

1493, an Interim Rule and Request for Comments in Docket No. 91-1, *Bonding of Non-Vessel-Operating Common Carriers*, to implement the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments"), section 710 of Public Law No. 101-595. Due to the limited time between publication of the Interim Rule and the effective date of the 1990 Amendments on February 14, 1991, the Interim Rule provided authority for new tariffs filed by NVOCCs on or before February 14, 1991, to become effective on one day's notice. By Order dated February 13, 1991, the Commission deferred the effective date of the Interim Rule until April 15, 1991. That Order also extended until April 15, 1991, the authority for new NVOCC tariffs to be filed on one day's notice.

In a special permission application requesting extension of the one day's notice authority, the Commission has been advised by Effective Tariff Management ("ETM") that articles in the trade press and statements by freight forwarding industry leaders have led a significant number of foreign NVOCCs to believe that the bonding requirement would be further stayed beyond the April 15, 1991, effective date. ETM contends that this confusion has resulted in the failure of many companies to properly file a bond. ETM also alleges that due to a fear that a new tariff would be rejected if a bond was not on file, many NVOCCs have held off filing their new tariffs.

In view of the foregoing, the Commission has determined to extend the period during which NVOCCs may file new tariffs on one day's notice until May 24, 1991. This action does not constitute a waiver by the Commission of the prohibition against operating as a common carrier without having an effective tariff on file or of the penalty provisions of section 13 of the Shipping Act of 1984 and the Commission's implementing regulations.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-10180 Filed 4-30-91; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-127; RM-7203]

Radio Broadcasting Services; Erath, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Solo Music Company, permittee of Station KXKW(FM) (formerly KRAR(FM)), substitutes Channel 299C3 for Channel 299A at Erath, Louisiana, and modifies its authorization to specify operation on the higher powered channel. See 55 FR 10790, March 23, 1990. Channel 299C3 can be allotted to Erath, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.3 miles) northwest to avoid a short-spacing to Station KCIL(FM), Channel 298C1, Houma, Louisiana. The coordinates for the allotment of Channel 299C3 at Erath are North Latitude 29-59-30 and West Longitude 92-05-47. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-127, adopted April 15, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 299A and adding Channel 299C3 at Erath.

Federal Communications Commission.

Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-10229 Filed 4-30-91; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Dalea foliosa (Leafy Prairie-Clover) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Dalea foliosa* (leafy prairie-clover), a rare plant presently known from only two sites in Alabama, nine sites in Tennessee, and three sites in Illinois, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. It is endangered throughout its range by habitat alteration; residential, commercial, or industrial development; livestock grazing; and conversion of its limited habitat to pasture. This action extends Federal protection under the Act to leafy prairie-clover.

EFFECTIVE DATE: May 31, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Dalea foliosa (Gray) Barneby (leafy prairie-clover) is a perennial member of the pea family (Fabaceae) that has only been collected from Illinois, Tennessee, and Alabama. The erect 0.5-meter- (1.5-foot-) tall stems arise from a hardened root crown. The plant's pinnately compound alternate leaves are 3.5 to 4.5 centimeters (1.4 to 1.8 inches) long and are composed of 20 to 30 leaflets. The small purple flowers are borne in dense spikes at the end of the stems (Smith and Wofford 1980). Flowering begins in late July and continues through August. Seeds ripen by early October, and the above-ground portion of the plant dies soon afterward. The dead stems remain erect and disperse ripened seeds from late fall to early spring (Baskin and Baskin 1973).

Leafy prairie-clover was described by Gray in 1868 as *Petalostemum foliosum* (Gray 1868). Barneby (1977) included the species of the genus *Petalostemon*

(alternative spelling) within his concept of the genus *Dalea*, and his treatment of the group is followed by the Service.

Leafy prairie-clover is typically found growing in close association with the cedar glades of central Tennessee and northern Alabama. However, it seems to prefer the deeper soil of the prairielike areas along the boundaries of and within the rocky cedar glades (Smith and Wofford 1980). In Illinois, the species is now found only along the Des Plaines River, growing in prairie remnants that occur on thin-soil areas overlying dolomite (Kurz and Bowles 1981). A description of the species' status within each State where it occurs is provided below.

