic diversity occur in the southern portion of the species' range. Cruzan (2002) also concluded that the range of *Helianthus eggertii* is not geographically subdivided into distinct genetic units.

Helianthus eggertii is a hexaploid (composed of cells that have six chromosome sets) sunflower, and, although its distinctiveness as a species has been established by morphological studies (USFWS 1999a) and biochemical studies (Spring and in Schilling 1991), it probably outcrosses (breeds with less closely related individuals) with other hexaploid sunflowers (Jones 1991). It is not known how commonly outcrossing occurs and to what degree this can eventually degrade the genetic integrity of the species. *Helianthus strumosus* (pale-leaved woodland sunflower), occasionally found in association with *H. eggertii,* has been identified as a sunflower with a compatible ploidy (number of sets of chromosomes) level (Jones 1991).

Helianthus eggertii typically occurs on rolling-to-flat uplands and in full sun or partial shade. It is often found in open fields or in thickets along woodland borders and with other tall herbs and small trees. It persists in, and may even invade, roadsides, power line rights-of-way, or fields that have suitable open habitat. The distribution of this species shows a strong correlation with the barrens (and similar habitats) of the Interior Low Plateau Physiographic Province, with some records from the Cumberland Plateau Section of the Appalachian Plateau Physiographic Province.

When *Helianthus eggertii* was listed as threatened in 1997, it was known from only 1 site in one county in Alabama, 13 sites in 5 counties in Kentucky, and 20 sites in 8 counties in Tennessee. While the species was not defined in terms of "populations'' at that time, the Alabama site was described as vigorous, while most sites in Kentucky contained less than 15 stems, with 4 sites having 5 or fewer stems, and about 50 percent of the Tennessee sites contained fewer than 20 stems (62 FR 27973, May 22, 1997). When the recovery plan for this species was finalized in 1999, there was 1 known site in Alabama, 27 sites in 6 counties in Kentucky, and 203 sites in 12 counties in Tennessee.

The term "population,'' as it relates to *Helianthus eggertii,* was first defined in the Recovery Plan as "a group of plants that is isolated by geographic discontinuity or a distance of one-half mile'' (USFWS 1999a). Recent studies on *H. eggertii* genetics by Cruzan (2002) suggested that a population of fewer than 100 flowering stems is unlikely to be sufficiently large enough to maintain genetic diversity. Cruzan (2002) also estimated a reasonable fragmentation threshold of 1 kilometer (km) (0.6 mile); that is, sites within that distance of each other were close enough to exchange genetic material. The further use of the term "population'' in this document

indicates a site, or sites, that cumulatively have more than 100 flowering plants and that do not occur more than 1 km apart. Based on 2003 data from the Alabama, Kentucky, and Tennessee Natural Heritage Programs and the Service, there are 3 known sites in 2 counties in north Alabama, 33 sites in 9 counties in central Kentucky, and 243 sites in 15 counties in middle Tennessee (Alabama Natural Heritage Database 2003; Kentucky Natural Heritage Database 2003; Tennessee Natural Heritage Database 2003; USFWS unpublished data). Applying the definition above to the current situation for this species, Alabama has 3 populations, Kentucky has 18 populations, and Tennessee has 47 populations; 27 of these 68 populations occur on public lands. Furthermore, the total of 279 currently known sites of *Helianthus eggertii* far exceeds the 34 sites known at the time the species was listed.

Previous Federal Actions

Federal actions on this species began in 1973, when the Act was first passed. Section 12 of the Act 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. 9451, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act). By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *H. eggertii* was included in the Smithsonian report and also in the July 1, 1975, Notice of Review (40 FR 27823). On June 16, 1976, we published a notice in the **Federal Register** (41 FR 24523) that determined approximately 1,700 vascular plant taxa, including *H. eggertii,* to be endangered pursuant to section 4 of the Act.

The 1978 amendments to the Act required that all proposals that were not finalized within two years be withdrawn. On December 10, 1979 (44 FR 70796), we published a notice withdrawing all plant species proposed in the June 16, 1976, rule. The revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480), included *Helianthus eggertii* as a category 2 species. Category 2 species were described as those taxa for which the Service had information indicating that proposing to list them as endangered or threatened might be appropriate, or for which substantial data on biological vulnerability and threats were not known at the time or were not on file to support the listing. It was subsequently retained as a category 2 species when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640), 1985 (50 FR 39526), and 1990 (55 FR 6184).

