

(e) *Exemption criteria.* Wildlife shipments meeting all of the following criteria are exempt from the designated port inspection fee or nondesignated port administrative fee and hourly minimums:

(1) No permits are required under parts 16, 17, 18, 21, 22, or 23 of this subchapter;

(2) The wildlife is imported or exported between the United States and Canada or Mexico;

(3) The wildlife shipment consists of raw fur, raw, salted, or crusted hides or skins, or separate parts thereof, lawfully taken from the wild in the United States, Canada, or Mexico;

(4) The wildlife was taken from the wild by the importer or exporter of record or a member of his immediate family;

(5) The importer or exporter of record is licensed in accordance with § 14.91;

(6) The wildlife or any part thereof has not been previously bought or sold;

(7) The shipment does not exceed 100 raw furs, raw, salted, or crusted hides or skins, or separate parts thereof;

(8) The shipment does not contain any manufactured products or live animals.

**Donald J. Barry,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 98-1414 Filed 1-21-98; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE30

#### Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Comment Period on Proposed Endangered Status for Rough Popcornflower

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

**ACTION:** Proposed rule; notice of public hearing and reopening and extension of comment period.

**SUMMARY:** The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed endangered status for *Plagiobothrys hirtus* (rough popcornflower). In addition, the Service has reopened and extended the comment period to accommodate a public hearing that was requested by Mr. Danny Lang of Roseburg, Oregon. All parties are invited to submit comments on this proposal.

**DATES:** The comment period now closes on February 23, 1998. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held on Tuesday, February 10, 1998, from 6:00 p.m. to 8:00 p.m.

**ADDRESSES:** The public hearing will be held at the Holiday Inn Express, 375 West Harvard Boulevard, Roseburg, Oregon. Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Andrew F. Robinson Jr. of the Oregon State Office (see **ADDRESSES** section) at (503) 231-6179.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Plagiobothrys hirtus* is an annual herb on drier sites, or perennial herb on wetter sites, that is known from only the interior valley of the Umpqua River in Douglas County, Oregon. The plant is threatened by destruction and/or alteration of habitat by development and hydrological change (e.g., wetland fills, draining, construction); spring and summer grazing by domestic cattle, horses, and sheep; roadside maintenance; and competition from native and non-native species (i.e., succession and encroachment). Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species listed above;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

On November 20, 1997, the Service published a rule proposing endangered status for *Plagiobothrys hirtus* in the **Federal Register** (62 FR 61953). The original comment period was to close on January 20, 1998. Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 et seq.) requires that a public hearing be held if it is

requested within 45 days of the publication of the proposed rule. A public hearing request from Mr. Danny Lang of Roseburg, Oregon was received within the allotted time period. The Service has scheduled a public hearing on Tuesday, February 10, 1998, at the Holiday Inn Express in Roseburg, Oregon.

Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period now closes on February 23, 1998. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section.

**Author**

The primary author of this notice is Dr. Andrew F. Robinson Jr. (see **ADDRESSES** section).

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: January 7, 1998.

**Don Weathers,**

*Acting Regional Director, Region 1, Portland, Oregon, Fish and Wildlife Service.*

[FR Doc. 98-857 Filed 1-21-98; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE54

#### Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plant *Lesquerella thamnophila* (Zapata Bladderpod) as Endangered

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

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to list the plant *Lesquerella thamnophila* (Zapata bladderpod) as an endangered species under the Endangered Species Act of 1973, as amended (Act). *Lesquerella thamnophila* is known from four locations in Zapata and Starr Counties, Texas. This species is threatened by increased urban development, highway construction, increased oil and gas

activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population numbers. This proposal, if made final, will extend the Act's protection to *Lesquerella thamnophila*. Designation of critical habitat is not being proposed because the Service has determined such designation is not prudent.

