

Authority: 16 U.S.C. 1531, 1532, 1533, 1534

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Sensitive Joint-Vetch (*Aeschynomene virginica*)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

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

water pollution, and bank erosion from motorboat traffic.

EFFECTIVE DATE: June 19, 1992.**ADDRESSES:** The complete file for this rule is available for inspection by appointment during normal business hours, at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, MD 21401.**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Jacobs at the above address, telephone (410) 269-5448, during normal business hours.**SUPPLEMENTARY INFORMATION:****Background**

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

A. virginica is an annual legume (family Fabaceae) that attains a height of 1 to 2 meters (3-6 feet) in a single growing season. The stems are single, sometimes branching near the top. Leaves are even-pinnate, 2-12 centimeters (0.8-4.8 inches) long, with entire, gland-dotted leaflets. The irregular, legume-type flowers are about 1 cm (0.4 inch) across, yellow, streaked with red, and grow in racemes (elongated inflorescences with stalked flowers). The fruit is a loment with 6-10 segments, turning dark brown when ripe.

Flowering begins in late July and continues through September. Fruits are produced from July to frost. Some observations indicate that seedlings may germinate only in "flotsam" (plant material) that has been deposited on the riverbank (Bruederle and Davison 1984).

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

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

commercial and housing developments, realignment of a highway, habitat conversion to a public beach, and competition from weedy species. In the course of survey work, six new occurrences of *A. virginica* were found, two in or adjacent to cornfields and the remainder in roadside ditches. These new populations, in habitat atypical for the species, have not proven to be stable. Three disappeared the year following their discovery, and another population has since disappeared. An additional small population was discovered in 1991. Thus, *A. virginica* is presently known to be extant in North Carolina only in three locations—two ditches connected to Lake Mattamuskeet, in Hyde County, and a ditch in Beaufort County. These populations are all apparently unstable, and the outlook for their long-term survival is not good. Intensive fieldwork in North Carolina's fresh tidal marshes in the areas of Albemarle and Pamlico Sounds during 1989 and 1990 revealed no new joint-vech populations. These areas represented most of the best potential habitat for *A. virginica* in the State, and it is therefore unlikely that any additional significant joint-vech populations will be found in North Carolina.

The currently known distribution of the species is as follows: New Jersey: One small occurrence (± 50 individuals) on the Wading River in Burlington County and one large occurrence (± 2000) on the Manumuskin River in Cumberland County. The latter site, representing one of the few remaining examples of pristine freshwater tidal marsh habitat in the State and containing the largest known viable *Aeschynomene virginica* population, has been acquired by The Nature Conservancy. New Jersey historic records for *A. virginica* occur in Atlantic, Camden, Cape May, and Salem Counties. Additional potential habitat along the Mullica and Maurice River systems remains to be checked for the species' presence. Maryland: One occurrence of several hundred individuals on Manokin Creek, in Somerset County; historic records from Anne Arundel, Calvert, Charles, Prince Georges, and Wicomico Counties. All historic sites have been recently field-checked. North Carolina: As stated above, in the summer of 1991 *A. virginica* was known to occur in two ditches in Hyde County and one ditch in Beaufort County. The plant also occurred historically in Craven County. Virginia: This is the stronghold of the species' current distribution. Wide annual fluctuations make estimations

difficult, but it is believed that the total number of plants in the State is in the vicinity of 5000. It occurs along six river systems, as follows: (1) An occurrence of about 50 individuals along the Potomac River in Stafford County; (2) an extensive occurrence consisting of seven sub-populations along approximately 25 miles of the Rappahannock River in King George, Essex, Richmond, and Westmoreland Counties; (3) a large occurrence consisting of five sub-populations along an approximate 15-mile stretch of the Mattaponi River, a tributary of the York in King and Queen and King William Counties; (4) five sub-populations along a 15-mile section of the Pamunkey River, another tributary of the York (King William and New Kent Counties); (5) an occurrence of about 50 plants on the Chickahominy River, a tributary of the James River, in Charles City and James City Counties; and (6) a tiny occurrence of some eight plants along the mainstem of the James River, in Charles City County. The species is apparently extirpated from its type locality further downstream on the Rappahannock in Middlesex County. Historic records also exist for Prince George and Surry Counties, along the James River. The historic range of the species also included Delaware, (New Castle County), where it was last observed in 1899, and Pennsylvania (Delaware County), where it was last seen in 1891.