All plant taxa included in the comprehensive plant notices are treated as if under a petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. This was the case for *H. eggertii* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, we found that the petition calling for the listing of *H. eggertii* was not warranted because of insufficient data on its distribution, vulnerability, and degrees of threat. We funded a survey in 1989 to determine the status of *H. eggertii* in Alabama, Kentucky, and Tennessee. In 1990, the Service had not yet received the results of the survey we had funded and it was believed that additional surveys of potential habitat and further identification of threats were needed before a decision could be made on whether to propose listing the species.

In 1991, we accepted a final report on these surveys (Jones 1991). Information contained in the 1991 final report completed informational gaps and provided what was then thought to be sufficient data to warrant preparation of a proposed rule to list the species. *Helianthus eggertii* was accepted as a category 1 species on August 30, 1993, and was included in the revised Notice of Review for Native Plants published on September 30, 1993 (58 FR 51144). On September 9, 1994 (59 FR 46607), we published a proposal to list *H. eggertii* as a threatened species in the **Federal Register**. A final rule placing *H. eggertii* on the Federal List of Endangered and Threatened Plants as a threatened species was published on May 22, 1997 (62 FR 27973). That decision included a determination that the designation of critical habitat was not prudent for *H. eggertii.*

The final Recovery Plan for *Helianthus eggertii* (Recovery Plan) was completed in December 1999. The Recovery Plan provides the following criteria to consider *H. eggertii* for delisting—(1) the long-term conservation/protection of 20 geographically distinct, self-sustaining populations (distributed throughout the species' range or as determined by genetic uniqueness) must be provided through management agreements or conservation easements on public land or land owned by private conservation groups and (2) these populations must be under a management regime designed to maintain or improve the habitat and each population must be stable or increasing for 5 years. There are presently 27 populations that are under a management regime that benefits the species and that occur on public land or land owned by a private conservation group (*i.e.,* The Nature Conservancy (TNC)). These are geographically distinct (separated by more than 1 km (0.62 miles)), and self-sustaining (greater than 100 flowering stems). These populations are scattered throughout the species' historic range. We have 5 years of monitoring data on each of the 27 populations that show they are stable or increasing. We have finalized cooperative management agreements with Kentucky Transportation Cabinet (one population), Tennessee Wildlife Resources Agency (seven populations), and Mammoth Cave National Park (three populations) for the long-term protection of *H. eggertii.* We are in the process of finalizing cooperative management agreements that will protect the remaining populations that occur on public lands and TNC property. We expect to have these agreements in place before this rule is finalized. These cooperative management agreements will remain in place even if the species is delisted.

Federal involvement with *Helianthus eggertii* subsequent to listing has included funding for recovery activities such as surveys for new locations, monitoring of known populations, population and ecological genetics studies, and collection and analysis of ecological and biological data. We have also been involved with the development of the Eggert's Sunflower Management Plan, Barrens Management Plan, and the Integrated Natural Resources Management Plan for Arnold Air Force Base in Tennessee. All of these plans address *H. eggertii* and its habitat (see discussion under Factor A). Recently we have signed an agreement with the Kentucky Transportation Cabinet to protect and manage a *H. eggertii* site in Hart County, Kentucky. We have evaluated potential impacts to this species from 248 Federal actions. The majority of these actions are highway and pipeline projects. We have conducted two formal consultations; one resulted in a "no effect'' to the

species finding and the other a "not likely to jeopardize the continued existence'' of the species finding. No plants were adversely affected by either project.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our determination that designation of critical habitat for *Helianthus eggertii* was not prudent (*Southern Appalachian Biodiversity Project* v. *United States Fish and Wildlife Service, Norton & Williams* (CN 2:00–CV–361 (E.D. TN)). On November 8, 2001, the District Court of the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determination and submit a new prudency determination for *H. eggertii* no later than December 29, 2003. On January 8, 2004, the court extended the submission date to not later than March 30, 2004. Accordingly, we are including a new prudency determination in this proposal to delist *H. eggertii.*