Alabama. There are four known locations for leafy prairie-clover in Alabama. Two of these were discovered in the late 1960s (Baskin and Caudle 1967). At the time of their discovery, one population (Franklin County) was small and contained only a few plants. The other population (Morgan County) was relatively larger and contained several hundred individuals. Smith and Wofford (1980) reported that no plants were found at the Franklin County site during the 1980 field season. They further reported that while the Morgan County population only supported about 50 individuals, it appeared to be a healthy reproducing population. In 1989 a third population was discovered in Lawrence County. This population is small and is located within the right-of-way of a Tennessee Valley Authority (TVA) power transmission line (Leo Collins, TVA, personal communication, 1990). The fourth Alabama population was discovered in 1984 in Jefferson County. This site was searched twice by botanists, once in 1989 and again in 1990, and it apparently no longer supports the species. At the present time there are believed to be two extant and two extirpated populations in the State (Scott Gunn, Alabama Natural Heritage Program, personal communication, 1990).

Illinois. Leafy prairie-clover was originally known from six counties in the northeastern portion of the State (Kurz and Bowles 1981). Only three populations are now known in the State. All are in Will County and are in prairie remnants along the Des Plaines River. Historically, the species was also found in Boone, Ogle, Kane, La Salle, and Kankakee Counties. The Illinois Department of Conservation recently attempted to reestablish the species at one of the historic Kankakee County sites. In the spring of 1988, 105 individuals were planted in suitable habitat at this historic location. The

spring and summer of 1988 were very dry in northern Illinois, and only six individuals survived to the fall of 1988 (John Schwegman, Illinois Department of Conservation, personal communication, 1989). It is not known whether a viable, reproducing population will become reestablished at this site.

Two of the known Illinois sites are protected and/or managed by the Will County Forest Preserve District. A third site, recently rediscovered by the Illinois State Natural History Survey Division, is adjacent to the right-of-way for a proposed new highway. All of a fourth Will County location was recently bulldozed, and all of the *Dalea foliosa* at the site were destroyed. The Will County Forest Preserve District will attempt to acquire this area and reintroduce leafy prairie-clover to the site, provided suitable habitat still exists (De Mauro *in litt.*).

Tennessee. The following information on leafy prairie-clover in Tennessee was primarily derived from Smith and Wofford (1980) and Dr. Paul Somers (Tennessee Department of Conservation, personal communication, 1989, and Somers *in litt.*).

The Service believes that there are currently only nine viable leafy prairie-clover populations in Tennessee. Most of these populations are small and contain fewer than 50 individual plants. Historically, the plant was known from seven Rutherford County sites. One of these sites was destroyed by industrial construction, and the species has not been observed on three other Rutherford County sites in the recent past. In Rutherford County the only currently known viable population is in a State park and consists of 25 to 30 individuals. Two additional Rutherford County sites support two individuals each; the Service does not consider these to represent viable populations.

There are two records of the species in Wilson County located on lands managed by the Tennessee Department of Conservation. One of these was discovered in 1979 and supported about 30 individuals in 1990. The other was discovered in 1990 and contained about 20 individuals. In June 1990, Marshall County was found to support two leafy prairie-clover populations; one of these contained 21 plants, while the other contained 15 plants (Baskin and Wofford *in litt.*). In late May 1990, a healthy population of leafy prairie-clover was discovered in Bedford County by Mr. J. Raveill of the Tennessee Department of Conservation. This population contained about 250 plants in June 1990. The glades

supporting this population are privately owned and exhibit little evidence of disturbance (Baskin and Wofford *in litt.*).

Davidson County once supported four populations. One of the sites was bulldozed for development and is or soon will be lost to the species. Another site is slated for development and is expected to be lost, and two very small populations, discovered in 1985, have not been observed since their discovery. None of the Davidson County populations are considered by the Service to be viable.