Federal government actions on this species began on December 15, 1980, when the Service published in the *Federal Register* a revised Notice of Review for Native Plants (45 FR 82480). *Aeschynomene virginica* was included in that notice as Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. On November 28, 1983, the Service published in the *Federal Register* a supplement to the Notice of Review for Native Plants (48 FR 53640); updated plant notices have been published on September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 8184). *A. virginica* was included in these revisions as a Category 2 species.

In 1985 the Service contracted with The Nature Conservancy's Eastern Regional Office to conduct status survey work on *A. virginica* and several other Federal candidate species. Their report (Rawinski and Cassin 1986) indicated that sufficient information did not exist at that time to support listing *A. virginica* as endangered or threatened.

They recommended retention of this species in Category 2. Subsequent to the submission of this report, numerous developments precipitated the preparation of a proposal to list the species as threatened. These included: (1) The disappearance of four known occurrences of the species in North Carolina; (2) resolution of uncertainties about the species' taxonomic affiliations (Carulli and Fairbrothers 1988); (3) accomplishment of further surveys of potential habitat throughout its range; and (4) appearance of specific threats to the species' continued existence, particularly in New Jersey and Virginia. The *Federal Register* document proposing threatened status for *Aeschynomene virginica* was published on July 26, 1991 (56 FR 34162). With the publication of this final rule, the Service now determines threatened status for *Aeschynomene virginica*.

Summary of Comments and Recommendations

In the July 26, 1991, proposed rule (56 FR 34162) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Comments were requested from appropriate state agencies, county governments, scientific organizations, and other interested parties. Newspaper notices inviting public comment were published in a total of five newspapers in New Jersey, Virginia, Maryland, and North Carolina, all of local circulation in the areas where the joint-vech occurs.

A total of 11 comments were received. Seven of these were from various regulatory agencies in the four states where the species occurs. All of these expressed support for the listing action, although New Jersey recommended endangered, rather than threatened status. The Service concurs that the sensitive joint-vech is faced with many threats, some of which are imminent. However, the current range-wide distribution and status of *Aeschynomene virginica* is more in keeping with the definition of "threatened" (i.e. likely to become endangered within the foreseeable future) as opposed to the "imminent danger of extinction" criterion that an endangered designation would indicate.

The U.S. Army Corps of Engineers also expressed support for the listing, as did a private individual who lives on Virginia's Pamunkey River and has witnessed considerable degradation over the past few years. A letter from Mattamuskeet National Wildlife Refuge in North Carolina expressed willingness

to cooperate with surveys and recovery actions. A letter from the Maryland Department of Transportation expressed no position, but indicated their readiness to protect the species where it might be affected by one of their projects. A letter from the Chesapeake Bay Local Assistance Department of Virginia also expressed no position on the proposed listing. Many of the letters provided additional information, which has been incorporated into this rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. 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 *Aeschynomene virginica* (L.) B.S.P. (sensitive joint-vetch) are as follows:

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

The extirpation of the sensitive joint-vetch from Delaware and Pennsylvania and its elimination from many sites in other States can be directly attributed to habitat destruction. Many of the marshes where it occurred historically have been dredged and/or filled and the riverbanks bulkheaded or stabilized with riprap. This is most evident in historic locations around Philadelphia (Bruederle and Davison 1984). Other sources of potential or actual habitat destruction include impoundments and water withdrawal projects, road construction, commercial and residential development, and resultant pollution and sedimentation.

The remaining stronghold of *A. virginica* is in Virginia, along the relatively narrow band of freshwater tidal sections of several river systems on the coastal plain. These river sections are quite pristine, despite their proximity to the major metropolitan areas of Washington, DC and Richmond, Virginia. As the suburbs associated with these cities expand, the impacts to these river sections from residential and commercial development, shoreline stabilization activities, point and non-point source discharges, recreational use, water development projects, and sedimentation from building and road construction are all expected to increase greatly

Certain of these factors are known to be harmful to *Aeschynomene virginica*; others require further study to determine their effects. Shoreline stabilization, as in placement of riprap, can destroy the species' habitat directly. Increased motorboat traffic is known to be detrimental to freshwater tidal systems (A.E. Schyler, Philadelphia Academy of Natural Sciences, pers. comm. 1989). In addition to direct toxic effects from fuel leaks, the wave action from boat wakes can rapidly erode the mudflats and banks where the joint-vetch grows. Along narrower river sections, the wake from a single boat may affect both shorelines simultaneously. The letter of comment from the Pamunkey River resident attests to the erosive action of boat wakes.