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the Federal List of Endangered and Threatened Wildlife and Plants. These five factors and their application to *Helianthus eggertii* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In 1997, when *Helianthus eggertii* was listed as threatened, most of the 34 known sites of this species were thought to be threatened with destruction or modification of their habitat. It was estimated that over 50 percent of the known sites were threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants that produce shade and compete with this species for limited water and nutrients. Active management was listed as a requirement to ensure the plant's continued survival at all sites. Since most of the sites where this species survives are not natural barrens, but areas such as rights-of-way or similar habitats that mimic barrens, direct destruction of this habitat for commercial, residential, or industrial development or intensive rights-of-way maintenance (*e.g.*, herbicide use) was thought to be a significant threat to the known sites at the time of listing.

Overall, the activities affecting the species' habitat, such as encroachment of more competitive vegetation, direct destruction of habitat for commercial and residential development, intensive rights-of-way maintenance, and conversion of barrens habitat to croplands, pasture, or development, appear to have changed very little since listing. However, the risk those threats pose for *Helianthus eggertii*'s survival and conservation are considerably less than what was understood at the time of listing. *H. eggertii* appears to respond favorably to disturbance. One site that occurs in Coffee County, Tennessee, was known to have hundreds of stems in 1998 before the site was clearcut. In 2000, Tennessee Department of Environment and Conservation (TDEC) found that there were very few plants left and it was thought that the logging had resulted in the destruction of the plants at this site. However, in 2003, we found that the site had 1,578 total stems, including 951 flowering stems. Logging had only a temporary negative effect and the resulting land disturbance resulted in greatly increasing the size and vigor of the plants at this site (USFWS, unpublished data 2003). This same event has occurred on the Arnold Air Force Base in Coffee County. Pine stands that had few to no *H. eggertii* had been clearcut, followed by either the new appearance of *H. eggertii* or a significant increase in size and vigor of existing plants (K. Fitch, pers. comm. 2003). Many of the known *H. eggertii* sites occur along road and power line rights-of-way. This is probably due to the disturbance of these areas from continual maintenance activities. While plants will not grow and flower well in very deep shade (*i.e.*, 80 percent), the moderate levels of shade (from 40 to 60 percent) where *H. eggertii* normally occurs do not appear to have large negative consequences for its growth or reproduction (Cruzan 2002). Cruzan (2002) also found that *H. eggertii* competes well against other more widespread species under full sunlight and 60 percent shade conditions, a fact that was not known at the time of listing.

At the time of listing, we did not fully understand that *Helianthus eggertii* could readily adapt to utilizing manmade disturbances to replace the dwindling natural barrens. We originally thought the species was restricted to these natural barren areas. When *H. eggertii* was listed, manmade areas were thought to be low-quality sites where the species was making a last ditch effort to survive. Upon discovering that manmade sites were a significant habitat *H. eggertii* was exploiting and in which it was thriving, we began finding a significant number of new sites. In fact, since listing, an additional 245 sites have been found that contain the species (Alabama Natural Heritage Database 2003; Kentucky Natural Heritage Database 2003; Tennessee Natural Heritage Database 2003; USFWS unpublished data 2003). The species is also more widespread than originally thought, occurring in 2 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee. The number of stems has also increased dramatically from the time of listing. In Alabama, the one site known at the time of listing was described as vigorous; presently, there are three sites and all three have more than 100 stems (Alabama Natural Heritage Database 2003). In Kentucky, most of the 13 original sites at the time of listing contained fewer than 15 stems and 4 sites had fewer than 5 stems. Presently in Kentucky, there are 33 known sites; 13 of these sites have more than 100 stems, and are now considered viable populations (Kentucky Natural Heritage Database 2003). In Tennessee, about one-half of the 20 original sites at the time of listing contained fewer than 20 stems. Currently in Tennessee, there are 243 known sites, 63 of which have more than 100 stems and are now considered viable populations (Tennessee Natural Heritage Database 2003; USFWS unpublished data 2003).

