

dimorphus, this subspecies was referred to as the "California elderberry longhorn beetle." Since this name would more appropriately apply to the nominate coastal subspecies, *Desmocerus californicus californicus*, the Service intends to use the common name "valley elderberry longhorn beetle" for the subspecies *Desmocerus californicus dimorphus*.

On August 10, 1978, the Service published a proposed rulemaking in the **Federal Register** (43 FR 35636-43) advising that sufficient evidence was on file to support a determination that the valley elderberry longhorn beetle was a Threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That proposal summarized the factors thought to be contributing to the likelihood that this species could become Endangered within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State or Territory within which a resident species of wildlife is known to occur be notified and be provided 90 days to comment before any such species is determined to be a Threatened species or an Endangered species. A letter was sent to the Governor of California on August 16, 1978, notifying him of the proposed rulemaking for the valley elderberry longhorn beetle. On August 14, 1978, a memorandum was sent to other interested parties notifying them of the proposal and soliciting their comments and suggestions. On May 2, 1980, the Service published a proposed rule in the **Federal Register** (45 FR 29373-75) repropounding Critical Habitat for the valley elderberry longhorn beetle, to comply with the 1978 Endangered Species Act amendments. A letter notifying the Governor of California of this action, and letters to other interested parties were sent on March 31, 1980. A public meeting and a public hearing on the reproposal of Critical Habitat for the valley elderberry longhorn were held at Davis, California on May 22 and June 12, 1980, respectively.

Official comment was received from the Governor of California, Sacramento County, Solano County, and the U.S. Water and Power Resources Service (formerly the U.S. Bureau of Reclamation).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Listing the Valley Elderberry Longhorn Beetle as a Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) to be a Threatened species. This action is being taken because alteration of this species' riverside habitat has reduced the known populations of the beetle to a few areas in the California central valley. Critical Habitat in California is included with this final rule. The rule will provide protection to wild populations of this species.

DATE: This rule becomes effective on September 15, 1980.

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

SUPPLEMENTARY INFORMATION:

Background

In prior Service correspondence, and in **Federal Register** documents pertaining to *Desmocerus californicus*

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.

In the August 10, 1978, proposal (43 FR 35636-43) to list the valley elderberry longhorn beetle as a Threatened species, the May 2, 1980, proposal of Critical Habitat (45 FR 29373-75), and the respective press releases, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All comments received from August 10, to November 7, 1978, regarding the proposal to list the valley elderberry longhorn beetle as Threatened were considered. Comments regarding the reproposal of Critical Habitat received from May 2, to June 30, 1980, were considered. Additional opportunity for public comment was provided by the May 22, 1980, public meeting and the June 12, 1980, public hearing.

In response to the August 10, 1978, proposal, four comments were received. The Commissioner of Reclamation stated that the beetle should not be listed because exhaustive distributional data were not available. The Director of the California Department of Fish and Game suggested that additional field data be obtained before listing the beetle. Dr. John Chemsak, an entomologist at the University of California at Berkeley, stated that the valley elderberry longhorn beetle had always been rare and restricted in distribution, and supported Critical Habitat designation. Dr. Robert Pyle, representing the Survival Service Commission of the International Union for Conservation of Nature and Natural Resources, supported the proposal.

In response to the May 2, 1980, reproposal of Critical Habitat for the valley elderberry longhorn beetle, seven comments were received. Mr. Douglas Peterson, Environmental Analyst for the Sacramento County Planning Department, supported the proposal and suggested that the host plant elderberry was *Sambucus mexicana caerulea*, not *Sambucus glauca*. Dr. Arthur Shapiro of the Department of Zoology of the University of California at Davis supported the proposal, pointed out that the taxonomy of *Sambucus* was confused, and suggested that *Desmocerus californicus dimorphus* be called the "Sacramento Valley elderberry longhorn beetle" to distinguish it from the coastal

subspecies *Desmocerus californicus californicus*. Mr. Wallace Brazelton objected to Critical Habitat designation for the beetle, because the beetle was not " * * * important to the general welfare of Solano county or the Nation." Mr. Brazelton also objected to the locality of the public meeting and hearing on the beetle, and felt that insufficient time had been allowed for review of the proposal. Mrs. Amza Petersen and Mrs. Claire Davis opposed listing and Critical Habitat designation for the beetle. Mrs. Davis suggested that the beetle be transplanted to the Suisun Game Refuge. Dr. John Chemsak, an entomologist at the University of California at Berkeley, supported the proposal. Mr. Philip A. Stohr, an attorney representing a landowner within the Critical Habitat, objected to Critical Habitat designation on land owned by his client. Mr. Stohr contended that such designation threatened economic damage to the property, and that Critical Habitat designation would be academic, and to no purpose, if Federal activities were not involved in the area. Mr. Stohr also objected to the Critical Habitat designation on the grounds that the beetle occurs in sites other than those proposed as Critical Habitat, and suggested that the beetle was already protected by State law through the California Environmental Quality Act and the California Subdivision Map Act.