Sedimentation could affect *A. virginica* by inhibiting germination, smothering seedlings and/or promoting the invasion of weedy species. Sipple (1990) notes that sedimentation of the Patuxent River in Maryland has allowed the common reed (*Phragmites australis*) to extend its range, displacing much of the wild rice (*Zizania aquatica*) that occurred historically along this river. Establishment of *Phragmites* or other invasive species could be especially detrimental to *A. virginica*, which has evolved to thrive in an environment with little competition from other plants.

Two specific projects could threaten New Jersey's large population of *A. virginica*. One is the extension of a major highway, which is proposed to cross the Manumuskin River in the vicinity of the population. The plants and their habitat could be destroyed directly, during the construction process, or indirectly, through input of sediments, road salt or petrochemicals. The other project is a coal-fired electric generating facility, proposed to be located less than a mile upstream from the population. There is concern that the disposal of by-products from this facility could degrade the plants' habitat.

Maryland's one known joint-vetch population is located in an area heavily impacted by humans, adjacent to a major highway, a sewage treatment plant, and a residential development. The population is dissected by two bridges, and its creek is channelized, beginning about one-half mile upstream. The population is also flanked by invasive weeds, including *Phragmites australis* and multiflora rose (*Rosa multiflora*). Fortunately, a larger segment of this population was discovered nearby in 1991, in a less heavily impacted setting.

In Virginia, most of the potential threats facing *Aeschynomene virginica*

and its habitat are associated with population growth. Virginia's population, within the Chesapeake Bay watershed, is projected to increase by 32% by the year 2020, a rate nearly twice that predicted for Maryland (18%) and four times that for Pennsylvania (8%) (Year 2020 Panel 1988). In areas local to the occurrence of *Aeschynomene virginica*, growth rates may be even greater. Over the past ten years, the human population of King William County near the Mattaponi River joint-vetch population has grown more than 60 per cent (Ober 1990), and this growth rate is projected to continue.

Residential development associated with this population increase is becoming evident. In early 1991, a 200-acre subdivision was completed in eastern King and Queen County. This development includes a boat launch and pier on the Mattaponi. In the western part of the county, efforts are underway to secure the necessary zoning for a 500-acre development, which would include river access, an 18-hole golf course, and other amenities. Without careful planning, such developments are likely incompatible with the continued existence of *Aeschynomene virginica*. The plants' habitat can be destroyed by the construction of piers and dredging for boat slips or other recreational purposes. Additionally, water quality degradation in streams harboring *A. virginica* can result from runoff of pesticides, fertilizers, and other chemicals used on golf courses, lawns, and gardens. Increased sewage effluent in the area may result in increased nutrient loading or pollution of local stream systems. One commentator on the proposed rule noted catching "grossly distorted catfish" and "living oysters with the shells badly corroded away" from the Pamunkey. The relationship between these observations and potential adverse impacts to the joint-vetch are unclear, but these observations certainly indicate that water quality in the area should be closely monitored.

Tremendous development pressures are also found close to the Washington, DC area. In 1987, a 1000-acre development was proposed on the Widewater Peninsula, a finger of land in Stafford County, Virginia that harbors the sole known Potomac River occurrence of *Aeschynomene virginica*. The original proposal called for over 3150 dwellings, a conference center, golf course, air strip, stores, offices, a 1000-slip marina, and industrial uses. This proposal required a re-zoning, which was rejected. However, several alternative planned developments have

been proposed, and the current intended land use of this area is for relatively high intensity waterfront development, which, without careful planning, may not be compatible with the continued existence of *A. virginica* or other freshwater tidal marsh plants.

In addition to expanded residential development, the population increase in Virginia will be accompanied by an increased demand for potable water. Tidal freshwater river systems are the source of freshwater in closest proximity to coastal communities and the obvious choice for obtaining this necessary commodity. The construction of Walker's Dam has already eliminated the tidal influence on a significant portion of the Chickahominy River, and it may have altered joint-vetch habitat in the process.