Of the 279 sites where *Helianthus eggertii* is known to occur in Alabama, Kentucky, and Tennessee, 126 (which make up 27 total populations) are in public ownership or on land owned by TNC and are being managed to protect the species. Protection for the species will continue on these sites even if it is delisted. Arnold Engineering and Development Center (AEDC), operated by the U.S. Air Force, has 115 of these sites (11 populations) and is the largest Federal landowner harboring this species. *H. eggertii* is covered by AEDC's Integrated Natural Resources Management Plan (INRMP), a Barrens Management Plan (BMP), and a separate Eggert's Sunflower Management Plan (ESMP). The INRMP, BMP, and ESMP are active management plans that provide for the long-term conservation of this species by focusing on restoring barrens habitat and maintaining the necessary ecological processes in habitats the species requires. These processes include various silvicultural treatments (*e.g.*, clearcuts, marked thinning, and row thinning), prescribed burning, and invasive pest plant management (*e.g.*, manual removal and herbicide spot application). Regardless of the Federal status of *H. eggertii*, the BMP, ESMP, and INRMP will continue

to provide for the protection and management of this species (U.S. Air Force (USAF) 2001, USAF 2002). In Kentucky, Mammoth Cave National Park (MCNP) has three populations and there is one population on U.S. Army Corps of Engineers property at Nolin Lake. MCNP is actively managing *H. eggertii* populations and has implemented a prescribed burning regime to provide for the long-term protection of this species. We have recently signed a Cooperative Management Agreement with MCNP to provide long-term protection of the three *H. eggertii* populations occurring on Park property. These populations and the barrens habitats on which they occur will be sustained by implementing habitat management activities, such as prescribed burns, tree thinning, and invasive plant removal, and monitoring the plants and their habitat. We also have draft Cooperative Management Agreements being reviewed by AEDC and the U.S. Army Corps of Engineers. We believe that these agreements will be signed before this proposed rule is finalized, within a year. These agreements, like the MCNP agreement, will provide for the long-term protection of *H. eggertii* populations by implementing the above-listed habitat management activities. These agreements will aid in sustaining these populations on these Federal lands regardless of the Federal status of this species.

Helianthus eggertii is an early successional stage species and, while historic barrens habitat is becoming increasingly rare, this species readily responds to barrens restoration activities as well as colonizing manmade disturbed areas. The key to long-term survival of *H. eggertii* is periodic burning, mowing, or thinning of the competing vegetation. Kentucky Transportation Cabinet has signed a management agreement with us to maintain, enhance, and monitor *H. eggertii* on its property (41 acres, one population) which includes restoring barrens habitat by thinning the existing trees near *H. eggertii* occurrences, conducting periodic prescribed burns, and monitoring the success of these management practices to refine them if necessary. The management agreement is in effect until 2010 delete previous place.

The Alabama and Tennessee State Departments of Transportation are working with us to develop and maintain roadside mowing regimes that would benefit existing *Helianthus eggertii* sites. This will also encourage new establishment of plants along road rights-of-way by reducing the competing vegetation and keeping the areas open. The Tennessee Wildlife Resources Agency (TWRA), which owns four wildlife management areas that contain seven *H. eggertii* populations, is managing these areas for small game, which indirectly benefits this species by keeping the area in early successional vegetation. We have drafted a management agreement with TWRA that would provide for the protection of this species on its lands for an initial period of 10 years. This agreement is in the process of being signed and, like the Federal agreements, will involve habitat management activities such as prescribed burns, tree thinning, and invasive plant removal, and monitoring the plants and their habitat to ensure the protection and management of these sites regardless of the Federal status of *H. eggertii*. Similarly, we have drafted a management agreement with the City of Nashville, Metro Parks and Recreation, which owns and operates Beaman Park in Davidson County, Tennessee. Beaman Park contains two populations of *H. eggertii*. This park is new and plans are being developed for future uses such as hiking trails, picnic areas, park headquarters, and maintenance buildings. We are working with Metro Parks to ensure that the existing *H. eggertii* populations are protected. The draft agreement will be signed before this proposed rule is finalized (within one year), and will include the above-listed habitat management activities.

TNC in Kentucky owns a site known as Baumberger Barrens, which contains one population of *Helianthus eggertii*. TNC has an existing management plan for the barrens that includes *H. eggertii*. The site is undergoing management, such as removal of woody species, periodic prescribed burns, and invasive plant removal, to ensure the native barrens species, including *H. eggertii*, are maintained and protected. It is our understanding that this site will be protected in perpetuity by TNC of Kentucky for the people of Kentucky.