At the June 12, 1980, public hearing two statements relating to the beetle were made. Mr. Stohr presented statements similar to those already discussed above under responses to the reproposal. Mr. John Anderson, of the Sacramento Audubon Society, supported the listing proposal and designation of Critical Habitat.

Conclusion

The Services recognizes the fact that additional populations of the valley elderberry longhorn beetle may be located, but does not believe that the beetle will ever be found to occupy all areas where the host plant, *Sambucus*, occurs. Although exhaustive distributional studies would contribute additional data to the knowledge of the beetle, the Endangered Species Act requires that the Service make decisions based on the best available data. There is no evidence that additional studies would yield a different distributional pattern. Regarding Dr. Shapiro's comments, the Service has changed the common name of the beetle to the "valley elderberry longhorn beetle" to better reflect the distribution of this subspecies. Since confusion on the specific and subspecific identity of the

Sambucus host of the beetle exists, the Service considers that one or more species of the *Sambucus* may be suitable hosts. With respect to Mr. Brazelton's comments, the Endangered Species Act does not require that economic value for a species be established in order for it to be listed. The Service has complied with the regulations concerning location of the public meeting and hearing and provision of comment periods. Regarding Mrs. Davis' comments, the Service has no indication that the Suisun Game Refuge would serve as an appropriate habitat to transfer the beetles to. In response to Mr. Stohr's comments, the definition of Critical Habitat is based primarily on biological information, although economic impacts are considered in its delineation. The Service knows of no specific Federal involvement which would presently affect the landowner's activities in the area. Future Federal involvement will not be prohibited in the Critical Habitat. Federal agencies will be required to consider the impacts of their actions, should such actions appear likely to jeopardize the continued existence of this species, or to destroy or adversely modify the Critical Habitat. If Federal involvement is likely to result in jeopardy to the species, the Secretary would be required to suggest reasonable and prudent alternatives that would avoid the conflict. Critical Habitat need not include all the areas where the species is known to occur. The Service realizes California law requires certain environmental considerations to be taken into account when land use planning occurs, but believes that Federal listing may increase the consideration given the species by the State of California, because attention will be drawn to a little-known, but unique, biological attribute of the environment which might otherwise be overlooked.

After a thorough review and consideration of all the information available, the Director has determined that the valley elderberry longhorn beetle is likely to become endangered throughout all of its range. Two of the five factors described in Section 4(a) of the Act, and affecting the beetle, were outlined in the August 10, 1978, proposal (43 FR 35636-43) to list this beetle as Threatened. The five criteria as described in that proposal are:

1. The present or threatened destruction, modification, or curtailment of its habitat or range. The valley elderberry longhorn beetle originally occurred in elderberry thickets in moist valley oak woodland along the margins

of the Sacramento and San Joaquin Rivers in the Central Valley of California. The beetle is presently known from less than 10 localities in Merced, Sacramento, and Yolo Counties. The habitat of this insect has now largely disappeared throughout much of its former range due to agricultural conversion, levee construction, and stream channelization. Today, remnant populations are found in the few remaining natural woodlands and in some State and county parks. However, in parks the clearing of undergrowth (including elderberry) and planting of lawns has resulted in further habitat degradation.

2. Overutilization for commercial, sporting, scientific, or educational purposes. Not applicable to this species.

3. Disease or predation. This factor is not known to affect the present status of this species.

4. The inadequacy of existing regulatory mechanisms. There currently exist no State or Federal laws protecting this species or its habitat.

5. Other natural or manmade factors affecting its continued existence. None.

Critical Habitat

Subsection 4(a)(1) of the Act states in pertinent part:

At the time any such regulation (to determine a species to be Endangered or Threatened) 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.

50 CFR Part 424 defines Critical Habitat as:

- (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
- (ii) Specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service has concluded that two areas in Sacramento Country, California should be designated as Critical Habitat for the valley elderberry longhorn beetle. These areas include the densest known populations of the beetle. Due to lack of information on the beetle from one of the areas proposed as Critical Habitat for the beetle in Solano County (Putah Creek Zone), this area has not been designated as Critical Habitat. The designated Critical Habitat areas include the known biological constituent elements essential to the conservation of

the valley elderberry longhorn beetle. These elements are described below in the description of Critical Habitat for this species.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis which has been used as the basis for a decision that economic and other impacts of this action are insignificant for the foreseeable future.

Effect of the Rulemaking

All prohibitions of 50 CFR 17.31 pertaining to threatened wildlife will apply to the valley elderberry longhorn beetle. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also will be illegal to possess, sell, deliver, carry, transport or ship any specimens illegally taken. Certain exceptions will apply to agents of the Service and State conservation agencies. Permits for specified purposes will be available in accordance with 50 CFR 17.32.

Section 7(a) of the Act provides:

Federal Agency Actions and Consultations—(1) 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.

