
DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine *Frankenia johnstonii* (Johnston's frankenia) To Be an Endangered Species****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a plant, *Frankenia johnstonii* (Johnston's frankenia), as an Endangered species. This species is known from two counties in Texas, and one locality in Mexico. About 1,000 plants are known to exist within a 35-mile radius in Texas; several hundred plants occur in Mexico. The plants are not reproducing well and show signs of having been browsed by cattle. There is no current management plan for Johnston's frankenia, nor is there State or Federal protection. This proposed rule, if made final, will put into effect the protection provided by the Endangered Species Act of 1973, as amended, for this plant. The Service seeks data and comments from the public on this proposed rule.**DATES:** Comments from the public and the State of Texas must be received by September 6, 1983. Public hearing requests must be received by August 22, 1983.**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW, Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT:

Dr. Russell L. Kologiski, Botanist, Region 2 Endangered Species Staff (see ADDRESSES above) (505/766-3972), or 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**

Frankenia johnstonii is a member of the family Frankeniaceae. Dr. D. S. Correll first collected and described this species in 1966. There are five populations in Texas, and another population is known from near Monterrey, Mexico. The most distinctive features of the plant are its blue-green color and wiry appearance. The branches of most plants are hedged or clipped, suggesting it is eaten by large herbivores, such as cattle. The plants are perennial shrubs, usually about 31 centimeters tall, but individuals may be up to 62 centimeters. The roots are wiry and dark brown. The leaves and numerous stems are grayish- or bluish-green from a dense covering of very short whitish hairs. The leaves are somewhat oblong in shape, about 13 millimeters long and 4 millimeters wide. The single, white flowers are 5-petaled and small, about 4 millimeters long. Flowering is from September to May. Pollination is mainly by bees and flies. Seed set in natural populations is less than 50 percent and seedlings are very rarely observed. Experimental pollination attempts also resulted in less than 50 percent seed set (Turner, 1980).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27923) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the 1973 Act (Section 4(b)(3)(A) now), and of its intention thereby to review the status of the plant taxa included therein. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. *Frankenia johnstonii* was included in the Smithsonian report, the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in an

April 26, 1978, *Federal Register* publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. Therefore, on December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, which included *Frankenia johnstonii*.

Frankenia johnstonii was again included in a list of plants under review for Threatened or Endangered classification published in the *Federal Register* (45 FR 82480-82569) on December 15, 1980. A status report compiled in 1980 and investigations carried out by Service botanists since December 1979 have provided new biological data concerning *Frankenia johnstonii*, including information on the low number of plants, low reproduction, and grazing pressure. This new information, as well as data previously available to the Service, forms the basis for the present proposed rule to list this species as Endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments Pub. L. 97-304) set forth procedures for adding species to the Federal list. The Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. It has been determined that *Frankenia johnstonii* is Endangered due primarily to factors A, C, and E. A discussion of these factors follows.

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* There are six known populations of *Frankenia johnstonii*. Five occur in Zapata and Starr Counties in southern Texas on grazing land owned by approximately five private landowners. One of the populations in Starr County consists of about 200-400 plants scattered over 15-20 acres. Two other Starr County populations consist of several hundred individuals, each on less than an acre. One of the Zapata County populations has 50-100 plants on an area of less than 1 acre. A population estimate for an additional population (the type locality) is not available as it may no longer exist. There are several hundred plants in a population in Nuevo Leon, Mexico,

which covers 4 to 5 acres. All populations are on rangeland in poor condition, show low reproduction, could be impacted by any habitat change brought about by chaining or plowing. All known populations are on private land, thus the Endangered Species Act would not restrict land use per se, unless Federal activities, for which authorization are involved. Modification of the habitat could occur and result in destruction of some of the populations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Critical Habitat is not being proposed because of the potential for collecting and vandalism. All of the populations are on private land and are therefore not protected from taking under the Endangered Species Act.

C. *Disease or predation* (including grazing). All the known populations are located in heavily grazed areas. The branches of most of the *Frankenia johnstonii* appear to be hedged or clipped, a characteristic of plants that have been grazed by cattle. Grazing could not only affect the *Frankenia johnstonii* populations directly, but could also have an indirect adverse effect by altering the habitat of which the *Frankenia johnstonii* is a part.

