

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b), and EPA delegation 8-7.

Dated: July 13, 1984.

Charles R. Jeter,
Regional Administrator.

[FR Doc. 84-20876 Filed 8-6-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Frankenia Johnstonii* (Johnston's Frankenia) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Frankenia johnstonii* (Johnston's frankenia), to be an endangered species under the Endangered Species Act of 1973, as amended. 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 area 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 action implements the protection provided by the Endangered Species Act for this plant.

DATES: The effective date of this rule is September 6, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 2, 421 Gold Avenue SW., Room 407, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972).

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kogolski, Botanist, U.S. Fish and Wildlife Service, Endangered Species Office, Region 2 (see ADDRESSES above), 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 and was first collected and described by Dr. D. C. Correll in 1966. There are 5 populations

known 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 plants are small 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 and have a 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 (Correll and Johnston, 1970). 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 have also resulted in less than 50 percent seed set (Turner, 1980).

Frankenia johnstonii occurs in relatively small populations in highly specialized habitats on rocky gypseous hillsides or saline flats (Whalen, 1980). It occurs in soils of the Maverick series at the most saline end of the range for that series. All known populations are located on privately owned lands. The branches of most plants are hedged or clipped as is common on plants which have been grazed by cattle.

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 27823) 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(c)(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 category 2 of the list of plants under review for threatened or endangered classification in the December 15, 1980, Federal Register (42 FR 82480). Category 2 included those taxa for which more information was needed to biologically support a determination to list the species. A status report compiled in 1980 and investigations carried out by Service and other botanists since December 1979 (Whalen, 1980; Turner, 1980) 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, formed the basis for the July 8, 1983, proposed rule (48 FR 31414) and for the present determination of this species as endangered.

Summary of Comments and Recommendations

In the July 8, 1983, proposed rule (48 FR 31414) and associated notifications, all interested parties were requested to submit factual reports or information which 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. A newspaper notice was published in *The Monitor* in McAllen, Texas, on August 3, 1983, which invited general public comments. A total of six comments were received on the proposal, one each from the Texas Parks and Wildlife Department, the U.S. Soil Conservation Service, the National Park Service, the International Union for the Conservation of Nature and Natural Resources, a professional botanist, and an interested private individual. No public hearing was requested or held.

The Texas Parks and Wildlife Department submitted comments in support of the proposal. It also pointed out that under Chapter 88 of the Texas Parks and Wildlife Code, any Texas plant that is placed on the Federal list as endangered is required to also be listed by the State of Texas as endangered. Thus, this rule will provide both State and Federal protection for *Frankenia johnstonii*.

The National Park Service stated that it had no new information on the species, and as it did not occur on its

lands it had no comment on the proposal. The International Union for the Conservation of Nature and Natural Resources also had no comments on the proposal.

The U.S. Soil Conservation Service commented that it knew of no reason why *Frankenia johnstonii* should not be listed, and that it was not aware of any populations other than those already mentioned in the proposal.

In addition, a professional botanist who is the leader of the Texas Plant Recovery Team, submitted comments in support of the proposal.

An interested private individual submitted several questions concerning the possibility of vegetative reproduction, how recently the type locality had been searched, what the populations at the type locality were in 1966, and what habitat characteristics would be most beneficial for the species' survival. The Service responded to his inquiries by stating that there is no evidence of natural vegetative reproduction in this species and that no attempts are known to have been made to vegetatively propagate it in nurseries, that the type locality was last searched in 1980, that the population at the type locality when it was discovered in 1966 was probably only a few plants (these are no longer proven to exist), and that the habitat characteristics for the species were described in more detail in the status report (Turner, 1980), a copy of which was enclosed.

Due to an inadvertent oversight, the Mexican Government was not contacted at the time when the proposed rule was published. However, Mexico was notified of the proposed action on April 22, 1984, and requested to submit its data, comments, and/or opinions on the proposal by May 20, 1984. The Mexican Government has not responded to this request.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Frankenia johnstonii* should be classified as an endangered species. Procedures found at 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 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) 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 *Frankenia johnstonii*

Correll (Johnston's frankenia) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. There are 6 known populations of *Frankenia johnstonii*. Five occur in Zapata and Starr Counties in southern Texas on grazing lands owned by approximately 5 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 1 acre. One Zapata County population has 50-100 plants in an area of less than 1 acre. The other Zapata County population (the type locality) has not been relocated despite extensive search, and may no longer exist. There are several hundred plants in population in Nuevo Leon, Mexico, which covers 4 to 5 acres of privately owned land. All populations are on rangeland that is in poor condition. The populations show low reproduction, and could be adversely impacted by any habitat change brought about by land and vegetation manipulation such as chaining or plowing. All known populations occur on private land; thus, the Endangered Species Act would not restrict land use *per se*, unless Federal activities, funds, or authorizations 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 therefore are not protected from taking by the Endangered Species Act.

