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**DEPARTMENT OF THE INTERIOR**
**Fish and Wildlife Service****50 CFR Part 17**
**Endangered and Threatened Wildlife and Plants; Proposal To Determine *Torreya taxifolia* (Florida torreyi) as an Endangered Species**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to list a tree, *Torreya taxifolia* (Florida torreyi), as an Endangered species under the authority contained in the Endangered Species Act of 1973, as amended. This plant is endemic to the Apalachicola River area in Florida and Georgia. The primary threat to this species is a fungal disease, although past habitat reductions have occurred. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Torreya taxifolia*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from the States of Florida and Georgia and the public must be received by June 6, 1983. Public hearing requests must be received by May 23, 1983.

**ADDRESSES:** Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection during normal business hours at the above address, by appointment.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Washington Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

**SUPPLEMENTARY INFORMATION:** An evergreen tree reaching 18 meters tall, *Torreya taxifolia* (Florida torreyi) was first discovered in 1835 and formally described in 1838 (Arnott, 1838). The Florida torreyi and other endemics of

the Apalachicola River system have received much attention from scientists and local residents. The relic nature of the habitats accounts for the presence of many unique species (James, 1967). It has been proposed that during recent glaciations, species migrated southward by way of the Apalachicola River system which served as a refugium during cooling periods. The Apalachicola River is the only far south river system which has its head waters in the southern Appalachians. Cool moist conditions persisted on the bluffs and ravines of the Apalachicola after climatic change rendered the surrounding area much drier and warmer. The entire Apalachicola River bluff system today is an extremely diverse and unique ecosystem, of which *Torreya taxifolia* is a part.

*Torreya taxifolia* is a conifer, with whorled branches and stiff, sharp-pointed, needle-like leaves. The trees are conical in nature. Dark green fleshy seeds mature in the midsummer to fall. The leaves of the tree have a strongly pungent or resinous odor when crushed, thus one common name, "stinking cedar." A similar coniferous species of the same plant family (Taxaceae), *Taxus floridana* (Florida yew), also occurs in the Apalachicola River area. This small tree is easily distinguished from *Torreya taxifolia*. *Taxus floridana* was also initially recommended for listing as Endangered but recent (1982) studies indicate it is less vulnerable at this time than previously thought.

**Background**

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those 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. On July 1, 1975, the Director published a notice in the **Federal Register** (40 CFR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 18, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523) 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 July 1, 1975, **Federal Register**

publication. *Torreya taxifolia* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal, along with four other proposals which had expired. A 1981 report submitted by the Georgia Plant Program, investigations carried out by Service botanists (Washington Office and Jacksonville Area Office) during the winter of 1981, and a contract completed during 1982 on *Torreya taxifolia* and *taxus floridana*, have provided significant new data.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) states that the Secretary of Interior shall determine whether any species is an Endangered or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Torreya taxifolia* (Florida torrey) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.**—*Torreya taxifolia* occurs in the ravines along the eastern side of the Apalachicola River from Lake Seminole in Georgia to Bristol, Florida (Southeastern Wildlife Services, 1982). One population also occurs on the margin of Dog Pond (Florida) which lies to the west of the Apalachicola River.

The Georgia population contained 27 trees in 1981 and occurs entirely on public land administered by the U.S. Army Corps of Engineers (ACE) on the margins of Lake Seminole (Butler, 1981). The construction Lake Seminole has been reported to have resulted in the loss of habitat and possibly individuals of *Torreya taxifolia* (Milstead, 1978). The resource manager at Lake Seminole, however, feels that the impoundment level was below the elevation on the ravines where *Torreya taxifolia* occurs (Butler, 1981). Presently, this resource manager is sensitive to the need for proper management and protection of the species. This proper management and protection will need to continue and should not conflict with the present recreational use of the area.

The Florida populations occur on a State park, a city park, and privately owned lands. *Torreya* State Park was established for the protection of *Torreya taxifolia* and the unique bluff habitats

and species. A city park in Chattahoochee also provides some protected habitat for this species. The majority of the area occupied by *Torreya taxifolia* is in private ownership, however, where no protection status exists. Past habitat destruction has occurred due to housing developments (Baker and Smith, 1981). Another Army Corp of Engineers planned impoundment near Blountstown, Florida, is not expected to affect this species because the proposed high water mark is below the elevations at which *Torreya taxifolia* occurs. The steepness of the bluffs and ravines render them somewhat inappropriate for many types of agriculture, forestry, and housing. As a result, habitat destruction is not the major threat to this species at this time. Proper planning for the protection of this species will be necessary in relation to all ACE and any other future Federal projects.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.**—Not applicable to this species.

**C. Disease or predation (including grazing).**—The major threat facing *Torreya taxifolia* is disease. Since 1962, natural populations have been drastically reduced or eliminated due to a fungal disease (Godfrey, 1962). The fungal disease causes necrosis of the needles and stems and severe defoliation; however, treatment through the application of fungicides seems possible (Alfieri *et al.*, 1967). All that remains in nature are root sprouts, reaching less than 3 meters in height (Baker and Smith, 1981). Trees formerly reached heights of 18 meters. Cultivated, uninfected specimens exist in various botanical gardens and can provide seeds and material for future recovery efforts. Through treatment of diseased individuals or breeding of resistant strains *Torreya taxifolia* can possibly be recovered. However, extensive research is needed to determine appropriate treatments and to investigate the possibilities of breeding trees resistant to the disease.

