

more efficiently and equitably. It does not appear that their program would be more spectrally efficient than the Commission's proposed method of making assignments. Further, the Commission believes that Brown and Schwaninger's proposal is such a major change from the current assignment process and from the method proposed in the Fourth Notice that a full proceeding, including an adequate notice and comment period, would be required before the Commission could adopt their proposal. The Commission believes that this would unnecessarily delay implementation of service on the 932/941 MHz point-to-multipoint frequencies. Therefore, the Commission will assign point-to-multipoint channels as set forth in the Memorandum Opinion and Order and is denying Brown and Schwaninger's petition for partial reconsideration.

Ordering Clauses

10. Authority for this rule making is contained in sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(c), 303(f), 303(g) and 303(r).

11. Accordingly, *it is Ordered*, That parts 22 and 94 of the Commission's Rules, 47 CFR parts 22 and 94, are amended as specified in the Rule Changes, below, effective August 30, 1991. *It is Further Ordered*, That the petition for reconsideration filed by Mr. Dennis C. Brown and Mr. Robert H. Schwaninger, Jr. is Denied.

12. *It is Further Ordered*, That this proceeding is terminated.

List of Subjects

47 CFR Part 22

Communications common carriers; radio.

47 CFR Part 94

Private operational-fixed microwave service, Radio.

Rule Changes

13. Parts 22 and 94 of title 47 of the Code of Federal Regulations are amended as follows:

PART 22—PUBLIC MOBILE SERVICES

14. The authority citation in part 22 continues to read:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

15. Section 22.501 is amended by revising paragraph (g)(1) introductory text to read as follows:

§ 22.501 Frequencies.

(g)(1) The frequencies listed in this paragraph are available for control stations utilized within a multiple address system that requires the use of at least four simultaneously operated base stations operated on the same frequency assignment. These frequencies will be assigned only when there are four or more control station, on the same frequency listed on the application for license. For purpose of this four base station limitation, base stations proposed to be controlled in the 932-932.5/941-941.5 MHz bands in any multiple address control application filed pursuant to this paragraph cannot be listed in, or counted towards, the four base requirement of any other pending application for the 932-932.5/941-941.5 MHz bands. The frequencies may be used in paired or unpaired configurations. When paired, the higher frequency will be used by the control/relay station, and the lower frequency will be used by the control station.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

16. The authority citation for part 94 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

17. Section 94.15 is amended by revising paragraph (g) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

(g) Except as provided in paragraph (h) of this section, applicants requiring multiple transmit frequencies employed on separate paths from a single station location will not normally be authorized more than four of the transmit frequencies available in the band. Further, master and remote stations using frequencies listed in § 94.65(a)(1) of this part will not normally be authorized more than four (12.5 kHz) frequencies or frequency pairs. During the initial filing window for the 932-932.5/941-941.5 MHz bands:

(1) An applicant may not apply for a frequency or frequency pair within a 25 mile radius of any location for which it has concurrently applied;

(2) Further, no party may have an ownership interest, direct or indirect, in two or more pending applications proposing sites within 25 miles of each other.

18. In § 94.73, the table in paragraph (a) is amended by removing footnote one, redesignating footnotes 2 through 8

as 1 through 7, and revising the first sentence in redesignated footnote two to read as follows:

§ 94.73 Power limitations.

(a) * * *
 * ² For multiple address operations, see § 94.65(a)(1)(v). * * *

Federal Communications Commission.
 William F. Caton,
 Acting Secretary.
 [FR Doc. 91-17421 Filed 7-25-91; 8:45 am]
 BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant *Xyris tennesseensis* (Tennessee Yellow-Eyed Grass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Xyris tennesseensis* (Tennessee yellow-eyed grass), to be an endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Xyris tennesseensis* is currently believed extant at only seven sites—five in Tennessee and one each in Alabama and Georgia. All sites occupy less than an acre in area. Three populations have been lost and four of the remaining populations have declined in recent years from habitat modification associated with agricultural and silvicultural uses, road construction/maintenance, over-collecting and succession. This action will extend the Act's protection to *Xyris tennesseensis*.

EFFECTIVE DATE: August 26, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Cary Norquist at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Xyris tennesseensis, a species of yellow-eyed grass in the family

Xyridaceae, is a perennial which ranges from 7 to 10 decimeters (2.3 to 3.3 feet) in height. Plants typically occur in clumps where they arise from fleshy bulbous bases. Leaves are basal, the outermost scale-like, the larger ones linear, twisted, deep green and 14 to 45 centimeters (cm) (5.5 to 17.7 inches) long. The inflorescence consists of brown conelike spikes, 1 to 1.5 cm (0.4 to 0.6 inch) in length, which occur singly at the tips of long slender stalks from 30 to 70 cm (12 to 28 inches) long. The flowers, which are pale yellow in color and 4.5 millimeters (mm) (0.2 inch) long, unfold in the late morning and wither by mid-afternoon. Fruits are thin walled capsules containing numerous seeds 0.5 to 0.6 mm (0.02 inch) in length. Flowering occurs from August through September (Kral 1978, 1983, 1990).