C. Disease or predation. 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 on these populations may also be partially responsible for the low reproductive rate. The tender new shoots of plants are often preferred forage for livestock, and are cropped off shortly after emergence. 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 currently no State or Federal laws protecting Johnston's frankenia. However, once this species is added to the Federal list of endangered species,

Chapter 88 of the Texas Parks and Wildlife Code requires that it also be added to the Texas list of endangered species.

E. Other natural or manmade factors affecting its continued existence. Reproduction in *Frankenia johnstonii* is occurring at a very low rate. Seed set in natural populations is less than 50 percent and seedling are very rarely observed. Because of this low reproductive rate, the low population numbers, and the restricted habitat, any natural or 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 loss of individuals. Any loss of individuals from these populations could cause irreversible decreases of the populations, especially when the added impacts of grazing are considered.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Frankenia johnstonii* as endangered. Given the small number of plants, their restricted distribution, the impact of grazing on them, and the low reproductive potential of the species, *Frankenia johnstonii* must be regarded as a species in danger of becoming extinct. Therefore, a threatened classification would not be appropriate. A critical habitat determination would not be appropriate because it might pose an increased threat to the species (see discussion under heading Critical Habitat). A decision to take no action would exclude this species from the protection of the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires 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. The Service finds that designation of critical habitat is not prudent for this species at this time. If exact localities for *Frankenia johnstonii* were published in the Federal Register the species might be additionally threatened by taking and vandalism. All known populations occur on privately owned lands and the Endangered Species Act of 1973, as amended, does not prohibit taking of plants on non-Federal lands.

Since publication of critical habitat maps might make this species more vulnerable, it is not prudent to do so at this time.

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 by 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is listed, 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 such species. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Frankenia johnstonii*, all trade 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 U.S. 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 can 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 plant species under certain circumstances. International and interstate commercial 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, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This new prohibition now applies to *Frankenia johnstonii*. However, the plant is not known to occur on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417) and these will be made final following public comment. No taking permits are expected to be requested.

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).

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

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined by 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).

Literature Cited

- 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. xiii + 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.

Authors

The primary author of this rule is Sandra Lamerick, Endangered Species Staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; 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.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

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

Dated: July 6, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[Final: *Frankenia johnstonii* (Johnston's frankenia)—endangered]

[FR Doc. 84-20352 Filed 8-6-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States for the 1984-85 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early season migratory bird hunting regulations from which States may select season dates and daily bag and possession limits for the 1984-85 season. These seasons may open prior to October 1, 1984, and apply to mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; an experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special falconry seasons.

DATES: Effective on August 7, 1984. Season selections are due from the States by July 27, 1984. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) by July 27, 1984, for publication in the Federal Register as amendments to §§ 20.103 through 20.106 of 50 CFR Part 20.

ADDRESSES: Season selections from States are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 536,

Matomic Building, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, D.C. 20240, telephone 202-254-3207.

SUPPLEMENTARY INFORMATION: On March 23, 1984, the U.S. Fish and Wildlife Service published for public comment in the Federal Register (49 FR 11120) proposals to amend 50 CFR Part 20, with comment periods ending June 21, 1984, for Alaska, Hawaii, Puerto Rico and the Virgin Islands frameworks; July 16 (later extended to July 18), 1984, for other early season frameworks; and August 17, 1984, for late season frameworks. That document dealt with establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the Federal Register dated June 13, 1984 (49 FR 24417).

On June 21, 1984, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged doves, sandhill cranes and other species. The meeting was announced in the Federal Register on March 23, 1984 (49 FR 11120) and June 13, 1984 (49 FR 24417). Proposed hunting regulations were discussed for these species and for common snipe; rails; gallinules; September teal seasons in the Mississippi and Central Flyways; early duck seasons in Florida, Iowa, Kentucky and Tennessee; special sea duck seasons in the Atlantic Flyway; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; falconry seasons and hunting regulations for Alaska, Puerto Rico and the Virgin Islands. Public comments on these matters were received.

On July 9, 1984, the Service published in the Federal Register (49 FR 28026) a third document in the series of proposed

and final rulemaking documents dealing specifically with proposed frameworks for the 1984-85 season from which, when completed, wildlife conservation agency officials may select season dates for hunting certain migratory birds in their respective jurisdictions during the 1984-85 season. On July 19, 1984, the Service published in the Federal Register (49 FR 29238) a fourth document in the series which dealt specifically with final frameworks for Alaska, Puerto Rico and the Virgin Islands.

This rulemaking is the fifth in the series and deals specifically with final frameworks for other early season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1984-85 season. These seasons may open prior to October 1, 1984, and apply to mourning doves; white-winged doves; band-tailed pigeons; rails; woodcock; snipe; gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; and experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Review of Public Comments

The Service has already responded to earlier comments on proposed regulations published in the Federal Register on March 23, 1984 (49 FR 11120) and June 13, 1984 (49 FR 24417), and discussed at the June 21, 1984, Public Hearing in Washington, D.C. These responses appeared in the Federal Register on June 13, 1984 (49 FR 24417), July 9, 1984 (49 FR 28026), and July 19, 1984 (49 FR 29238). Three additional