Williamson County supports one population of the species; most of this site was acquired through donation by The Nature Conservancy and is protected. However, a small portion remains in private ownership and could be lost.

Maury County once supported three populations of leafy prairie-clover. In June 1990 it was determined that one population was extirpated, and a second only supported about 50 plants. The third population is the largest and healthiest in Tennessee and is owned by TVA. This site is within the floodpool of the proposed Columbia Dam project, and half of the 630 plants found there will be flooded if the project is constructed as originally proposed. (See the "Summary of Factors Affecting the Species" section of this rule for further discussion of this project).

The Tennessee Department of Conservation conducted a survey of several hundred cedar glades and cedar glade remnants in the central basin of Tennessee during the 1987 through 1990 field seasons. Despite this thorough search of much of the available habitat for leafy prairie-clover, only two new populations of the species were found.

Federal government actions on this species began with Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which 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 Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Dalea foliosa* (*Petalostemum foliosum*) was included in the Smithsonian report and in the July 1,

1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Dalea foliosa* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Dalea foliosa* was included as a category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened is appropriate. This species was changed to a category 2 species for the revised plant notices of review published in 1983 (48 FR 53640) and in 1985 (50 FR 39526).

Category 2 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This was the case with *Dalea foliosa*. The Service believed that additional searches of potential habitat in central Tennessee were needed before a decision could be made as to whether to prepare a proposed rule to add the species to the list. The Service funded a survey in 1979 to determine the status of *Dalea foliosa* in Alabama and Tennessee; a final report on this survey was accepted by the Service in 1980. A report summarizing the status of the species in Illinois was completed by Kurz and Bowles in 1981. During the 1987, 1988, 1989, and 1990 field seasons, personnel with the Tennessee Department of Conservation conducted an extensive inventory of cedar glades in central Tennessee. Several hundred sites were visited during this inventory, and only two additional populations of *Dalea foliosa* were discovered. Based on the additional information, *Dalea foliosa* was changed to a category 1 species in the plant notice of review published February 21, 1990 (55 FR 6184).

Section 4(b)(3)(B) of the 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 *Dalea foliosa* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and in October of each year thereafter, through 1989, the Service found that the petitioned listing of *Dalea foliosa* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. The March 27, 1990, proposal to list leafy prairie-clover as endangered (55 FR 11230) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the March 27, 1990, proposed rule; the October 1, 1990, notice of public hearing and extension of the comment period (55 FR 39988); the October 16, 1990, public hearing; and notifications associated with these activities, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: Daily Herald, Columbia, Tennessee; Nashville Banner, Nashville, Tennessee; Lebanon Democrat, Lebanon, Tennessee; Daily News Journal, Murfreesboro, Tennessee; Daily Journal, Kankakee, Illinois; Joliet Herald, Joliet, Illinois; Decatur Daily, Decatur, Alabama; and Franklin County Times, Russellville, Alabama. In response to two formal requests, a public hearing on the proposal to list *Dalea foliosa* as an endangered species was held on October 16, 1990, at Columbia State Community College in Columbia, Tennessee. A notice of the hearing and reopening of the comment period to November 1, 1990, was published in the Federal Register on October 1, 1990 (55 FR 39988). The public hearing notice announced the purpose, time, and location of the hearing and extended the formal comment period on the proposal in order to ensure that all interested parties had ample time to provide information on the proposed rule.

All written comments and oral statements presented at the public hearing and those received during comment periods are covered in the following discussion. Comments of similar content are grouped together. These issues and the Service response to each, are discussed below.

Nine written responses to the proposed rule were received during the initial comment period. Three State

agencies, one county agency, one city official, and four private individuals or organizations provided comments.

The Illinois State Natural History Survey Division, the Illinois Department of Conservation, and the Forest Preserve District of Will County, Illinois, strongly supported the addition of leafy prairie-clover to the Federal list of endangered species, provided additional information on the status of the species in Illinois, and provided updated information on conservation activities in Illinois. The Service has incorporated the additional information on the status and conservation of the species, as appropriate, into this document.

