

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered and Threatened Status for Three Florida Shrubs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Deeringothamnus pulchellus* (beautiful pawpaw) and *Deeringothamnus rugelii* (Rugel's pawpaw) to be endangered species, and *Asimina tetramera* (four-petal pawpaw) to be a threatened species pursuant to the Endangered Species Act of 1973 (Act). Critical habitat is not proposed. *Deeringothamnus pulchellus* is restricted to Pine Island, Lee County, and southern Charlotte County, Florida. *Deeringothamnus rugelii* is known from near New Smyrna Beach, Volusia County, Florida. Both species of *Deeringothamnus* are endangered by the destruction of their habitats for residential, commercial, and agricultural purposes. *Asimina tetramera* inhabits scrub vegetation on dunes near the Atlantic coast in Martin and northern Palm Beach Counties, Florida. It is threatened by destruction of its habitat for commercial and residential construction, and by successional changes in its habitat. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for these three shrubs. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by December 31, 1985. Public hearing requests must be received by December 16, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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

SUPPLEMENTARY INFORMATION:**Background**

These three species of pawpaw are shrubs of the custard-apple family (Annonaceae), a family that includes a dozen trees and shrubs of the southeastern United States. John K. Small (1924) established the genus

Deeringothamnus to accommodate the newly-discovered *D. pulchellus*, which differed from *Asimina rugelii* to *Deeringothamnus*. Rehder and Dayton (1944) and Wilbur (1970) merged *Deeringothamnus* into *Asimina*, but the distinctness of *Deeringothamnus* has been upheld in studies by Kral (1960) and Walker (1971). A recent study of leaf anatomy in the Annonaceae shows *Deeringothamnus* to be very distinctive (John L. Roth, Jr., personal communication, July, 1984). The genus *Deeringothamnus* consists of only the two Florida endemic species covered here. Both species inhabit poorly-drained slash pine-saw palmetto flatwoods. They are low shrubs with stout taproots. The leaves are oblong and leathery. The fruits are cylindrical berries with pulpy flesh, 3-6 centimeters (1-3 inches) long, and yellow-green when ripe. Seeds are about the shape and size of brown beans. The annual or biennial stems are 10-20 centimeters (4-8 inches) tall, rarely taller. The plants resprout readily from the roots after the tops are destroyed by fire or mowing. The absence of such disturbance leads to the eventual demise of *Deeringothamnus* (Norman and Brothers, 1981).

Deeringothamnus pulchellus has flowers with linear, creamy white petals that are straight when the flower opens, becoming recurved. The flowers are pleasantly scented. J.K. Small coined the whimsical common name of "squirrel banana" (Small 1926a). It was discovered "in the uninhabited pineland wilderness between Punta Gorda and Fort Myers" (Small, 1924), probably near Tuckers Corner in what is now the Cecil M. Webb Wildlife Management Area (L. Campbell, Webb Area manager, personal communication, March 14, 1985). Subsequently, it was found at several sites in southern Charlotte County and in Lee County near Fort Myers (Wunderlin *et al.*, 1981). Despite searches by botanists, *Deeringothamnus* has not been collected in these sites since the 1950's. Urbanization has destroyed several known sites in the Fort Myers area. A population has been known on Pine Island, Lee County, since 1930. At the present time, this species is known from grassy flatwoods on Immokalee sand and Punta fine sand soils on Pine Island. It is relatively abundant on road edges and partly developed subdivision lots that are regularly mowed, but where chopping or other soil disturbances have not occurred. A second population is known from grassy flatwoods and a road edge on Myakka fine sand soil along county highway 765 near Pirate Harbor, in southern Charlotte County (R.W.

Repenning, report to Florida Natural Areas Inventory, May 2, 1985). Until recently, the flatwoods inhabited by *Deeringothamnus* were kept relatively free of large shrubs and saw palmetto by frequent ground fires. With the coming of development, fires were controlled and mechanical means have been used to clear and maintain open areas. Infrequent mowing of undeveloped lots and road edges has replaced fire as an acceptable means of removing larger shrubs that can shade out *Deeringothamnus*. Frequent low mowing could prove detrimental.