TNC of Kentucky and the State of Kentucky each own 50 percent in a site known as Eastview Barrens. One population of *Helianthus eggertii* occurs at the Eastview Barrens. These two landowners are working together to manage the barrens on this site by removing woody species, conducting periodic prescribed burns, and preventing and removing invasive plants to ensure the native barrens species, including *H. eggertii*, are maintained and protected. This site will be protected in perpetuity by TNC of Kentucky and the State of Kentucky for the people of Kentucky.

The large increase in new *Helianthus eggertii* sites (245) since listing, the increased understanding of the plant's adaptability, and the protection and management provided by State and Federal landowners have led us to conclude that the threats to *H. eggertii*'s habitat have been adequately addressed and habitat destruction is no longer considered to be a threat to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We have no documented evidence, records, or information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to *Helianthus eggertii.* We have found no records of unauthorized collection during our literature review or in discussions with researchers. This species is not believed to be a significant component of the commercial trade in native plants, and overutilization does not constitute a threat for this species.

C. *Disease or predation.* Disease has been observed by the Service and other observers on small numbers of *Helianthus eggertii* plants (T. Gulya, pers comm. 2004). This disease is believed to be a rust fungi of either the Puccinia or Coleosporium genus (T. Gulya, pers comm. 2004). This rust attacks the vegetation and leaves orange-to-brown pustules (raised bumps or areas) on the surfaces. It does not appear to kill the plants, and we do not believe that it is a threat to the species' existence. Predation from insects and herbivores has also been noted on small isolated patches of H. eggertii. These incidents appear to result from normal environmental conditions. Because of the ability of this plant to sprout stems from rhizomes, the small amount of predation observed does not pose a threat to this species.

D. *The inadequacy of existing regulatory mechanisms.* The Act does not provide protection for plants on private property unless the landowner's activity is federally funded or requires Federal approval. In all three States (Alabama, Kentucky, and Tennessee), plants have no direct protection under State law on private property. Plants on private property are afforded ancillary protection under State criminal trespass laws. If this proposed delisting rule is finalized, the only change to the protection of *Helianthus eggertii* on private land would be that we would no longer consult under section 7 of the Act for the activities that are federally funded or require Federal approval. However, there are enough populations of *H. eggertii* on public lands (27 populations) to afford the long-term

conservation of this species based on the recovery criteria (20 populations) in the Recovery Plan. The recovery criteria called for the 20 populations to be distributed throughout the species' historical range and, based on the number and distribution of populations known at that time, determined that the relative proportions would be one population in Alabama, three populations in Kentucky, and 16 populations in Tennessee. Although none of the three populations in Alabama are currently under a management plan, we believe that the current distribution of populations under such plans meets the intent of the recovery criteria because they are "distributed throughout the species'' historical range,'' including populations that occurred near the Tennessee/Alabama border.

Section 9(a)(2)(B) of the Act prohibits removal and possession of endangered plants from areas under Federal jurisdiction. Kentucky has 4 populations and Tennessee has 11 populations that occur on Federal lands. None of the three populations in Alabama occurs on Federal lands. *Helianthus eggertii* sites on MCNP in Kentucky are also protected from take by Code of Federal Regulations, Title 36, Volume 1, which protects all plants on Department of Interior lands. We have a cooperative management agreement with the Mammoth Cave National Park and we anticipate having signed agreements with the remaining Federal landowners before this rule is finalized, within one year. These agreements would protect *Helianthus eggertii* and its habitat for a period of 10 years, regardless of the Federal status of the species. Both the plant and its habitat would be protected, managed, and monitored under these agreements.