Xyris tennesseensis superficially resembles *X. torta*, one of the few xyrids with which it is sympatric. However, *X. torta* differs in its strongly ribbed leaves and more curved and ciliate (rather than lacerate) lateral sepals. Taxonomically, *Xyris tennesseensis* is closest to the *X. difformis* complex. In that complex, the leaves are flatter than fanlike, bases are non-bulbous and their seed sculpture is different (Kral 1983, 1990).

Kral (1978) described *X. tennesseensis* during the course of a study on Xyridaceae, based on an examination of a 1945 specimen (identified as *Xyris caroliniana*) from Lewis County, Tennessee, and more recent collections from that County and northwest Georgia. Extensive surveys were conducted for this species during the 1988 and 1989 field seasons (Kral 1990). Three of the original sites no longer supported populations of this *Xyris* and only one new population was located. Currently, only seven populations are known to be extant, consisting of five sites in Lewis County, Tennessee, and one site each in Bartow County, Georgia, and Franklin County, Alabama. These isolated remnants are located over three different physiographic provinces, the Cumberland Plateau of Alabama, the Western Highland Rim of Tennessee and the Valley and Ridge Province of Georgia (Kral 1990).

Xyris tennesseensis occurs in seep-slopes, springy meadows or on the banks of gravelly shallows of small streams. As with all *Xyris*, the habitat is open or thinly wooded and the soils are moist to wet year-round. However, this species differs from other *Xyris* in being found in areas where calcareous rocks are at or near the soil surface. Thus, its soils are circumneutral to basic instead of acidic. Common associates include ferns and fern allies such as *Osmunda*,

Thelypteris palustris and *Lycopodium appressum*; grasses such as *Leersia oryzoides*, *Panicum* and *Andropogon*; and sedges such as *Scirpus atrovirens*, *Eleocharis*, *Cyperus*, *Rhynchospora caduca* and *R. capitellata*. *Juncus* is common with *J. brachycephalus* being a constant associate. Dominant dicots are *Phlox glaberrima*, *Lysimachia lanceolata*, *Solidago patula*, *Rudbeckia fulgida umbrosa*, *Eupatorium perfoliatum* and *Parnassia grandiflora* (in Tennessee). Woody vegetation on the border of seeps or along streambanks include *Alnus*, *Salix*, *Sambucus*, *Cornus*, and *Cephalanthus*. The surrounding forest consist of upland species common to the oak-hickory, oak-pine or oak-juniper type (Kral 1983, 1990).

Population size ranges from a few dozen plants at one site to thousands of individuals at two sites. Most sites support populations of a few hundred plants and each site occupies less than an acre in area. Most populations are located on private land; however, plants extend onto State maintained highway right-of-way in Alabama and onto National Park Service land (Natchez Trace Parkway) in Lewis County, Tennessee.

Of 10 historically known populations, 3 populations have been lost and 4 of the remaining are declining from threats associated with highway construction/right-of-way maintenance; modification or destruction of habitat for agricultural usage; over-collecting; or the encroachment of woody plants.

Federal actions involving *Xyris tennesseensis* began with the December 15, 1980, publication of a notice of review for native plants in the *Federal Register* (45 FR 82480). *Xyris tennesseensis* was included in this notice as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species. On November 28, 1983, the Service published a supplement to the notice of review for native plants in the *Federal Register* (48 FR 53640); the plant notice was again revised on September 27, 1985 (50 FR 39528) and on February 21, 1990 (55 FR 6184). *Xyris tennesseensis* was included as a category 2 species in the 1983 supplement and the revised notices. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. The Service contracted a status survey for this species in 1988.

Field surveys were conducted during 1988 and 1989. A final report was received and approved by the Service in the spring of 1990. This report (Kral 1990) and other information support the listing. The data demonstrate a limited distribution and continuing threats to the species. On February 15, 1991, the Service published a proposal (56 FR 6341) to list *Xyris tennesseensis* as an endangered species.

Summary of Comments and Recommendations

In the February 15, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Daily Tribune News*, Cartersville, Georgia, on February 28, 1991; the *Lewis County Herald*, Hohenwald, Tennessee, on February 28, 1991; and the *Franklin County Times*, Russellville, Alabama, on March 3, 1991.

Two comments were received, including one from a Federal agency (Tennessee Valley Authority) and one from an individual. Both were in support of the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Xyris tennesseensis* should be classified as an endangered species. Procedures found at 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 were followed. 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 *Xyris tennesseensis* Kral (Tennessee yellow-eyed grass) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Xyris tennesseensis* has been and continues to be threatened by the destruction or adverse modification of its habitat. In surveying potential habitat for additional populations, Kral (1990) noted that similar habitat had been impacted or lost due to agricultural or silvicultural practices. Many of the larger stream bottoms, which were once seep

meadows and springs, have been dammed for ponds, drained and converted to pasture or row-crops, or developed for housing. A site in Gordon County, Georgia, that once supported a population of this *Xyris* is now a soybean field (Kral 1990). Other areas surveyed had been adversely affected by timber operations. As discussed in the "Background" section of this rule, this *Xyris* is dependent on small, clean, spring-fed headwater streams or associated seeps. Timbering upslope leads to increased erosion, deposition into the seeps and water quality degradation of the watershed (Kral 1990). Heavy equipment, in association with logging, would damage individual plants and drain the habitat if operated directly in the seeps.