Three individuals and the Center for Plant Conservation supported the proposed addition of the species to the Federal list of endangered species or requested additional information on the species. The Service provided the requested information.

The Tennessee Upper Duck River Development Agency and the City of Columbia, Tennessee, requested a public hearing on the Service's proposal but provided no comments on the proposal in their requests.

The public hearing on the proposed rule to list leafy prairie-clover as an endangered species was held on October 16, 1990, in the auditorium of the Clement Building at Columbia State Community College, Columbia, Tennessee. Seven verbal statements were made at the public hearing, and six written statements were provided, three of which were copies of verbal statements given. Eighteen written comments were received during the comment period extension.

Statements at Public Hearing

The Mayor of the City of Columbia expressed opposition to the proposed addition of leafy prairie-clover to the Federal list. The Mayor also suggested that in lieu of Federal protection the Service permit area residents to cultivate the species and thereby ensure that it does not become extinct. The Service believes that cultivation of leafy prairie-clover without protecting the natural ecosystems upon which it depends would not meet the requirements of the Act. One of the Act's primary purposes, as stated in section 2(b) of the Act, is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." Cultivation of endangered and threatened species can be a positive conservation tool, and it is often listed as a task to be completed before recovery can be achieved. However, the

purpose of this cultivation is to ensure that, if the species is lost from the wild, plants will be available to reintroduce the species back into the natural ecosystem. Additionally, cultivation of endangered and threatened species can provide wildflower gardeners with a source of rare plants for home gardens without adversely affecting the species in the wild.

The Columbia City Manager endorsed efforts to preserve leafy prairie-clover provided that those efforts did not impede the completion of the proposed Columbia Dam. The City Manager concurred that the species is rare, but did not believe it should be listed unless other conservation efforts, such as those proposed by the Mayor, prove inadequate. He also endorsed the Mayor's proposal to cultivate the species. The Service response to the cultivation issue is provided above. The Columbia Dam project and its potential effects on the plant are discussed in the "Summary of Factors Affecting the Species" section of this rule. The procedures followed by the Service in reviewing the potential impact of Federal projects on listed species are outlined in the "Available Conservation Measures" section of this rule.

The Chairman, Board of Directors, Upper Duck River Development Agency (Agency) stated that, based upon the information provided by their consultant, he did not believe that leafy prairie-clover needed Federal protection to ensure its survival. The Service, however, believes that Federal protection for leafy prairie-clover is merited based upon the information outlined in the "Summary of Factors Affecting the Species" section of this rule.

The Agency's Executive Director stated that the Agency supported ensuring that species do not become extinct and would attempt to take any actions necessary to ensure that end. He also stated that, based on information in the public record, he believed leafy prairie-clover is in better condition now than it was historically. The Service does not concur with this conclusion based upon the information provided in the "Background" and "Summary of Factors Affecting the Species" sections of this rule.

The Agency's consultant stated that, based on his review of the available data, he concurred that leafy prairie-clover is indeed a rare and sporadically occurring species. However, he believed the species was not threatened, was likely more common than present distribution data suggest, and argued that it did not need Federal protection. He stated that the species can remain

dormant during adverse climatic conditions, and this may account to some degree for the sporadic nature of its distribution. He noted that, based on work performed in Illinois and elsewhere, the leafy prairie-clover is easily cultivated and has seeds that often germinate several years after they fall to the soil. He stated that there appeared to be more individuals of the species now than previously reported and that at least one population in each State is protected through public ownership. In conclusion, he stated that if there is concern about the species' survival, the Service should cooperate with the Mayor's suggested volunteer citizen cultivators to ensure that the species does not disappear. The Service does not concur with the consultant's conclusions regarding the present vulnerability of the species. Based upon the data outlined in the "Background" and "Summary of Factors Affecting the Species" sections of this rule, it is the Service's conclusion that the leafy prairie-clover qualifies for protection under the Act. The observed rarity and sporadic distribution cannot be fully accounted for merely by the species' ability to remain dormant during drought and other adverse climatic conditions. In Illinois the species was originally known from six counties. It is now restricted to three sites in one county. In Alabama, two of the four known sites have been destroyed, and in Tennessee most sites are small and vulnerable to loss due to the factors discussed in the rule sections referenced above. Although the species is readily cultivated, several attempts in Illinois to reintroduce the species to a site have been unsuccessful (*De Mauro in litt.*). The range of environmental requirements for successful reestablishment in the wild is not fully understood and will require additional research before anyone can reintroduce the species with confidence that the reintroduction will be successful.