Deeringothamnus rugelii has flowers with straight, oblong, canary yellow petals. It was first collected by Ferdinand Rugel in 1848. It was not validly described as a species until B.L. Robinson published the name *Asimina rugelii*, based on Rugel's specimens, in 1897. J.K. Small rediscovered this plant in 1924, assigned it to his genus *Deeringothamnus*, and called it the "yellow squirrel banana" (Small, 1930). The next collections were made by R. Kral in 1956 and 1958 (Wunderlin *et al.*, 1980). The present distribution of these plants has been determined by Norman and Brothers (1981). They found seven populations containing a total of fewer than 500 plants. About half of the plants were in pine flatwoods used for cattle pasture. Most of the rest were in a powerline right-of-way and a recently-burned flatwoods. All of these populations are in southern Volusia County, Florida. One population is 12 miles southwest of New Smyrna Beach. The rest are in an area of about 3 square miles, about 5 miles west of the center of New Smyrna Beach.

Asimina tetramera is a large shrub or small tree, 1-3 meters (3-9 feet) tall, with one to several upright main stems. The flowers have 4 sepals (occasionally 3 or 5), and usually 6 petals in 2 sets of 3 each. The petals are pink to maroon, and the flowers have a fetid odor. The four-petal pawpaw inhabits sand pine scrub on old dunes inland from the present Atlantic coast in Martin and northern Palm Beach Counties. It was discovered by J.K. Small in 1924 at Rio, just north of Stuart and was subsequently named by him (Small, 1926b). Small (1933) placed six species of *Asimina*, including *A. tetramera*, in a new genus, *Pityothamnus*. This genus has been rejected by other taxonomists (Kral, 1960). *Asimina tetramera* responds well to the occasional several fires and hurricane damage that typify its habitat, because new sprouts grow readily from the roots. In the absence of such disturbance, *Asimina tetramera* is usually shaded out by evergreen oaks

and sand pines. Most of its habitat has been destroyed by urban development (Austin and Tatje, 1979; Austin *et al.*, 1980). Only several hundred plants exist in the wild at the present time (R. Moyroud, Mesozoics Landscapes, Inc., personal communication, 1985). Over 100 plants were destroyed through land development in 1984 alone (P. Quincy, Florida Power and Light, personal communication, 1984).

Federal Government actions on these species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In this report, *Asimina tetramera* was listed as endangered, and *A. pulchella* and *A. rugelii* were listed as threatened. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). The above three taxa were included in the notice.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94-51 and the July 1, 1976, **Federal Register** publication. *Asimina tetramera* was included in the proposed rule. The 1978 Endangered Species Act Amendments required the withdrawal of all proposed rules over two years old, except that a 1-year grace period was allowed for proposals already over two years old. On December 10, 1979, the Service withdrew that portion of the June 16, 1976, proposal that had expired (44 FR 70796). On December 15, 1980, the Service published a notice of review for plants (45 FR 82479), which included *Asimina tetramera* and *Deeringothamnus rugelii* as category-1 candidates (species for which data in the Service's possession indicate listing is warranted). *Deeringothamnus pulchellus* was included as a category-2 candidate (species for which data in the Service's possession indicate listing is possibly appropriate but for which

received in response to the 1980 plant notice, favoring action to ensure the survival of these species. On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. The supplement treated *Deeringothamnus pulchellus* as a category-1 candidate, based on field work by Wunderlin *et al.*, 1981.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Asimina tetramera* and for both species of *Deeringothamnus* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 13, 1985, the Service found that the petitioned listing of these three species was warranted, and that, although other pending proposals had precluded their proposal, expeditious progress was being made to list these species. Publication of the present proposal constitutes the next 1-year finding that is required on or before October 13, 1985.