Currently, the Newport News Waterworks projects a water deficit of 35 million gallons per day (mgd) by the year 2040. The utility is beginning to evaluate numerous water supply options, three of which could potentially affect *A. virginica* habitat. The first alternative is withdrawal of 40 mgd from the James River above Richmond. A second alternative would involve a pumpover from the Pamunkey and Chickahominy Rivers (a 40 mgd withdrawal rate is proposed for each river). A third alternative calls for a maximum 75 mgd withdrawal from the Mattaponi River (B. Gladden, TNC, Charlottesville, VA, pers. comm. 1991).

Spotsylvania County has projected that it will need to increase its capacity to provide potable water by 1995. The County has applied for a permit to withdraw some 8.2 mgd from Po Creek (a tributary of the Mattaponi River). Stafford and Spotsylvania Counties and the City of Fredericksburg are also discussing a 24 mgd withdrawal from the Rappahannock River at Fredericksburg.

Hanover County, Virginia proposes to begin operating a reservoir for public water supply to the Mechanicsville-Chickahominy area by the end of this century. The reservoir would be created by constructing a cross-stream impoundment on Crump Creek, a tributary to the Pamunkey River. The implementation of this proposal would include a 25 mgd withdrawal from the Pamunkey River.

The effects of these proposed water supply projects on *A. virginica* are very likely to be detrimental and clearly need to be evaluated, both on a local and a regional basis. The withdrawal of large amounts of freshwater could raise the salinity of the marsh systems occupied by the joint-vetch, possibly beyond the species' tolerance limits. Other plant

and animal species in this community type might be adversely impacted along with the entire system. Salinity changes might also promote the invasion of weedy plant species that could readily out-compete the joint-vetch. It is likely that the growing demand for water in southeastern Virginia can be met without extirpating *A. virginica* or destroying the unique and important ecosystem that it inhabits, but this will require careful planning.

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

A. virginica has not been a target for collection, since it grows in a specialized habitat and would not survive under normal garden conditions. The plant has been collected in the past for scientific study. The increased visibility of the species as a result of the publication of this rule might increase the perceived value of specimens to collectors.

C. Disease or Predation

Observations in North Carolina have indicated severe predation of seeds by tobacco budworms and corn earworms (Leonard 1985). It is unlikely that these predators will prove to be a problem in other populations throughout the species' range, as they do not occur in typical wetland habitat.

D. The Inadequacy of Existing Regulatory Mechanisms

The sensitive joint-vetch is listed as endangered by the States of Maryland, New Jersey, and North Carolina, but not in Virginia. The Maryland Threatened and Endangered Species regulations (COMAR 08.03.08) prohibit taking of endangered plant species from State property except by special permit and further prohibit taking from private property without the written permission of the landowner. However, these regulations do not prohibit alteration of the habitat in which these species occur. Protection of habitat is afforded *Aeschynomene* under Maryland's Critical Areas regulations (COMAR 14.15.09), which prohibit any activity that may adversely affect any endangered or threatened species or its habitat within 100 feet of the upper limit of a tidal wetland. However, implementation of these regulations may be variable, because protection measures are developed and administered by local jurisdictions. The joint-vetch is afforded legal protection in North Carolina by North Carolina general statutes §§ 106-202.122, 106-202.19 [CUN.SUP.1985], which prohibit interstate trade without a permit.

prohibit taking without written permission of landowners, and provide for monitoring and management of state-listed species. However, this legislation provides no habitat protection for listed species. In Virginia, the state with the greatest number of populations of *A. virginica*, provides no protection. Listing *A. virginica* under Virginia's Endangered Plant and Insect Species Act (title 3.1, chapter 39), would protect it from take, but destruction or alteration of its habitat would be unregulated. In these states, listing under the Endangered Species Act would provide additional protection particularly for the habitat of *A. virginica*.