One private individual supported listing of the species and supported completion of the Columbia Dam project. Another private individual stated that the population in the Columbia Dam project area could be better managed if the dam were completed.

Written Statements Received After the Public Hearing

Eighteen written comments were received during the comment extension period—3 from State or county agencies, 1 from a private conservation organization, and 14 from private individuals.

The Tennessee Department of Conservation supported protection of leafy prairie-clover under the Act and provided additional information on the distribution of the species in Tennessee. The Forest Preserve District of Will County, Illinois, reiterated their support for the species' proposed addition to the Federal endangered species list and provided additional information on the current species' status in Illinois and their efforts to reintroduce the species in the wild. The Service concurs with the conclusion that the species merits addition to the Federal list. The information on the status of the species and reintroduction efforts has been incorporated, where appropriate, into this rule.

The Agency's Executive Director expressed regret that they had not been allowed to accompany the group that surveyed the proposed Columbia Dam project area population in June 1990. It was not the Service's intent to exclude the Agency from the site visit; through an oversight by the Service, the Agency was not notified of the planned survey. As soon as the oversight was brought to the Service's attention, a Service representative provided an Agency employee with a tour of the site. The Executive Director and another individual pointed out that the written survey report (Wofford and Baskin 1990) stated that this population contained 630 individuals while a Service employee stated at the public hearing that the population contained 750–1,000 individuals. The Service believes that the correct figure for the size of this population is 630, and the employee's statement at the hearing was in error. The Executive Director stated that it was his belief that the Service did not want help from others in meeting its responsibilities under the Act. This belief was based upon the Service's reluctance to utilize cultivation rather than Federal listing to protect leafy prairie-clover. The Service does not believe that cultivation is appropriate in lieu of listing for the reasons stated above. The Service recognizes the value of and welcomes the conservation efforts made by the private sector and Federal, State, county, and city governments and agencies. However, these efforts must contribute to species' conservation and meet the goals of the Act. Cultivation without habitat protection does not contribute to conservation of the species or meet the mandates of the Act.

The Executive Director questioned why the Service chose to propose the leafy prairie-clover from the extensive list of category 1 species in the February

21, 1990, notice to review plant taxa for listing as endangered or threatened species (55 FR 6184). The decision to propose this plant was based upon the threats to the species, its limited distribution, availability of data on its status, and the support for the action expressed by the State conservation agencies responsible for the protection of the flora in their respective States. In conclusion, the Executive Director offered the Agency's assistance in protecting leafy prairie-clover. The Service appreciates their willingness to conserve this species and looks forward to a successful effort to ensure that the population managed for TVA by the Agency is not lost.