**DATES:** Comments from all interested parties must be received by March 23, 1998. Public hearing requests must be received by March 9, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Texas A&M University-Corpus Christi, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor of the Corpus Christi Ecological Services Field Office in Corpus Christi, Texas. (Telephone 512-994-9005; Facsimile 512-994-8262).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Lesquerella thamnophila*, a member of the mustard family, was first collected in Zapata County, Texas by R.C. Rollins in 1959. The species was named *Lesquerella thamnophila* in 1973 by R.C. Rollins and E.A. Shaw in their work on the genus *Lesquerella* (Rollins and Shaw 1973). The few collected specimens of *Lesquerella thamnophila* have all come from Zapata and Starr Counties in southern Texas.

*Lesquerella thamnophila* is a pubescent, somewhat silvery-green herbaceous perennial plant with sprawling stems 43–85 centimeters (cm) (16–32 inches (in)) long. It has narrow basal leaves 4–12 cm (1.5–4.7 in) long and 7–15 millimeters (mm) (0.3–0.6 in) wide, with entire to wavy or slightly toothed margins. The stem leaves are 3–4 cm (1–1.5 in) long and 2–8 mm (0.1–0.3 in) wide, with margins similar to the basal leaves. The inflorescences, usually appearing in April but dependent upon the timing of spring rains, are loose racemes of yellow-petaled flowers. Fruits are round and 4.5–6.5 mm (0.2–0.8 in) in diameter on short downward curving pedicels (Poole 1989).

*Lesquerella thamnophila* occurs on level to sloping terrain in gravelly to sandy-loam upland terrace or Rio Grande floodplain soils. Known locations are associated with three

Eocene-age geologic formations—the Jackson, Laredo, and Yegua—which have yielded fossiliferous and calcareous sandstones and clays. The Starr County sites for *Lesquerella thamnophila* occur within the Jimenez-Quemado soil association and on Catarina series soils. Jimenez-Quemado soils are well-drained, shallow, gravelly to sandy loams underlain by caliche. Catarina series soils are clayey, saline upland soils developed from calcareous, gypsiferous, or saline clays that usually contain many drainages and erosional features. The underlying material of these soils contains many calcareous concretions, gypsum crystals, and marine shell fragments (Thompson, *et al.* 1972).

The soils of Zapata County have not been mapped in detail, but the bladderpod sites in Zapata County occur within the Zapata-Maverick soil association, based upon the general soils map for the county. Zapata soils are shallow and well-drained, occurring over caliche. Maverick soils are upland clayey soils occurring over caliche with the underlying calcareous material also containing shale and gypsum crystals (Thompson, *et al.* 1972).

*Lesquerella thamnophila* occurs as a herbaceous component of an open *Leucophyllum frutescens* (cenizo) shrub community that grades into an *Acacia rigidula* (blackbrush) shrub community. Both plant communities dominate many upland habitats on shallow soils near the Rio Grande (Diamond 1990). Other common plant species in the cenizo and blackbrush communities include *Acacia berlandieri* (guajillo), *Prosopis glandulosa* (mesquite), *Celtis pallida* (granjeno), *Yucca treculeana* (Spanish dagger), *Zizyphus obtusifolia* (lotebush), and *Porlieria angustifolia* (guayacan). The aggressively invasive nonnative *Cenchrus ciliaris* (buffelgrass) is also commonly present. These shrublands are sparsely vegetated due to the shallow, fast-draining soils and semi-arid climate (Poole 1989).

These open brushland communities are used primarily as rangeland and, due to the semi-arid environment, are sensitive to soil erosion and vegetation changes brought about by long-term livestock overgrazing (Schlesinger, *et al.* 1990). As a result, root-plowing of shrubs and subsequent planting of buffelgrass are common regional practices for rangeland improvement. Cattle reportedly graze on *Lesquerella thamnophila* (Poole 1989).

*Lesquerella thamnophila* occurred historically in Zapata and Starr counties in the United States. It has never been collected in Mexico despite its potential occurrence there. Recent surveys of

historical locations in Starr County failed to relocate those populations. Poole (1989) located three populations, two in Zapata County and one in Starr County. In April 1994, Bill Carr and Lee Elliott of the Texas Parks and Wildlife Department discovered another previously unknown Starr County location (Lee Elliott, pers. comm. 1994).