In New Jersey, numerous laws pertain to the protection of endangered plants. The New Jersey Endangered Plant Species List Act [NJ SA 13:1B-15.151-158] merely provides for the creation of a list of rare plants and offers no protection from take or habitat alteration. However, other state laws provide more substantial protection. Both New Jersey populations of *A. virginica* occur in wetlands regulated under the New Jersey Wetlands Act of 1970, which prohibits most non-water-dependent development within wetlands, with some exceptions, such as powerline crossings. The entire Wading River population and the eastern half of the Manumuskin River population occur within the area protected by the Pinelands Protection Act [NJ AC 7:50-6.24], which prohibits any development that would adversely affect the survival of any local population of an endangered or threatened species. The regulations governing the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 *et seq.*) state that habitat for endangered and threatened species on Federal or State lists or under active consideration for inclusion on either list will be considered "special areas". Development in these areas is prohibited unless it can be shown that the rare species' habitat would not be adversely affected. The Wading River population also falls within the area covered by this Act.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Whether due to causes mentioned under Factor A or to other as yet unidentified threats, the range of *Aeschynomene virginica* along river systems in Virginia is contracting. On both the Rappahannock and the James Rivers, *Aeschynomene virginica* was collected historically some 10 miles further upstream and downstream than it is currently known to exist. It remains

on only one section of the Chickahominy River, where it once had a much broader distribution, as noted from historical collections (T. Wieboldt, VPI&SU Herbarium, pers. comm. 1990).

It has been speculated that the existence of joint-vech may be threatened over the long term by sea level rise. This phenomenon could result in merely "pushing" the species' habitat upstream from its present position. However, the location of major cities and other developed areas upstream from the fresh/brackish water interface in many locations might block the upstream migration of natural freshwater marsh communities and their component species, including *A. virginica*.

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 *Aeschynomene virginica* as threatened. The species is not in immediate danger of extinction, due primarily to its current distribution along six river systems in Virginia. However, the best available data indicate that it qualifies as a threatened species, based on the projected outlook for human population increase and associated commercial and suburban development, demand for water, and increased human use along these river systems. Increased development has proven to be detrimental to *A. virginica* and its specialized habitat, as indicated by the species' extirpation from two States and numerous counties in the States where it is yet extant.

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 the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species at this time because the benefits of publicizing critical habitat are outweighed by added risks. Publication of critical habitat is not in the best interest of this species. The rarity of this species and its restricted range make the plants particularly vulnerable to taking. Taking is an activity difficult to prevent, and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or

regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make the joint-vech more vulnerable and increase problems. Adding the plant to the List of Endangered and Threatened Plants publicizes rarity and thus can make them attractive to curiosity seekers or expose them to potential vandalism. Though prohibited by the Act, taking and vandalism are difficult to control on the ground. The plant is sedentary which makes it particularly vulnerable. The principal land managers have been notified of the location of the species and are aware of the importance of protecting the species' habitat.

Protection of these species habitat will be addressed through the recovery process and section 7 jeopardy standard. Any federal action that would impact the plants' habitat would necessarily affect the plants themselves (being immobile, rooted organisms) and would be reviewed during section 7 consultation. The Service finds that designation of critical habitat is not presently prudent for the plant species.

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, States, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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. Private developers who are

working without any Federal permits, other authorizations, or monies, will be unaffected under this rule with respect to section 7(a), but would be subject to restrictions against take, as specified in section 9 of the Act and implementing regulations.

Because *A. virginica* occurs in wetland habitats, many projects potentially affecting it would be within the permitting authority of the U.S. Army Corps of Engineers. The water supply and development projects mentioned under Factor A are among such projects.

The listing of this plant also brings sections 5 and 6 of the Endangered Species Act into full effect on its behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Service may grant funds to affected states for management actions aiding the protection and recovery of the species.

Listing the sensitive joint-vech as threatened provides for development of a recovery plan. Such a plan will bring together State, Federal, and private efforts for conservation of species. The plan will establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will also set recovery priorities and estimate the cost of various studies or other tasks necessary to accomplish them. It will assign appropriate functions to each agency and a time frame within which to complete them. It also identifies specific areas that need to be monitored and possibly managed for the species.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the

removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038-7329 (202/343-4955).

National Environmental Policy Act

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

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List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended, as set forth below:

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

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

2. Section 17.12(h) is amended 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) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Bean family						
<i>Aeschynomene virginica</i>	sensitive jointvetch	U.S.A. (DE*, MD, NC, NJ, PA*, VA)..	T	4FO	NA	NA

Dated: May 7, 1992.
 Bruce Blanchard,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 92-11828 Filed 5-19-92; 8:45 am]
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