**D. The inadequacy of existing regulatory mechanisms.**—*Torreya taxifolia* is offered protection under Florida Law, Chapter 65-426, Section 865.06 which includes prohibitions concerning taking, transport, and the selling of plants listed under that law. *Torreya taxifolia* is also included under Georgia's Wild Flower Preservation Act of 1973 which prohibits taking from public lands and intrastate transport and sale of certain rare plant species. The Endangered Species Act would offer additional protection for the species through the recovery process

and interstate/international trade prohibitions.

**E. Other natural or manmade factors affecting its continued existence.**—The very limited range and small size of the populations of this species increase the possibility of loss of all or a significant portion of the species as a result of any accidental or natural catastrophe.

#### Critical Habitat

The Act requires that Critical Habitat be determined at the time of listing, where prudent. The Service has determined that it would not be prudent to determine Critical Habitat for *Torreya taxifolia* at this time. All mature viable trees are located in botanical gardens and arboreta. The wild trees do not now have good long-term survival prospects. The initial focus of recovery will be to address controlling the disease. After the disease has been overcome, recovery efforts would address reintroduction of the species into the wild, and Critical Habitat could be determined at that time, if found prudent to do so. Sites where the species could receive protection and proper management, such as the Army Corps land, the State and city park, and other areas could be chosen. It is not currently possible to determine which areas would be selected and, therefore, Critical Habitat determinations would be imprudent at this time.

#### Effects of This Rule

In addition to the effects discussed above, the effects of this proposal, if published as a final rule, would include, but would not necessarily be limited to, those mentioned below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Federal agencies are required under Section 7(a)(3) to confer with the Service on any action that is likely to jeopardize proposed species. This rule, if made final, will require Federal agencies to insure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of this species. Possible effects of this rule on the Army Corps of Engineers have already been discussed, and these are not major. No other Federal involvement is known to exist.

The Act and implementing regulations published in the June 24, 1977, Federal Register set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations pertaining to

Endangered plants are found at 50 CFR 17.61 and are summarized below.

With respect to *Torreya taxifolia* all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, 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. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act, 50 CFR 17.62 and 63, also provides for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. International and interstate commercial trade in *Torreya taxifolia* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be sought or issued since this plant is not common in the wild and is not presently in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for regulations to provide this protection to Threatened plant species. This new prohibition will apply to *Torreya taxifolia* once it is listed. Permits for exceptions to this prohibition are available through Sections 10(a) of the Act, following the general approach of 50 CFR 17.72 until revised regulations are promulgated.

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). It is anticipated that few taking permits for the species will ever be requested.

The Service will review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered for other appropriate international agreements.

The Service determined on July 7, 1982, that this proposed action is not major as defined in Executive Order 12291, does not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, and does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). No small

businesses, organizations, groups, or small entities were identified which would be expected to be impacted by this rule. No direct costs, enforcement costs, or information collection and recordkeeping requirement were determined to be imposed on small entities if this proposal were adopted. Small entities in the area would include the cities of Chattahoochee and Bristol and private landowners, but it was determined that these will not be impacted by the listing. These findings were made as a result of analyses by the Office of Endangered Species of information received from the Chattahoochee Office of the Army Corps of Engineers, the State of Florida Department of Transportation and the Division of State Parks, the city of Chattahoochee, Fish and Wildlife Service Regional and Field personnel, local botanists, and private citizens.

#### National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined, by appointment, during regular business hours. This assessment forms the basis for a decision, that will be made at the time of final rule as to whether this is 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 (implemented at 40 CFR Parts 1500-08).

#### Public Comments Solicited

The Service intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

1. Biological or other relevant data concerning any threat or the lack thereof to *Torreya taxifolia*;
2. Additional information concerning the range and distribution of this species including specific location information;
3. Current or planned activities in the subject area; the probable impacts of such activities; and

Final promulgation of the regulations on *Torreya taxifolia* will take into consideration the comments and any additional information received by the Director, and such communications may

lead him to adopt 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 should be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

#### Author

The primary author of this proposed rule is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

#### References

- Alfieri, S.A., Jr., A.P. Martinez, and C. Wehlburg. 1967. Stem and needle blight of Florida *Torreya* (*Torreya taxifolia* Arn.). *Proc. Florida State Horticultural Society*. 80: 428-31.
- Arnott, G.A.W.. 1838. On the Genus *Torreya*. *Annals of Natural History*. 1: 126-32.
- Baker, C.S. and E.L. Smith. 1981. Field notes, maps, and report prepared for U.S. Fish and Wildlife Service files.
- Butler, Will. 1981. Status of the Florida *Torreya* in Georgia. Unpublished report prepared by the Georgia Protected Plants/Natural Areas program.
- Godfrey, R.K. and H. Kurz. 1962. The Florida *Torreya* destined for extinction. *Science*. 136: 900-02.
- James, C.W. 1961. Endemism in Florida. *Brittonia*. 13(3): 225-44.
- Milstead, Wayne. 1978. *Torreya Taxifolia* Status Report. Prepared for U.S. Fish and Wildlife Service.
- Southern Wildlife Services. 1982. A Distribution Survey of the Populations of *Taxus floridana* and *torreya taxifolia* in Florida.
- A report contracted for by the U.S. Fish and Wildlife Service.

#### List of Subjects: in 50 CFR Part 17

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

#### 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 is as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1241; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

#### § 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order the following to the list of Endangered and Threatened plants:

Species		Historic range	Status	When listed	Critical habitat	Special rule(s)
Scientific name	Common name					
Taxaceae—Yew family:						
<i>Torreya taxifolia</i> .....	Florida torreya .....	U.S.A. (FL, GA) .....	E .....		N/A .....	N/A.

Dated: February 7, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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