The number of plants in known populations appears to fluctuate dramatically in apparent response to precipitation (Poole 1989). In 1985, there were approximately 5,000 plants at one 4-hectare (ha) (10-acre (ac)) Zapata County site (Tigre Chiquita) and approximately 1,000 plants at the 15-acre type locality in Zapata County (Falcon Lake West). The year 1986 was dry; only 28 plants were counted at the Tigre Chiquita site, and none at Falcon Lake West. Plants were seen at both Zapata County sites again in 1988, but no specific population counts were recorded. No plants have been observed at the Falcon Lake West site since 1988.

The Texas Parks and Wildlife Department has established a management agreement with the Texas Department of Transportation for the Tigre Chiquita site. The agreement requires that the transportation agency avoid mowing within the highway right-of-way from February to May, while the plant is actively growing. The Texas Parks and Wildlife Department annually monitors the site for population size and has recorded these numbers: 10 reproductive plants and 3 non-reproductive ones in 1991; no plants in 1992; 7 non-reproductive plants in 1993; one reproductive plant in 1994; 3 non-reproductive plants in 1995; and no plants in 1996 (probably due to drought).

In 1986, Poole (1989) found 20 plants at a 2-ha (5-ac) site in Starr County (Santa Margarita Ranch). Plants were again observed at this site in 1994, but the number of individuals was not recorded that year (Gena Janssen, Texas Parks and Wildlife Department, Austin, Texas, pers. comm. 1994).

Approximately 70 plants were seen in 1997. In 1994, the Texas Parks and Wildlife Department recorded about 50 plants at a new Starr County site (Cuellar Tract) located on a tract of the Lower Rio Grande National Wildlife Refuge. In 1996, a monitoring plot was established and a total of 131 plants were located, 84 of them non-reproductives. In 1997, an extremely wet year, the estimated number of individuals increased to several thousand, all within a 2–3 acre section of the tract.

*Lesquerella thamnophila* is a cryptic annual species and blooms within a set

period of time following spring rainfall, creating a short period in which to survey. These factors may contribute to the occasional inability to locate these plants at known sites. Additional surveys carried out at the most favorable times to find specimens, and focusing on associated soil types, are warranted during the review of this species for listing as endangered.

#### Previous Federal Action

Federal action involving this species began with section 12 of the Endangered Species Act (Act) of 1973, as amended (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 in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and announcing that it would initiate a review of the status of those plants. *Lesquerella thamnophila* was included as threatened in the Smithsonian report and in the Service notice.

On June 16, 1976 (41 FR 24523), the Service published a proposed rule to determine approximately 1,700 vascular plants as endangered. *Lesquerella thamnophila* was included in this proposal. However, the 1978 amendments to the Act required the withdrawal of all proposals over 2 years old (although a 1 year grace period was allowed for those proposals already over 2 years old). On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final.

On December 15, 1980 (45 FR 82823), the Service published a list of plants under review for listing as threatened or endangered, in which *Lesquerella thamnophila* was included as a category 2 candidate. Category 2 candidates were those species for which available information indicated listing as threatened or endangered may have been appropriate, but for which substantial data were not available to support preparation of a proposed rule.

Section 4(b)(3)(B) of the Act requires that findings be made by the Secretary on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The 1975

Smithsonian report was accepted as a petition; therefore, all the plants noted within the report, including *Lesquerella thamnophila*, were treated as being newly petitioned on October 13, 1982. In each subsequent year, from 1983 to 1993, the Service determined that the petition to list *Lesquerella thamnophila* was warranted, but precluded by other listing actions of higher priority, and that additional data on vulnerability and threats were still being compiled.

A status report on *Lesquerella thamnophila* was completed August 8, 1989 (Poole 1989). That report provided sufficient information on biological vulnerability and threats to warrant reassigning the species as a category 1 candidate and supporting preparation of a proposed rule to list *Lesquerella thamnophila* as endangered. "Category 1 candidates" were those for which the Service had substantial information indicating that listing under the Act was warranted.