(2) 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") is not likely to 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 affected States, to be critical, unless such agency has been granted an exemption of such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation

on the commitment of resources as described in subsection (d).

Provisions for Interagency Cooperation were published in the **Federal Register** on January 4, 1978 (43 FR 870-876), and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. The rule now being issued will require Federal agencies to satisfy these statutory and regulatory obligations with respect to the valley elderberry longhorn beetle. These agencies will be required not only to insure that actions authorized, funded, or carried out by them are not likely to jeopardize the continued existence of this species, but also to insure that their actions do not result in the destruction or adverse modification of the habitat that has been determined by the Secretary to be critical.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any final regulation specifying Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Director, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for the valley elderberry longhorn beetle.

(1) Modification of riparian habitats by river channelization.

(2) Construction of buildings, roads, bridges, or parking lots, directly eliminating the beetle's host plant, elderberry (*Sambucus sp.*).

(3) Human disturbance, such as vandalism or fire, resulting from increased recreational use, which adversely affects the beetle.

No present Federal involvement in the above activities is known. In 1978, an informal consultation between the U.S. Coast Guard and the U.S. Fish and Wildlife Service was carried out; no conflict was found with a proposed plan to build a pedestrian bridge over the American River. Further recreational development in the American Parkway Zone is not expected to involve Federal agencies, and the Sacramento Department of Parks and Recreation intends to protect most of the riparian areas remaining in the Parkway. Future development in the Sacramento Zone of the Critical Habitat could involve Federal funding or permits such as Small Business Administration loans and federally subsidized sewage collection, according to the landowner's attorney. However, no development proposals are available to provide an estimate of future impact.

Effect Internationally

The Service will review the status of the valley elderberry longhorn beetle 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 appendix to that Convention and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

A final environmental assessment has been prepared and is on file in the Service's Office of Endangered Species. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment

within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The Primary author of this rule is Dr. Michael M. Bentzien, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C., 20240 (703/235-1975).

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

Regulations promulgation

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

§ 17.11 [Amended]

1. Section 17.11 is amended by adding the valley elderberry longhorn beetle to the list, alphabetically, under "Insects" as indicated below:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Beetle, valley elderberry longhorn	<i>Desmocerus californicus dimorphus</i>	U.S.A. (California)		NA	T	100 § 17.95(i)	NA

§ 17.95 [Amended]

2. Section 17.95(i) is amended by adding Critical Habitat for the valley elderberry longhorn beetle, alphabetically, as follows:

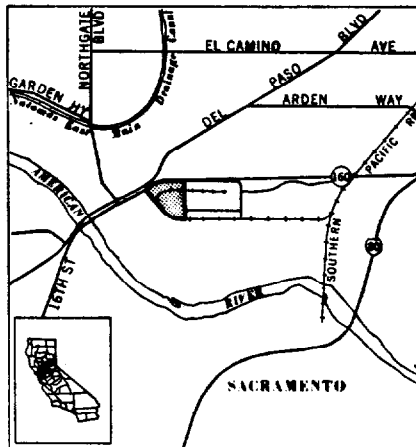
Valley elderberry longhorn beetle

(Desmocerus californicus dimorphus)

California. Sacramento County.

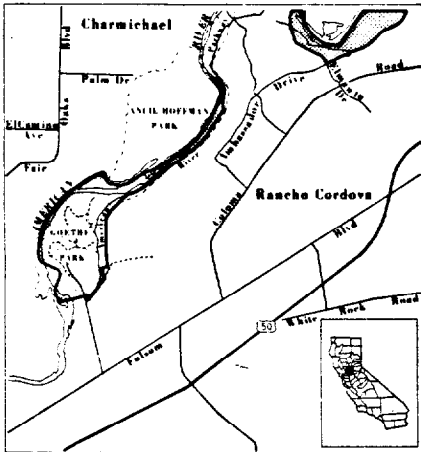
(1) *Sacramento Zone*. An area in the city of Sacramento enclosed on the north by the Route 160 Freeway, on the west and southwest by the Western Pacific railroad tracks, and on the east by Commerce Circle and its extension southward to the railroad tracks.

California Elderberry Longhorn Beetle (Sacramento Zone) Sacramento County, Calif.



(2) *American River Parkway Zone*. An area of the American River Parkway on the south bank of the American River, bounded on the north by latitude 30°37'30"N, on the west and southwest by Elmanto Drive from its junction with Ambassador Drive to its extension to latitude 38°37'30"N, and on the south and east by Ambassador Drive and its extension north to latitude 38°37'30"N. Goethe Park, and that portion of the American River Parkway northeast of Goethe Park, west of the Jedediah Smith Memorial Bicycle Trail, and north to a line extended eastward from Palm Drive.

California Elderberry Longhorn Beetle
(American River and American River Parkway Zones) Sacramento County, Calif.



Dated: July 31, 1980.

Robert B. Cook,

Deputy Director, Fish and Wildlife Service.

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