One individual expressed concern about past difficulties in meeting the Act's requirements for conserving endangered and threatened species, specifically the limited amount of money available for these efforts. The Service acknowledges that the present needs for protection and recovery of listed species exceed the currently available funds. However, availability of recovery funds is not a criterion used to determine if listing is warranted. He suggested that the Service move all of the known leafy prairie-clovers now growing on cedar glades to shallow-soiled prairie sites because, if left undisturbed, most cedar glades will eventually be covered so densely with cedars that leafy prairie-clover will be shaded out. The Service recognizes that the vegetation at the cedar glade populations will need to be managed in order to ensure that the habitat remains suitable for leafy prairie-clover and other rare cedar glade species. It should be noted that the populations occurring on shallow-soiled prairies also require management in order to maintain the habitat in a condition conducive to leafy prairie-clover. In conclusion, this individual stated that he believed the Service wanted to use the leafy prairie-clover to stop the Columbia Dam project. The Service responds that the purpose of Federal listing is not to stop projects but to ensure that species do not become extinct. The Service is generally able to work with project advocates to both protect the species and allow for project objectives to be met. The criteria for adding species to the Federal list are contained in Section 4 of the Act. These criteria, as they relate to the currently known status of leafy prairie-clover, are specifically addressed in the "Summary of Factors Affecting the Species" section of this rule. This project and its relationship to federally listed endangered species is addressed in Section A of this summary. Section 7 of

the Act, which addresses consultation with Federal agencies to protect listed species, is addressed in the "Available Conservation Measures" section of this rule.

Three individuals and a conservation organization expressed support for the proposed addition of leafy prairie-clover to the Federal list.

Ten individuals expressed opposition to the proposed addition of leafy prairie-clover to the Federal list stating their belief that it is more numerous than is currently known or that with the currently known populations it is not actually endangered. Most also expressed support for the completion of the Columbia Dam project. The Service believes that the current information on the status of leafy prairie-clover is accurate and reflects the actual distribution of the species. Additional populations may be found in the future; however, it is not anticipated that the discovery of additional sites will significantly affect the species' status. The Columbia Dam project and its relationship to this species is addressed above.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that leafy prairie-clover should be classified as an endangered species. Procedures found at Section 4(a)(1) of the act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement these listing provisions 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 *Dalea foliosa* (Gray) Barneby (leafy prairie-clover) (Syn: *Petalostemum foliosum* Gray) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Most of the known populations of *Dalea foliosa* are threatened with destruction or adverse modification of their habitat. The plant is best protected in Illinois, where two of the three known extant sites are being managed to protect the species. The third Illinois site could be adversely affected by construction of a proposed highway. However, with proper planning and appropriate care during actual construction, it should be possible to protect this population. A fourth Illinois population was recently destroyed; it is not known if the site can be acquired

and the *Dalea foliosa* restored (De Mauro *in litt.*, Kurz and Bowles 1981).

The Franklin County, Alabama, population was apparently destroyed by a series of construction activities that included road-widening and associated construction and, later, installation of an underground pipeline (Cary Norquist, U.S. Fish and Wildlife Service, personal communication, 1989). The small Morgan County, Alabama, population is vulnerable to loss or alteration by residential construction or conversion to livestock pasture (Smith and Wofford 1980). It is not known what caused the extirpation of the species from Jefferson County. The Lawrence County site is within the right-of-way of a power transmission line managed by TVA, and with proper management this population should be secure.

Two of Tennessee's nine currently confirmed viable populations are partially protected. Most of the Williamson County population was acquired by The Nature Conservancy through donation and is protected from outright destruction by construction or other mechanical habitat alteration. A portion of this population is still privately owned and is thereby vulnerable to loss in the future.

The best and largest Tennessee population is located on land owned by the Tennessee Valley Authority (TVA) in Maury County. This site was acquired as a part of the proposed Columbia Dam project area. Completion of this project has been delayed while TVA has been pursuing a mussel conservation plan aimed at avoiding jeopardy to federally listed endangered mussels that inhabit the project impact area. Several alternatives to the original project are currently being evaluated by the TVA (Tennessee Valley Authority 1988). These alternatives could involve lower floodpool levels than originally proposed. Should they be chosen, the altered project would have no impact on the *Dalea foliosa* population. If the full-pool alternative is implemented, approximately 50 percent of the 630 plants in this Maury County population would be inundated.

Davidson County has four recorded occurrences for *Dalea foliosa*. One of these has recently been bulldozed in preparation for development of the site. The Tennessee Department of Conservation and the Center for Plant Conservation are attempting to put the few plants remaining at this location into cultivation in order to ensure that the genetic material they contain is not lost. Two sites discovered in 1985 are very small and have not been observed to support any plants since the original

discovery. The Service does not consider any of the Davidson County sites to be viable.

