

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AB42

**Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Golden-cheeked Warbler as Endangered****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Emergency rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the golden-cheeked warbler (*Dendroica chrysoparia*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Ongoing and imminent habitat destruction has been identified, and some of the best golden-cheeked warbler habitat has already been lost. Because of the need to make Federal funding, protection, and other measures immediately available to protect the habitat, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

A proposed rule to list the golden-cheeked warbler as endangered is published concurrently with this emergency rule in the same Federal Register part, to provide for public comment and hearings (if requested).

**DATES:** This emergency determination is effective on May 4, 1990, and expires on January 2, 1991.

**ADDRESSES:** The complete file for this rule is available for inspection during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 9A33 Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas 76102.

**FOR FURTHER INFORMATION CONTACT:** Robert Short, Field Supervisor, Ecological Services Field Office, at the above address (telephone 817/334-2961 or FTS 334-2961).

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

See the Background section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

**Summary of Factors Affecting the Species**

The factors are addressed in the Summary of Factors section of the

proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

**Critical Habitat**

Critical habitat designation is discussed in the Critical Habitat section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

**Available Conservation Measures**

See the Available Conservation Measures Section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

**Emergency Determination**

Under section 4(b)(7) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the Federal Register. The detailed reasons why this rule is necessary with respect to the golden-cheeked warbler are discussed below. If at any time after this rule has been issued, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As noted above, an emergency posing a significant risk to the well-being of the golden-cheeked warbler exists as a result of on-going and imminent habitat destruction by both illegal and legal clearing. The golden-cheeked warbler needs mature Ashe juniper-mixed oak woodland or forest for nesting and feeding. Only mature Ashe juniper that is at least 20 years old provides the shedding bark that the golden-cheeked warbler requires for nest construction. Some of the best habitat for this species occurs in Travis County, Texas. Travis County has, by far, more warbler habitat than any other county, and it is some of the least fragmented habitat in the golden-cheeked warbler's range.

Development of a number of tracts is already in some stage of the approval process with the City of Austin in Travis County. The City recently discovered that several tracts that are candidates for development, including several hundred acres of golden-cheeked warbler habitat, has been completely or partially cleared without a City permit. About 80 hectares (200 acres) of golden-cheeked warbler habitat were cleared illegally on an area that did not have an approved site plan from the City of Austin.

Some tracts were cleared under agricultural exemption provisions of the

City code. About 8 hectares (20 acres) were cleared on one area while the developers and the City of Austin were discussing whether the property qualified for the ranching and farming or landscape maintenance exemptions. Although this property is in the development approval process, it qualifies under the current ranching and farming exemption because it is leased to someone who is raising goats on it.

For another Planned Unit Development (PUD), the developers recently submitted a request for a permit for surveying. The City has a 15-foot wide limit on clearing survey lines. The developers' request was for 15-foot wide survey lines every 50-feet in a grid formation. The City denied this request, based on the fact that the developers have completed a subdivision PUD plan, which included surveying.

The City is limited in its ability to prohibit clearing of warbler habitat. Many developments that have approved subdivision plans are a combination of residential and commercial development. Developers could proceed with clearing for single family dwelling development now, without a site plan. With an approved subdivision plan, the developers can build roadways and utility lines. A substantial amount of clearing could be done legally in golden-cheeked warbler habitat in the Austin area.

The City of Austin has a five-mile extraterritorial jurisdiction (ETJ) outside the City limits. The area outside the ETJ is not under any clearing control, and much development is proposed outside that boundary, around Travis Lake.

In urban counties, an estimated 19,000-55,750 hectares (47,900-137,750 acres) of suitable habitat for golden-cheeked warblers remain. In rural counties, an estimated 12,750-51,000 hectares (31,500-126,000 acres) of suitable golden-cheeked warbler habitat remain (Wahl *et al.* 1990).

In addition to the direct loss of habitat, clearing also increases fragmentation and is more detrimental than indicated merely by acres of habitat lost. A relatively small loss of habitat can contribute to fragmentation of a large area (Wahl *et al.* 1990). Fragmentation reduces the productivity of remaining habitat because of increased nest parasitism, and increased predation of eggs, young, and adults.

A Habitat Conservation Plan (HCP) for the Austin region is currently being developed. The golden-cheeked warbler is one of several species being included in the plan. The options available to conserve the species (such as creation of preserves and defining productive

configurations of nesting habitat) that could be included in the HCP for the golden-cheeked warbler may be seriously limited if further destruction of important habitat occurs before the plan is completed.

Further clearing will likely result in the loss of significant recovery potential for the golden-cheeked warbler. By implementing the emergency provisions of the Act at this time, the amount of land cleared at an accelerated rate during the period between (a) the date the proposal to list was published, and (b) the date the final rule becomes effective, can be substantially reduced. Clearing of golden-cheeked warbler habitat poses a significant risk to the survival of the species.

**References Cited**

The references are listed in the References Cited section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

**Author**

The primary author of this emergency rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, until January 2, 1991, 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. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Birds," to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

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(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
BIRDS							
Warbler, golden-cheeked.....	<i>Dendroica chrysoparia</i> .....	U.S.A. (TX), Mexico, Guatemala, Honduras, Nicaragua.	Entire.....	E	387E	NA	NA

Dated: April 30, 1990.  
**Richard N. Smith,**  
*Acting Director, Fish and Wildlife Service.*  
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