

would implement the protection provided by the Endangered Species Act of 1973, as amended, for *Solidago spithamaea* (Blue Ridge goldenrod).

DATES: Comments from all interested parties must be received by September 21, 1984. Public hearing requests must be received by September 6, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Plateau Building, Rm A-5, South French Broad Avenue, Asheville, N.C., 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie, Botanist, 704/258-2850 ext. 382 or FTS: 8/672-0321 (see **ADDRESSES** section above).

SUPPLEMENTARY INFORMATION:

Background

Solidago spithamaea (Blue Ridge goldenrod) was described from material collected in North Carolina by M.A. Curtis in the 1930's. Today, three populations of the species are known: Two in Avery County, North Carolina, and one on the border of Mitchell County, North Carolina and Carter County, Tennessee. Two populations are located on privately owned lands and one is located on public lands administered by the U.S. Forest Service. Two additional populations were historically known for the species but both sites have been developed and no Blue Ridge goldenrod have been relocated there during recent searches. The plant is considered extirpated from these sites or the original reports are considered erroneous. *Solidago spithamaea* is an erect perennial herb that arises from a short stout rhizome, and is a member of the aster family. The yellow flowers are borne in heads arranged into a corymbiform inflorescence. *Solidago spithamaea* grows above 4,600 feet in dry rock crevices of granite outcrops on high peaks in the Blue Ridge Mountains. The continued existence of *Solidago spithamaea* is threatened by trampling and habitat disturbance due to heavy use of its habitat by hikers. Construction of new trails and other recreational improvements at any of the sites could further jeopardize this plant. This rule proposes to determine *Solidago spithamaea* to be a threatened species and would implement the protection provided by the Endangered Species Act of 1973, as amended.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for *Solidago Spithamaea* (Blue Ridge Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to determine a plant, *Solidago spithamaea* (Blue Ridge Goldenrod) to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. *Solidago spithamaea* (Blue Ridge goldenrod) is endemic to high mountain peaks in North Carolina and Tennessee. Only three populations of *Solidago spithamaea* (Blue Ridge goldenrod) are known to exist; one is on public land administered by the U.S. Forest Service and the other two are on privately owned lands. Past loss of habitat and populations has occurred due to the recreational development of the high mountain peaks where this plant occurred. The continued existence of this plant is threatened by trampling and habitat disturbance due to heavy use by hikers. This proposal, if made final,

Past Federal government actions affecting this plant began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). *Solidago spithamaea* was included in the Smithsonian report and the 1975 notice of review as a threatened species. On December 15, 1980, the Service published a revised notice of review for native plants in the *Federal Register* (45 FR 82479); *Solidago spithamaea* was included in that notice as a category-1 species. Category-1 species are those for which data in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species 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 on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago spithamaea* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Solidago spithamaea* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to add species to the list. This finding was published in the *Federal Register* on January 20, 1984 (49 FR 2485). Publication of this proposal constitutes the next one-year finding requirement, which must be made by October 13, 1984.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36002, August 8, 1983) 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 *Solidago spithamaea* M.A. Curtis (Blue Ridge goldenrod) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Three populations of *Solidago spithamaea* are known to exist in Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. Two other historically known populations are assumed extirpated or the original reports are believed to be erroneous; both sites have been developed and the Blue Ridge goldenrod has not been reverified for over 60 years, although searches have been conducted. Of known extant populations, two are located on privately owned lands and one is located on public land administered by the U.S. Forest Service. The greatest damage to *Solidago spithamaea* in the past has probably come from the commercial development of the open mountain summits where it occurs. The construction of observation platforms, trails, parking lots, roads, suspension bridges, etc., have taken their toll either through the actual construction process or later by trampling due to hikers and sightseers (Kral, 1979). Today, heavy trampling occurs at two locations where *Solidago spithamaea* is known to be extant (Massey et al., 1980). Some of the open areas where these plants grow might be better protected by routing hikers away from the sites so that trampling could be avoided. With anticipated increased usage by sightseers, rock climbers, and hikers at all three localities where *Solidago spithamaea* occurs, significant impact on this species in the form of increased soil erosion, soil compaction, and trampling, could occur if protection is not provided. Likewise, additional development at any of the locales, such as expansion of trails or sidewalks, could further threaten this species if proper planning does not occur. To quote one botanist, *Solidago spithamaea* ". . . seems to have an instinct for growing in the most scenic sites, thus coming underfoot and underseat."