Notices revising the 1980 list of plants under review for listing as endangered or threatened were published in the **Federal Register** on September 27, 1985 (50 FR 39626), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51171). *Lesquerella thamnophila* was included in the September 30, 1993 notice as a category 1 candidate.

The 1996 Notice of Review (55 FR 6184) included *Lesquerella thamnophila* as a candidate. Candidates are species for which the Service has sufficient information indicating that a listing proposal is appropriate. The 1997 Notice of Review (62 FR 49398) also included *Lesquerella thamnophila* as a candidate.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. 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 *Lesquerella thamnophila* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction and modification are the primary threats to *Lesquerella thamnophila*. These threats include the introduction of non-native pasture grasses such as buffelgrass and conversion of native rangeland to improved pasture, overgrazing, urban development, construction or improvement of highways and utility

transmission systems necessary to support urban infrastructures, and oil and gas exploration and production. These types of activities have destroyed or altered more than 95 percent of the native habitat in south Texas (Jahrsdoerfer and Leslie 1988).

It is a common practice in south Texas to improve rangeland for livestock production by removing the native shrubs through root-plowing or aerial herbicide application and then reseeding the area with non-native grasses, usually buffelgrass. This practice potentially destroys *Lesquerella thamnophila* habitat. Buffelgrass has spread beyond the improved pastures and is now present throughout south Texas. This invasive non-native grass out-competes and displaces native grasses, forbs, and small shrubs. Potential sites for native plant seedling establishment are lost due to light and moisture competition with buffelgrass, and possibly due to allelopathy.

Much of south Texas was severely overgrazed in the past, and overgrazing continues in many areas today. Vegetation of the semi-arid south Texas climate is less resilient to the impacts of long-term grazing than is the vegetation of wetter climates. This has led to severe erosion of the often highly erodible south Texas soils (Schlesinger, *et al.* 1990). It is impossible to calculate how much habitat suitable to *Lesquerella thamnophila* may have been lost in the past because of the destructive effects of overgrazing or the conversion of native rangeland to improved pasture.

*Lesquerella thamnophila* is threatened by potential urban development. The type locality for this species has been reduced to a small vacant lot in a resort subdivision on Falcon Reservoir in the City of Zapata. This area is undergoing rapid retirement home development. Another *Lesquerella thamnophila* population occurs in an abandoned trailer park adjacent to a major highway. Recent construction of convenience stores in the area could stimulate urbanization that might extirpate the population.

South Texas is undergoing a rapid increase in highway improvements and construction to handle increased traffic stimulated by the North American Free Trade Agreement. There are *Lesquerella thamnophila* populations adjacent to existing roads that could be proposed for widening. Additionally, existing unimproved roads adjacent to populations could be proposed for widening and paving.

There are *Lesquerella thamnophila* populations adjacent to maintained highway rights-of-way where herbicides are used to control vegetation around

bridges, guard rails, signs, and reflector posts. Herbicides may also be used to kill woody species encroaching into the rights-of-way and along fence lines. Any plants within the rights-of-way are threatened by maintenance practices such as blading or disking and reseeding with erosion control seed mixtures, which contain primarily non-native invasive grasses.

South Texas is presently undergoing a significant increase in oil and gas exploration and production, especially in Zapata and Starr counties. All phases of exploration and production have the potential to harm *Lesquerella thamnophila* populations and habitat. The seismic vibration method of gas exploration results in extensive temporary rights-of-way being cleared to facilitate equipment traffic. The construction of well pads, access roads, electric lines, and oil gathering lines from wells, if not planned properly, can all destroy plants and habitat. The proximity of this species to existing oil and gas development poses a threat from an increase in number and capacity of gathering lines.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** No commercial trade is currently known to exist for the species. However, listed plant species can be threatened by both collection and vandalism, activities difficult to prevent and only regulated on lands under Federal jurisdiction or in knowing violation of a State law or regulation. Listing a plant species can precipitate commercial and scientific interest in the species. This interest can threaten the species through unauthorized and uncontrolled collection. Federally listing a species under the Act creates the potential for vandalism at known and potential habitat sites. In many areas, private landowner concern regarding endangered species is especially high and may result in the intentional destruction of endangered species habitat.

