

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Determination that *Rhododendron chapmanii* is an Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Rhododendron chapmanii* (Chapman rhododendron), a native plant of Florida, to be an Endangered species. Timbering operations and subsequent site preparation techniques have led to degradation and potential loss of this species' restricted habitat. In addition, the species has been exploited commercially (for horticulture) to an extent that has caused a decline in its natural population. This action will provide protection provided by the 1973 Endangered Species Act as amended in 1978.

**DATE:** This rulemaking becomes effective on May 23, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harold J. O'Connor, Acting Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202/343-4646.

**SUPPLEMENTARY INFORMATION:****Background**

The Secretary of the Smithsonian Institution, in response to Section 12 of the Act, presented his report to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This 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 No. 94-51 and the above mentioned *Federal Register* publication.

*Rhododendron chapmanii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. The notice of review included the taxon as *Rhododendron chapmanii*, a full species. In the proposal the taxon was referred to as *Rhododendron minus* var. *chapmanii*, following a 1962 study which reduced it to infraspecific rank. A consensus of more recent biological opinion recognizes the Florida plant as a distinct species. Therefore, the plant is being listed as *Rhododendron chapmanii*.

In the June 24, 1977, *Federal Register* (42 FR 32373-32381, to be codified at 50 CFR), the Service published a final rulemaking detailing the regulations to protect Endangered and Threatened plant species. The rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

**Summary of Comments and Recommendations**

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the *Federal Register* prior to adding any species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976 were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, *Federal Register* publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). A summary of the comments pertaining specifically to *Rhododendron chapmanii* are discussed in the following paragraph. Although the Governor of Florida was notified of the contemplated action pursuant to section 4(b)(1)(A) of the Act, he submitted no comments on the proposed action.

Four comments were received concerning *Rhododendron chapmanii*. One professional botanist noted the species' limited distribution and the threat from commercial exploitation. Three comments, one from an Army Corps of Engineers resource manager, one from a Service biologist, and one from a private citizen, provided information concerning the species'

distribution and rarity. The resource manager also noted the threat from site preparation techniques used in establishing pine plantations.

**Conclusion**

After a thorough review and consideration of all the information available, the Director has determined that *Rhododendron chapmanii* Gray (Chapman rhododendron) is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Rhododendron chapmanii* are as follows:

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, this species occurred in scattered localities in open pinelands of Gulf, Franklin, Liberty, Gadsden, Leon, and Clay Counties, Florida. Logging and drastic site preparation techniques for developing pine plantations have resulted in the loss of habitat for this species and a reduction in its range to only three remaining known locations. The three extant populations include one in Clay County which is owned by a Florida National Guard installation, one in Gulf County and one located on the Gadsden-Liberty County line, both of which are owned by a paper company. The two privately owned sites contain the vast majority of the known plants, since probably fewer than 50 plants are known from the Clay County site. The Gadsden-Liberty Counties population has already been reduced in size due to logging activities. The paper company which owns the site stated that they did leave one area specifically because the *Rhododendron* was present. One observer also noted large numbers of the species which had been pushed up into wind rows, where an area was being prepared for planting pines. Habitat destruction, especially on the privately owned sites, may continue to result from the various mechanical site preparation techniques and from drainage of the species' habitat to increase pine production, further jeopardizing the continued existence of this species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* The aesthetic qualities of this species make it an appealing horticultural plant. Entire plants are collected by nurserymen and amateur gardeners. One botanist noted this as being a major threat to entire populations and noted that once a

population is discovered all the plants are often removed.

(3) *Disease or predation* (including grazing). Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms*. This species is afforded protection under Florida Law, Florida Statutes, Section 865-06, which includes limited prohibitions concerning taking, transporting, and the selling of plants listed under the Florida law. The Endangered Species Act would offer additional protection for the species as described below.