Habitat for the Alabama population has been disturbed by timbering and gravel quarrying (for use in the adjacent highway). Since 1982, the number of plants at this site have significantly declined (from 100's to less than 100) due to these disturbances and the use of herbicides in right-of-way maintenance. Highway construction caused the destruction of a second population in Georgia (Bartow County). Three other populations are located near roads and are potentially threatened by road improvement measures.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is not known to be in commercial trade. Over-collecting (presumably for scientific purposes) has resulted in a significant decline for one population in Tennessee (Kral 1990).

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* This *Xyris* is considered endangered in all the States where it occurs; however, it is currently afforded legal protection in only one State (Tennessee). Tennessee legislation (Rare Plant Protection and Conservation Act of 1985) prohibits taking without the permission of the landowner and regulates commercial sale and export. Plants which are listed, or proposed for listing in Georgia, automatically come under the protection provided by the Wildflower Preservation Act of 1973 (T. Patrick, Georgia Heritage Program, pers. comm., 1990). This legislation prohibits taking of plants from public lands (without a permit) and regulates the sale and transport of plants within the State. Neither of these statutes provide protection against habitat destruction, which is the principal threat. The Tennessee Department of Conservation and Tennessee Nature Conservancy have several voluntary protection agreements with landowners. These

agreements, while very useful in protecting the plants, have no legal authority. The Act would strengthen existing protection, provide additional protection and encourage active management for *Xyris tennesseensis* (see "Available Conservation Measures").

E. *Other natural or manmade factors affecting its continued existence.* This species is vulnerable due to the small number of populations, the limited amount of area each population occupies and its specialized habitat requirements (see "Background" section). *Xyris tennesseensis* occurs in habitat which is "open" and is vulnerable to overcrowding and shade associated with woody plant encroachment. Furthermore, open wet areas are essential for successful germination (Kral 1988). In Lewis County, Tennessee, one population has been lost and a second is declining from the increased competition with succession (Kral 1990). While succession is a slow and natural process, it poses a threat to this species due to the small number of populations and limited amount of suitable habitat remaining. Proper management planning is needed to address this aspect of the species' biology.

This species is vulnerable to diversion of seep or ground water. Kral (1990) noted that water tables are dropping throughout the area, resulting in the loss of many of the seeps and springheads.

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 *Xyris tennesseensis* as endangered. Only seven populations remain (each occupies less than an acre of area, four have declined, and all are in need of long-term management; thus, a classification of endangered is appropriate. An endangered species, as defined by the Act, is threatened with extinction throughout all or a significant portion of its range. Critical habitat is not being designated for reasons discussed in the following section.

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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the Summary of Factors Affecting the

Species, *Xyris tennesseensis* has been impacted by over-collecting and publicity surrounding its listing could exacerbate the threat of taking. Taking is an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered 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. Publication of critical habitat descriptions and maps would make *Xyris tennesseensis* more vulnerable and increase enforcement problems. All involved parties, including State and Federal agencies and principal landowners, have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Xyris tennesseensis*.

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. 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 and with respect to its critical habitat, if any is being designated. 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 such a 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.

A portion of one population extends onto National Park Service (NPS) land. The Tennessee Department of Conservation has an agreement with NPS to protect this population. The Environmental Protection Agency will consider this species relative to pesticide (herbicide) registration. The Federal Highway Administration will consider this species in relation to those highway maintenance projects which are federally funded. Currently, no activities to be authorized, funded, or carried out by Federal agencies that would affect *Xyris tennesseensis* are anticipated.

The act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, will 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. In addition, for endangered 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 endangered 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 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered 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 listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

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).

References Cited

Kral, R. 1978. A new species of *Xyris* (sect. *Xyris*) from Tennessee and northwestern Georgia. *Rhodora* 80 (823) : 444-447.
 Kral, R. 1983. *Xyris tennesseensis*. In: A report on some rare, threatened, or endangered forest-related vascular plants of the South, Vol. 1:166-169. USDA Forest Service, Technical Publication: R8-TP 2.

Kral, R. 1988. A preliminary report on *Xyris tennesseensis*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jackson, Mississippi. 6 pp.
 Kral, R. 1990. A status report on *Xyris tennesseensis*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jackson, Mississippi. 22 pp.

Author

The primary author of this final rule is Cary Norquist (see **ADDRESSES** section) 601/965-4900 or FTS 490-4900.

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 I, 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. Amend § 17.12(h) by adding in alphabetical order the family Xyridaceae, and the following entry 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					
Xyridaceae—Yellow-eyed grass family: <i>Xyris tennesseensis</i>	Tennessee yellow-eyed grass	U.S.A. (AL, GA, TN).....	E	430	NA	NA

Dated: June 26, 1991.
 Richard N. Smith,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 91-17759 Filed 7-25-91; 8:45 am]
 BILLING CODE 4310-55-M