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 *Deeringothamnus pulchellus* Small (= *Asimina pulchella* (Small) Rehder & Dayton), beautiful pawpaw; *Deeringothamnus rugelii* (B. L. Robinson) Small (= *Asimina rugelii* B.L. Robinson), Rugel's pawpaw; and *Asimina tetramera* Small (= *Pityothamnus tetramerus* (Small) Small), four-petal pawpaw are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The former geographic ranges of the two species of *Deeringothamnus* are somewhat uncertain because few herbarium specimens were ever collected. A single specimen collected at Bithlo, Orange

Brothers, 1981). *Deeringothamnus pulchellus* has disappeared from most of its former range, which included what is now the Fort Myers urban area. The existing populations are quite vulnerable to real estate development (Wunderlin *et al.*, 1981.) since the Fort Myers area is one of the fastest-growing regions in Florida. *Deeringothamnus rugelii* has declined greatly in numbers since Kral collected specimens in 1956-1958. Real estate development is now a severe threat to this plant because all but one of the populations are within 1 mile of Interstate 95 at New Smyrna Beach. Areas that are not developed may also become unsuitable for *Deeringothamnus* due to modification of their habitats. Both species of *Deeringothamnus* are adapted to grassy flatwoods, where ground fires destroy the above-ground parts of the plant every several years. The plants resprout from the roots. *Deeringothamnus* can tolerate occasional mowing, but disruption of the root system is fatal. *Deeringothamnus rugelii* thrives in flatwoods converted to cattle pasture with bahia grass (*Paspalum notatum*), but conversion of the pastures to turf grass farming destroys the plants. Pine plantations, with fire protection and dense understory vegetation, cause *Deeringothamnus rugelii* to be shaded out. One population of *Deeringothamnus rugelii* is threatened by expansion of a cemetery (Norman and Brothers, 1981). Also, *Deeringothamnus pulchellus* is affected by trash dumping within part of its range.

Most of the original sand pine scrub habitat of *Asimina tetramera* is now urbanized. The species is now essentially confined to scrub vegetation in Jonathan Dickinson State Park, Hobe Sound National Wildlife Refuge, and several privately-owned tracts. Small areas of the State Park are used for military navigation facilities, which could be altered in the future and affect *Asimina* habitat. The four-petal pawpaw may occur on areas on and near the Refuge where the Army Corps of Engineers holds easements for disposal of dredge spoils from the Intracoastal Waterway. On the remaining privately-owned sites, native vegetation is susceptible to removal and alteration. Where the vegetation is allowed to remain, survival of the pawpaws is uncertain in the long run, because *Asimina tetramera* is a root-sprouting shrub that may be rejuvenated by having its above-ground stems

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera* are so limited in distribution and population size that indiscriminate scientific or other collecting could adversely affect these species. Collecting is not known to occur at this time, but caution will be necessary to ensure that increased publicity does not spark such collecting.

C. *Disease or predation.* *Deeringothamnus rugelii* is heavily damaged by the caterpillar of an unknown moth (Norman and Brothers, 1981). *Deeringothamnus pulchellus* also shows insect damage to leaves and flowers (Wunderlin *et al.*, 1981). No herbivory has been reported on *Asimina tetramera*.

D. *The inadequacy of existing regulatory mechanisms.* *Asimina tetramera* is listed as endangered under the Preservation of the Native Flora of Florida Law (Section 581.185 of the Florida Statutes). *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are not protected by this law at the present time. The Florida law regulates taking, transport, and the sale of plants, but it does not provide habitat protection. *Asimina tetramera* and *Deeringothamnus rugelii* were listed as endangered by the Florida Committee on Rare and Endangered Plants and Animals (Ward, 1979), but this listing confers no protection under law. The few plants of *Asimina tetramera* on Hobe Sound National Wildlife Refuge are protected from collecting (50 CFR 27.51).