B. Overutilization for commercial, recreational, scientific, or educational purposes.

Not applicable to this species.

C. Disease or predation.

Not applicable to this species.

D. The inadequacy of Existing Regulatory Mechanisms

During the summer of 1979, North Carolina passed new legislation to protect its rare plants. *Solidago spithamaea* is protected under that State law (N.C. General Statute 19-B, 202.12-202.19) as an endangered species. This

legislation provides protection from intrastate trade and provisions for monitoring and proper management. Tennessee does not currently have State legislation to protect endangered plants.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered rare, or unique species (36 CFR Part 261). These regulations, however, are difficult to enforce. The Endangered Species Act could offer additional protection to this species through Section 7—interagency cooperation requirements and recovery planning.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Solidago spithamaea is an early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion of ericaceous shrubs may occur, which could eliminate *Solidago spithamaea* by over-crowding and shading. This is a very slow process; however, proper management planning for *Solidago spithamaea* would need to address this aspect of the species' biology. Natural rock slides, severe storms, or other natural events may also eliminate populations of this plant.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service proposes to list *Solidago spithamaea* as threatened. Critical habitat is not being determined for reasons discussed below. Threatened status is proposed since one population is located on public lands (thus subjecting all proposed activities to the provisions of section 7 of the Act) and the present private owners are cooperative.

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 the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Solidago spithamaea* at this time. As discussed in the "Summary of Factors" section, all known locations for *Solidago spithamaea* receive visitor use, and associated trampling is a major threat to this species. Designation of these areas as critical habitat would increase public interest, and possibly lead to vandalism

and taking at the heavily used sites and thereby increase the threat to the plant. No benefits would be derived from the public notification portions of a critical habitat designation since the owners and managers of the three sites are already aware of the location of *Solidago spithamaea*. Vandalism and taking of listed plants is not regulated by the Endangered Species Act, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. These regulations and those of the Forest Service are also extremely hard to enforce. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it does not appear to be prudent to determine critical habitat for *Solidago spithamaea* at this time.

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. Regulations implementing this interagency cooperation provision of the Act are codified at 40 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 a proposed species or result in destruction or adverse modification of proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. One population of *Solidago spithamaea* occurs on U.S. Forest Service-administered public lands; proper protection and management plans are needed for the species at this site but no major conflicts are expected.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Solidago spithamaea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 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 this 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 17.72 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 since *Solidago spithamaea* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Solidago spithamaea* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. 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 this proposed rule are hereby

solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Solidago spithamaea*;
- (2) The location of any additional populations of *Solidago spithamaea* 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 this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Solidago spithamaea*.

Final promulgation of the regulation on *Solidago spithamaea* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs 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 Service's local Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

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

Literature Cited

- Kral, Robert. 1979. *Solidago spithamaea*, individual species reports submitted to the U.S. Forest Service, Southeastern Area, as part of Cooperative Agreement #42-283.
- Massey, J.R., P.D. Whitson, and T.A. Atkinson. 1980. Endangered and Threatened Plant Survey of Twelve Species in the Eastern part of Region 4. Report submitted to U.S. Fish and Wildlife Service, Region 4, under contract 14-16-004-78-108.

Authors

The primary authors of this proposed rule are Dr. Andrew F. Robinson, Jr., U.S. Fish and Wildlife Service, Lloyd 500 Building, Portland, Oregon 97232 and Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

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 reads as follows:

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

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

alphabetical order, under the family Asteraceae, 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					
Asteraceae—Aster family						
<i>Solidago spithamea</i>	Blue Ridge goldenrod	U.S.A. (NC, TN)	T		NA	NA

Dated: July 3, 1984.
G. Ray Arnett,
Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 84-19301 Filed 7-20-84; 8:45 am]
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