D. *The inadequacy of existing regulatory mechanisms.* There are no State or Federal laws protecting *Frankenia johnstonii*.

E. *Other natural or manmade factors affecting its continued existence.* Because of the low reproductive rate of this species, low population numbers and its restricted habitat, any natural human-caused environmental change could have an effect on *Frankenia johnstonii*. There is a low pool of genetic variability because of the low numbers resulting in a reduced ability of the species to tolerate stresses and losses of individuals. Any loss of individuals from these populations could cause irreversible decreases of the populations, especially when the impacts of grazing are considered.

Critical Habitat

The Endangered Species Act of 1973 requires that Critical Habitat be determined at the time of listing, to the maximum extent prudent and determinable. If exact localities for *Frankenia johnstonii* were published in the *Federal Register*, the species might be additionally threatened by taking or vandalism. All populations occur on privately-owned lands and taking is prohibited for plants on non-Federal lands by the Endangered Species Act of 1973, as amended. Since published Critical Habitat maps might make

species more vulnerable to taking, it is not prudent to do so at this time.

Available Conservation Measures

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. This proposed rule requires Federal agencies to satisfy their statutory obligations with respect to this species, that is, as a proposed species, agencies are required under Section 7(a)(4) to informally confer with the Service on any action that is likely to jeopardize proposed species. This protection will now accrue to *Frankenia johnstonii*. A final rule, when published, will require Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of *Frankenia johnstonii*. Provisions for Interagency Cooperation which implement Section 7 of the Act are codified at 50 CFR Part 402.

The Act and its implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations are found at 50 CFR 17.61 and are summarized below. With respect to *Frankenia johnstonii* all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. The prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act 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. International and interstate commerce trade in *Frankenia johnstonii* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. This new prohibition will theoretically apply to *Frankenia johnstonii* when it is officially listed. Permits for exceptions to this prohibition are available through

Section 10(a) of the Act, following the general approach of 50 CFR 17.62 and 17.63 until revised regulations are promulgated. However, this species is not known from Federal lands, so no effect from this regulation is expected.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903). It is anticipated that few taking permits for the species will ever be requested.

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

National Environmental Policy Act

A draft Environment Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Regional Office (see Addresses section) and may be examined, by appointment, during regular business hours. This assessment will form the basis for a decision, to be made at publication of the final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

Public Comments Solicited

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

Comments particularly are sought concerning: (1) Biological or other relevant data concerning any threat (or the lack thereof) to *Frankenia johnstonii*;

(2) The location of any additional populations of *Frankenia johnstonii* and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided by Section 4 of the Act; and

(3) Additional information concerning the range and distribution of this species.

Final promulgation of the regulations on *Frankenia johnstonii* 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 filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Author

The primary author of this proposed rule is Sandra Limerick, Endangered Species Staff, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972). A preliminary listing package was prepared by Barry S. Mulder, Office of Endangered Species, Washington, D.C. 20240 (702/235-2760). Status information was provided by Dr. B. L. Turner, Department of Botany, University of Texas, Austin, Texas 78712. LaVerne Smith and John Paradiso of the Washington Office of Endangered Species served as editors.

References

- Correll, D.S. 1966. *Frankenia johnstonii* Correll. sp. nov. *Rhodora* 68:424-425.
- Correll, D.S. and M.C. Johnston. 1970. *Manual of the Vascular Plants of Texas*. Texas Research Foundation, Renner, Texas. xxxi + 1881 pp.
- Turner, B.L. 1980. Status report on *Frankenia johnstonii* Correll. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 7 pp.
- Whalen, M. 1980. Systematic study of the American species of the genus *Frankenia*. Ph.D. Dissertation, University of Texas, Austin, Texas.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

§ 17.12 [Amended]

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

Species			Status	When listed	Critical habitat	Special rules
Scientific name	Common name	Historic range				
FRANKENIACEAE—						
Frankenia family						
<i>Frankenia johnstonii</i>	Johnston's frankenia.....	U.S.A. (TX); Mexico (Nuevo Leon).	E.....		NA.....	NA

Dated: June 9, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-18491 Filed 7-7-83; 8:45 am]

BILLING CODE 4310-55-M