An early report that the species occurred in Knox County was apparently based on the collection of a specimen from a transplanted population. The species was not native to Knox County, and the transplanted population has died out.

All of the known *Dalea foliosa* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that produce shade and compete for limited water and nutrients. Active management is required to ensure that the species continues to survive at all sites. In Illinois, experiments on the use of fire to maintain the available habitat in a condition conducive to *Dalea foliosa* are being evaluated. The species does not survive intensive livestock grazing (Kral 1983), and this factor remains a threat at all but the three protected and the two urban populations. Direct destruction of habitat for commercial, residential or industrial development, and intensive right-of-way maintenance activities are the most significant threats to the species at this time (Smith and Wofford 1980).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The Illinois Department of Conservation (D. Glosser *in litt.*) indicates that there is some horticultural interest in the species in their State. Most populations are very small and cannot support the collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a threat to the species.

C. Disease or Predation.

Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. The Inadequacy of Existing Regulatory Mechanisms.

Dalea foliosa is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act. This protects the species from taking without the permission of the landowner or land manager. In Illinois, the species is listed as endangered by the Illinois Department of Conservation's Order 154. Illinois law prohibits taking listed plants from the land of another without the written permission of the landowner. Selling or offering to sell listed plants or plant parts is also prohibited without a

permit. In Alabama, the species does not receive any protection by the State. The Act will provide additional protection from taking for the population that occurs on Federal land, and to the other populations when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate interstate commercial trade will also be provided.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The only other additional factors that threaten *Dalea foliosa* are the extended drought conditions which the species has faced during the past few years. The extremely dry summer of 1988 is probably responsible for the low survival rate of plants reintroduced to one of the Kankakee County, Illinois, locations. Only 6 of 105 plants transplanted to the site survived to the end of the summer. These conditions can be expected to be causing higher than normal mortality of seedlings in the natural populations and could, if they continue over an extended period of time, have an adverse effect on the survival of *Dalea foliosa*.

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. With only 14 relatively small populations, and most of these threatened with destruction or adverse modification of habitat, and with all populations in need of long-term management, the preferred action is to list *Dalea foliosa* as an endangered species rather than as a threatened species. An endangered species, as defined under section 3(6) of the Act, is a species that is in danger of extinction throughout all or a significant portion of its range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking of endangered plants, without permits, is prohibited by the Act from locations under Federal jurisdiction; however, only one of the known populations is under Federal jurisdiction. Therefore, publication of critical habitat descriptions and maps

would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Dalea foliosa* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, it would not now be prudent to designate critical habitat for *Dalea foliosa*.

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 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 a listed 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. All but one of the known populations of *Dalea foliosa* is on privately owned or State-owned land. One Tennessee population is on land owned by the Tennessee Valley Authority. Approximately 50 percent of this population is within the impoundment area of a proposed dam project. For further information on this project and its effects on *Dalea foliosa*, see the "Background" and "Summary of Factors Affecting the Species" sections of this rule. One of the Illinois populations is near the right-of-way of a federally funded highway. The Illinois

Department of Conservation and the Will County Forest Preserve District are working with the Illinois Department of Transportation to ensure that construction of the highway does not result in the loss or significant alteration of this population.

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, would 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 listed plants in knowing violation of any State law or resolution, 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.

Although the species is not common in cultivation or in the wild it has generated some commercial trading interest, and a limited number of trade permits may be sought and issued. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North 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

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (see "Addresses" section).

Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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 the following, in alphabetical order under Fabaceae 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					
Fabaceae—Pea family:						
<i>Dalea foliosa</i> (= <i>Petalostemum foliosum</i>).	Leafy prairie-clover.....	U.S.A. (AL, IL, TN)	E	422	NA	NA

Dated: April 10, 1991.
 Constance B. Harriman,
 Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 91-10264 Filed 4-30-91; 8:45 am]
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