On public lands in Tennessee and Kentucky, on which 27 populations (composed of 126 of the 279 known sites, and including the 15 populations on Federal lands just discussed) of the plants are found, *Helianthus eggertii* is adequately protected by other laws. Air Force Instruction 32–7064 at 7.1.1 provides the same protection for candidate and State listed species as for federally listed species "when practical'' on AEDC. It is our understanding that the State of Tennessee has no plans to delist *H. eggertii* in the immediate future. In addition, as mentioned previously, *H. eggertii* is covered under 3 management plans covering AEDC (INRMP, Barrens Management Plan and Eggert's Sunflower Management Plan), all of which will continue for some years regardless of whether the species is delisted. The TWRA has a rule (1660–1–14–.14) that protects all vegetation on designated wildlife management areas from take regardless of its State or Federal status. There are 10 known populations of *H. eggertii* that occur on State-owned public lands in Tennessee; 5 of these populations occur on 4 different State wildlife management areas managed by the TWRA. On public lands in Alabama and Kentucky, every natural component is considered public domain and is, therefore, protected from take under State law. Alabama has one population and Kentucky has three populations of *H. eggertii* that occur on State-owned public lands. These State laws will remain in effect regardless of whether this species remains federally listed or not.

The ESA protects plants on private lands only if the actions which might adversely impacted them are conducted, permitted or funded by a Federal agency, or constitute criminal trespass or theft of the plants. The limited protection afforded by the Act under these circumstances would be lost through delisting, and other existing regulations did not provide complete protection to all existing habitat on private lands. However, we believe the significant protections afforded to the 27 populations occurring on public lands are adequate to ensure those populations of *H. eggertii* remain viable, and such populations by themselves meet or exceed the recovery goals listed in the recovery plan.

E. *Other natural or manmade factors affecting its continued existence.* Extended drought conditions and an increase in the potential for inbreeding depression due to dwindling numbers were thought to affect the continued existence of *H. eggertii* at the time of listing. The known sites of *H. eggertii* have now increased in number to 279 (68 populations) and are scattered throughout 26 counties in three States. This makes the likelihood of a drought adversely affecting all the known sites much less than originally thought, when there were only 34 known sites. Also, there are three populations in Alabama, 18 populations in Kentucky, and 47 populations in Tennessee, for a total of 68 populations, that have more than 100 flowering stems. The Recovery Plan criterion requires only 20 populations to be considered for delisting. Cruzan (2002) suggested that 100 flowering stems or more were needed to maintain genetic diversity and prevent inbreeding depression within a population. Inbreeding depression due to low numbers of individuals per population is no longer a threat to *H. eggertii.* We believe the known number of sites, the numbers of existing populations, and their distribution are sufficient to protect against potential catastrophic events (*e.g.*, drought) and no longer consider such events to be a threat to this species. There are no other natural or manmade factors known to affect the continued existence of *H. eggertii;* therefore, we do not believe these factors will affect the continued existence of this species.

Summary of Findings

According to 50 CFR 424.11(d), a species may be delisted if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data for classification of the species. The "error in the original data'' category for delisting a species has been further subdivided by the Service to more specifically identify the "error'' as follows—(1) better data (foreign, scientific, or commercial information), (2) scientific (taxonomic) revision of the listing basis (subsequent to listing), (3) amendment to the Act (the scope of listing under section 4), and (4) additional discoveries of previously unknown populations and/or habitats (USFWS 1999b).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Helianthus eggertii.* Based on 2001, 2002, and 2003 surveys, we conclude that the threatened designation no longer correctly reflects the current status of this plant. Relative to the information available at the time of listing, recovery actions have resulted in new information that shows a significant (1) expansion in the species' known range, (2) increase in the number of known sites, and (3) increase in the number of individual plants. Furthermore, recovery efforts have provided increased attention and focus on this species. This in turn has led to greater protection for the species such that the recovery criteria in the Recovery Plan for this species are expected to be entirely met in the next year, prior to finalizing this proposed rule. After conducting a review of the species' status, we have determined that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. Given the expanded range, number of newly discovered population locations and individuals, the increased knowledge of the genetics of this species, and the protection offered by State and Federal landowners, we

conclude, based on the best scientific and commercial information, that *H. eggertii* does not warrant the protection of the Act. Therefore, we propose to remove *H. eggertii* from the List of Endangered and Threatened Plants.