**C. Disease or predation.** The populations of *Lesquerella thamnophila* have shown no evidence of disease. However, Poole (1989) reports that cattle graze the species to the extent that numbers of plants in populations subjected to grazing are severely reduced compared to those in adjacent, ungrazed lands. Grazing and browsing are greater threats during drought conditions when range quality is reduced and other forage species have been reduced or removed. This portion of south Texas is sensitive to overgrazing during drought conditions due to the semi-arid environment and the large area needed per grazing

animal, even under ideal range conditions.

**D. The inadequacy of existing regulatory mechanisms.** The species is not currently protected by any Federal or State laws or regulations.

**E. Other natural or man-made factors affecting its continued existence.** There are only four known small *Lesquerella thamnophila* populations with widely fluctuating numbers of plants from year to year. Low plant numbers during drought years could cause genetic drift. This has the effect of lowering genetic variability and may reduce the species' ability to cope with environmental perturbations. The reduced number of plants during drought years, with populations in some areas actually being reduced to zero above-ground vegetative individuals, also makes the species vulnerable to extinction from a prolonged drought. *Lesquerella thamnophila* occurs along the Rio Grande and the effect of past flooding on creating or maintaining habitat for the species is unknown. The extreme rarity of this species makes populations vulnerable to extirpation and the species vulnerable to extinction from a variety of random environmental events.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lesquerella thamnophila* as endangered. The endangered status is appropriate because of the species' limited distribution, low population numbers, and imminent threats of habitat destruction. Threatened status would not accurately reflect the current status of this species.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographical area occupied by a 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) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations

(50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)), state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the "Summary of Factors Affecting the Species" section of this rule, *Lesquerella thamnophila* is threatened by vandalism, an activity difficult to prevent and only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law.

The limited protection for plants on private land renders them particularly vulnerable to vandalism or collection due to their lack of evasive ability. Simply listing a plant species can precipitate commercial and scientific interest, legal as well as illegal, which can threaten the species through unauthorized and uncontrolled collection for both commercial and scientific purposes. The designation of critical habitat involves publication of habitat descriptions and general mapped locations of the species, greatly increasing the likelihood of unwanted notice by potential collectors and of successful search and removal operations at specific sites.

Such information also greatly exacerbates the potential for vandalism of endangered or threatened plants at known and potential habitat sites. The designation of critical habitat affects only Federal projects or activities which they fund, authorize, or carry out. Its designation does not affect private land activities conducted by State and local government activities if the activity does not involve Federal funds or authorization. However, this is not always easily understood by private landowners whose property boundaries may be included within a general description of critical habitat for a specific species. Identification of proposed critical habitat for other species has resulted in widespread confusion and heightened concern by

the general public. More importantly, such action has resulted in the unnecessary destruction of endangered species habitat by landowners in order to avoid the imagined attention of the Service and perceived prohibitions on private land.

In the case of *Lesquerella thamnophila*, the Service finds that designation of critical habitat is not prudent since it is likely to increase the degree of threat of take of the species. Publication of critical habitat descriptions and locations would make the species especially vulnerable to collection and vandalism.

The designation of critical habitat for *Lesquerella thamnophila* is also not prudent since it will provide no additional conservation benefit to the species. The most severe threats to the species include the overgrazing of native range, and conversion of native rangeland to improved pasture with nonnative grasses. Designation of critical habitat will not affect these threats, since impacts stem from private land activities. Further protection of habitat on private or State land will be addressed through the recovery process and will involve identifying measures that can mutually benefit both the species and landowner.

Section 7 of the Act 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 cause the destruction or adverse modification of its critical habitat. *Lesquerella thamnophila* is currently restricted to four sites ranging from 5 acres to 45 acres in size. Any adverse impact to sites that would result in destruction or adverse modification of critical habitat would likely also jeopardize the continued existence of *Lesquerella thamnophila*. Thus, in the case of this species, critical habitat would provide no additional benefit beyond that provided through listing as endangered.