E. *Other natural or manmade factors affecting its continued existence.* *Deeringothamnus pulchellus* is affected by all-terrain vehicles within part of its range. *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are both vulnerable to successional changes in the vegetation. Both species require frequent fire (or its equivalent, such as bush-hogging or mowing) to maintain an open, grassy understory vegetation, and to stimulate the production of new flowering shoots (Wunderlin *et al.*, 1981; Norman and Brothers, 1981). *Asimina tetramera* occurs in evergreen oak-sand pine scrub habitats where fires are infrequent but more intense. Because *A. tetramera* sprouts from its roots, it recovers quickly from fires. Eventually scrub oaks or sand pines overtop and shade out the pawpaws. As a result, protecting the vegetation from fire constitutes a threat to *Asimina tetramera*. Both Jonathan Dickinson State Park and Hobe Sound National Wildlife Refuge are implementing plans

for prescribed burning of vegetation. Tracts of scrub on private land where the *Asimina* exists need to be renewed by other methods, such as cutting (Austin and Tatje, 1979). Restriction to specialized habitats and small geographic ranges tends to intensify any adverse effects upon the populations of any rare plant. This is certainly true of these three species and is exacerbated by the loss of habitat which has already taken place.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* as endangered species and to list *Asimina tetramera* as a threatened species. The two former species have been extirpated from most of their historic ranges. The remaining habitat is vulnerable to development, so these species could become extinct in the near future. All the populations are on private land, and there are no State or local laws that offer them protection. Most of the range of *Asimina tetramera* is now urbanized. The remaining habitat of this species requires attention to prevent encroachment, and to ensure its continued suitability for the pawpaw. Critical habitat is not being proposed for these species for the reasons described in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. Designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The populations of *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are so small and geographically limited that excessive scientific collecting or, especially, vandalism could seriously damage the remaining populations of these species. Publication of critical habitat maps in the *Federal Register* would increase the likelihood of such activities. Similarly, it would not be prudent to publish maps of the known sites for *Asimina tetramera*. While collecting is generally prohibited in Jonathan Dickinson State Park and in Hobe Sound National Wildlife Refuge, these prohibitions are difficult to enforce. The Service believes that Federal involvement in the areas where

these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, since such designation can be expected to increase the degree of threat from taking or other human activity.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of proposed critical habitat. If a species is listed subsequently, 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 such a species or 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. Since all presently known sites for both *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are on privately-owned land, there will be no effect on Federal agencies from the above requirements unless the private owners request some Federal involvement in managing their lands. *Asimina tetramera* occurs primarily on State and private property. A few plants exist on Hobe Sound National Wildlife Refuge, where existing management

plans for prescribed fire should help to ensure its survival. The Army Corps of Engineers holds easements for dredge spoil disposal on the Refuge. The four-petal pawpaw may occur in scrub vegetation on these disposal areas. Section 7 consultation may be required if spoil is to be deposited at the plant sites.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, for endangered, and 17.71 and 17.72, for threatened, set forth a series of general trade prohibitions that apply to endangered and threatened plant species. With respect to *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. It is anticipated that few trade permits would be sought or issued; although *Asimina tetramera* is already in cultivation, it is expected to be of limited use as an ornamental.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. Permits for exceptions to this prohibition are available through revised regulations promulgated September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. Neither *Deeringothamnus pulchellus* nor *Deeringothamnus rugelii* is known from Federal lands, but *Asimina tetramera* occurs on part of Hobe Sound National Wildlife Refuge. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the ranges and habitats of these species and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207.

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).

Literature Cited

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Author

The primary author of this proposed rule is David Martin, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

order under Annonaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical

* * * * *
(h) * * *

SPECIES		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Annonaceae—Custard-apple family:						
<i>Asimina tetramera</i>	Four-petal pawpaw	U.S.A. (FL)	T		NA	NA
<i>Deeringothamnus pulchellus</i> (= <i>Asimina pulchella</i>)	Beautiful pawpaw	do	E		NA	NA
<i>Deeringothamnus rugelii</i> (= <i>Asimina rugelii</i>)	Rugel's pawpaw	do	E		NA	NA

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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