Prudency Determination

Because of the current status of the species throughout its range and the number of sites that are located on Federal, State, and private conservation areas, we are proposing to remove *Helianthus eggertii* from the List of Endangered and Threatened Wildlife and Plants under the Endangered Species Act. We believe that the threatened designation no longer correctly reflects the current status of this plant. We have not yet made a final determination on the delisting proposal. Therefore, the species remains listed, and the Act requires us to designate critical habitat for the species, if designation would be prudent. The facts and analysis described in the proposed rule above, however, are highly relevant to the question of what areas may constitute critical habitat for the species. In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species.'' Under the Act, "conservation'' is a technical term, defined as the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary. In the case of *H. eggertii*, no methods or procedures are required to bring the species to the point where listing is no longer necessary to the conservation of the species. Recovery actions have secured a number of populations and identified additional populations not previously known. The species is more widespread and abundant than was documented at the time of listing. The species habitat also does not require any "special management considerations or protection'' because we believe the species habitat is being appropriately managed and protected by State, Federal, and county land managers. The species is more resilient and less vulnerable to certain activities than previously thought, and is now protected on Federal, State, and county lands. The large increase in new sites, increased understanding of the plant's adaptability, and the protection and management provided by State and Federal landowners have led us to conclude that habitat destruction is no longer considered a threat to the species. Moreover, because of the significant protections afforded by the 27 populations of *H. eggertii* occurring on public lands, we believe that the protection provided by existing regulations are adequate to maintain habitat of sufficient quantity and quality to ensure viable populations and meet recovery goals listed in the recovery plan. Thus, there are no areas that constitute critical habitat for the species. If there is no critical habitat to be designated, designation would not be beneficial to the species. Designation of critical habitat is, therefore, not prudent.

Effect of This Rule

This rule, if made final, would revise 50 CFR 17.12(h) to remove *Helianthus eggertii* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.96.

If this species is removed from the List of Endangered and Threatened Plants, Endangered Species Act protection would no longer apply. Removal of *Helianthus eggertii* from the List of Endangered and Threatened Plants would relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

The 1988 amendments to the Act require that all species that have been delisted due to recovery efforts be monitored for at least five years following delisting. The Federal, State, and private conservation group landowners involved in recovery activities for this species are already monitoring the status of this species, either through existing agreements or voluntarily. The Kentucky Transportation Cabinet has signed a management agreement with us, covering one population in Kentucky, to protect this species and monitor its status for a period of seven years. We have draft agreements with the TWRA and the Arnold Air Force Base, covering 16 populations in Tennessee. These landowners will protect these populations and monitor their status for a period of 10 years. We anticipate that these agreements will be finalized before this proposed delisting rule would become final, within one year. Furthermore, we will be working with the Federal and State landowners and TNC to develop a post-delisting monitoring plan. This plan will be drafted, released for comment, and finalized on schedule with the final delisting.

Peer Review

Under our 1994 peer review policy (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population structure, and supportive biological and ecological information on this proposed rule. The purpose of such review is to ensure that we base listing decisions on scientifically sound data, assumptions, and analysis. To that end, we will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the interim rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior,

Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email comments to—*Exsec@ios.doi.gov.*

References Cited

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U.S. Fish and Wildlife Service. 1999a. Recovery Plan for *Helianthus eggertii* Small (Eggert's sunflower). Atlanta, Georgia. 40 pp.

U.S. Fish and Wildlife Service. 1999b. Endangered and Threatened Wildlife and Plants 50 CFR 17.11 and 17.12; As of December 31, 1999. Special Reprint. U.S. Government Printing Office. P. 56.

Author

The primary author of this proposed rule is Timothy Merritt (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

§ 17.12—[Amended]

2. Amend § 17.12(h) by removing the entry ''*Helianthus eggertii*'' under ''FLOWERING PLANTS'' from the List of Endangered and Threatened Wildlife and Plants.

Dated: March 30, 2004.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 04–7547 Filed 4–2–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI52

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout (*Salvelinus confluentus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the proposal to designate critical habitat for the Klamath River and Columbia River populations of bull trout (*Salvelinus confluentus*), and the availability of the draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until May 5, 2004.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 503/231–6243; or

3. You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section. In the event that our internet connection is not functional, please submit you comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: John Young, at the address above (telephone 503/231–6194; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (November 29, 2002, 67 FR 71235) and on our draft economic analysis of the proposed designation. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding any particular area as critical habitat outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of bull trout and its habitat, and which habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families beyond those identified in section 4.3 (Potential Impacts on Small Entities);

(5) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs are overlooked;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the economic analysis appropriately identifies all costs that could result from the designation;

(9) Whether the economic analysis correctly assesses the effect on regional