(5) *Other natural or manmade factors affecting its continued existence*. Since this species seems to do better where the overstory is kept open, succession of the community in which it occurs may threaten its continued survival. Periodic controlled burning or overstory thinning may be advantageous. The plant appears to sprout profusely following a burn.

#### Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 provides:

"The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of section 7 of the endangered Species Act Amendments of 1978."

Provisions for Interagency Cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870-876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. This rulemaking requires federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered or Threatened species. The regulations

referred to above, which pertain to plant species, are found at Sections 17.61 and 17.71 of Title 50 and are summarized below.

All provisions of Section 9(a)(2) of the Act, as implemented by Section 17.61 (42 FR 32373-32381) would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdictions of the United States to import or export, or to deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale in interstate or foreign commerce this plant. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the **Federal Register** of June 24, 1977 (42 FR 32373-32381), to be codified in 50 CFR Part 17 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered plants are available for scientific purposes or for enhancing the propagation or survival of the species.

#### Effect Internationally

In addition to the protection provided by the Act, the Service will review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendices to that Convention and whether it should be considered under other appropriate international agreements.

#### National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

#### Endangered Species Act Amendments of 1978

The Endangered Species Act Amendments of 1978 specify that the following be added at the end of subsection 4(a)(1) of the Endangered Species Act of 1973:

"At the time any such regulation (any proposal to determine a species to be an Endangered or Threatened species) is proposed, the Secretary shall by regulation,

to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

*Rhododendron chapmanii* is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973. Publication of critical habitat maps would make this species more vulnerable and therefore it would not be prudent to determine critical habitat.

The Endangered Species Act Amendments of 1978 further state the following:

"(B) In the case of any regulation proposed by the Secretary to carry out the purposes of this section with respect to the determination and listing of endangered or threatened species and their critical habitats in any State (other than regulations to implement the Convention), the Secretary—

"(i) shall publish general notice of the proposed regulation (including the complete text of the regulation), not less than 60 days before the effective date of the regulation—

"(I) in the **Federal Register**, and

"(II) if the proposed regulation specifies any critical habitat, in a newspaper of general circulation within or adjacent to such habitat;

"(ii) shall offer for publication in appropriate scientific journals the substance of the **Federal Register** notice referred to in clause (i) (I);

"(iii) shall give actual notice of the proposed regulation (including the complete text of the regulation), and any environmental assessment or environmental impact statement prepared on the proposed regulation, not less than 60 days before the effective date of the regulation to all general local governments located within or adjacent to the proposed critical habitat, if any; and

"(iv) shall—

"(I) if the proposed regulation does not specify any critical habitat, promptly hold a public meeting on the proposed regulation within or adjacent to the area in which the endangered or threatened species is located, if request therefore is filed with the Secretary by any person within 45 days after the date of publication of general notice under clause (i)(I), and

"(II) if the proposed regulation specifies any critical habitat, promptly hold a public meeting on the proposed regulation within the area in which such habitat is located in each State, and, if requested, hold a public hearing in each State."

In the case of *Rhododendron chapmanii*, all of these requirements have been complied with. *Rhododendron chapmanii* was proposed on June 16, 1976, in the **Federal Register** more than 60 days prior to this final rulemaking. A public meeting on this proposal was held in Washington, D.C. on August 4, 1976. Since critical habitat is not being determined for this species, none of the other amended subsections are applicable. Accordingly, the Service

is proceeding at this time with a final rulemaking to determine this species as Endangered pursuant to the Endangered Species Act of 1973.

The primary author of this rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235-1975). Dr. Wayne Milstead (also of the Office of Endangered Species), compiled the status report for this species.

**Regulation Promulgation**

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

**§ 17.12 Endangered and Threatened plants.**

Species		Known distribution	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Encaceae, Heath Family:						
<i>Rhododendron chapmanii</i> ....	Chapman rhododendron	U.S.A. (Florida).....	E	N/A	N/A	N/A

**Note.**—The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: April 14, 1979.

Lynn A. Greenwalt,

Director,

Fish and Wildlife Service.

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