In summary, the Service finds that *Lesquerella thamnophila* is vulnerable to collection and vandalism, and that identification of critical habitat would increase its vulnerability. Further, adequate protection from adverse Federal actions is provided through listing the species as endangered under the Act, and designation of critical habitat would provide little additional protection. Therefore, the Service finds that designation of critical habitat would, on balance, be detrimental to the species. Critical habitat designation is thus not prudent.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. For listed species, 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 the species or 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 consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include brush clearing for flood control in arroyos within the jurisdiction of the International Boundary and Water Commission; technical assistance to landowners by the Natural Resources Conservation Service (formerly Soil Conservation Service) for activities funded by the Consolidated Farm Service Agency (formerly Agricultural Stabilization and Conservation Service); and rangeland herbicide registration by the Environmental Protection Agency. The Federal Highway Administration will need to consider the occurrence of the species in activities such as widening existing roadways or constructing new highways. The U.S. Department of Housing and Urban Development will need to consider

these species when water, sewer, and power services are authorized following the development of unauthorized human settlements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, 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 in interstate or foreign commerce any such plant species; or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the removal and malicious damage or destruction of such plants on areas under Federal jurisdiction; and the removal, cutting, digging up, or damaging or destroying of such plants in any other area, including non-Federal lands, in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions 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 plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not in cultivation nor common in the wild.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

One population of the *Lesquerella thamnophila* occurs on public land under the jurisdiction of the Service. Collection, damage or destruction of this species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. As noted above, such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or regulation, including State criminal trespass law.

Normal residential lawn care and maintenance and the clearing of small areas surrounding a residence, which may be used as a fire break are not violations of section 9 and will not constitute take. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Corpus Christi Office (see ADDRESSES section). Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248-6920; facsimile 505/248-6922).

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;
- (2) Reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range, distribution, and population size of this species;
- (4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to 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 received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

**Required Determinations**

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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 Act. 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**

Diamond, D. 1990. Plant Communities of Texas (series level). Texas Parks and Wildlife Department, Austin, Texas.  
 Jahrsdoerfer, S.E. and D.M. Leslie, Jr. 1988. Tamaulipan Brushland of the Lower Rio Grande Valley of South Texas: Description, Human Impacts, and Management Options. U.S. Fish and Wildlife Service, Biological Report 88(36). 63 pp.  
 Poole, J. 1989. Status Report on *Lesquerella thamnophila*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Rollins, R.C. and E.A. Shaw. 1973. The Genus *Lesquerella*. Harvard University Press, Cambridge, Massachusetts.  
 Schlesinger, W.H., J.F. Reynolds, G.L. Cunningham, L.F. Huenneke, W.M. Jarrell, R.A. Virginia and W.G. Whitford. 1990. Biological Feedbacks in Global Desertification. *Science* 247:1043-1047.  
 Thompson, C.M., R.R. Sanders, and D. Williams. 1972. Soil Survey of Starr County, Texas. U.S. Department of Agriculture, Soil Conservation Service, Temple, Texas.

**Authors**

The primary authors of this document are Angela Brooks and Kathy Nemecek (see ADDRESSES section).

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

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

**Proposed Regulation Promulgation**

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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 FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**  
 \* \* \* \* \*  
 (h) \* \* \*

| Species                          |                      | Historic range    | Family             | Status | When listed | Critical habitat | Special rules |
|----------------------------------|----------------------|-------------------|--------------------|--------|-------------|------------------|---------------|
| Scientific name                  | Common name          |                   |                    |        |             |                  |               |
| FLOWERING PLANTS                 |                      |                   |                    |        |             |                  |               |
| <i>Lesquerella thamnophila</i> . | Zapata bladderpod .. | U.S.A. (TX) ..... | Brassicaceae ..... | E      | .....       | NA               | NA            |
| *                                | *                    | *                 | *                  | *      | *           | *                | *             |

Dated: December 30, 1997.  
**Jamie Rappaport Clark,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 98-1518 Filed 1-21-98; 8:45 am]  
 BILLING CODE 4310-55-P