

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for the Pawnee Montane Skipper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Pawnee montane skipper (*Hesperia leonardus montana*) is proposed for threatened status under the Endangered Species Act of 1973, as amended (Act). Critical habitat is not proposed. This butterfly is restricted to the South Platte River drainage in the Front Range of central Colorado. Its habitat has been impacted by off-road vehicle use. The Two Forks Reservoir Project will eliminate some of this species' habitat and some individuals of the species. If made final, this proposal would implement the protection of the Act for this species. Comments and

information regarding this proposed action are requested.

DATES: Comments from all interested parties must be received by November 24, 1986. Public hearing requests must be received by November 10, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Listing Coordinator, Endangered Species Office, at the above address, (303/236-7398 or FTS 776-7398).

SUPPLEMENTARY INFORMATION:**Background**

The Pawnee montane skipper, a member of the Hesperidae butterfly family, was first described in 1911, as *Pamphila (Hesperia) pawnee montana* (Skinner 1911). Scott and Stanford (1982) combined two species (*Hesperia pawnee* and *Hesperia leonardus*),

retained the specific name *leonardus*, and treated the Pawnee montane skipper as *Hesperia leonardus montana*. This subspecies occurs only on the Pikes Peak granite formation in the South Platte Canyon of Colorado. Locations of the other two subspecies of the group follow: *Hesperia leonardus leonardus* occurs in the eastern U.S. and Canada, and *Hesperia leonardus pawnee* occurs in the Northern Great Plains. This latter subspecies is not known from the Pikes Peak formation and its range does not overlap with *Hesperia leonardus montana*. The presence of ventral hind wing spots and its darker color differentiates *Hesperia leonardus montana* from *Hesperia leonardus pawnee* (Scott and Stanford 1982).

An adult Pawnee montane skipper is a small brownish-yellow butterfly, with a wing span slightly over 1 inch. Small, fulvous (dull brownish-yellow), usually distinct spots occur near the outer margins of the upper surface of the wings, while 1 to 4 distinct brownish to off-white spots occur on the lower (ventral) surface of the wings. The ventral spots are longer on the hind wing and are generally whiter in the female butterflies.

Pawnee montane skippers emerge as adult butterflies in mid to late August.

Males and females emerge simultaneously. The adults secure nectar from the prairie gayfeather (*Liatris punctata*). The adults spend most of their short existence feeding and mating. Adult females deposit eggs in the vicinity of blue grama grass (*Bouteloua gracilis*), which is the larval food plant (Scoot and Stanford 1982, McGuire 1982). The species overwinters as larvae and little is known of the larval and pupal stages. Pupation is generally short (13–23 days) in most butterfly species. The species completes its life cycle (egg to larva to pupa to adult butterfly to egg) annually (Keenan *et al.* 1986).

The Pawnee montane skipper is known only from the South Platte River drainage system in the Front Range of central Colorado. The species is known from 4 Colorado counties (Teller, Park, Jefferson, and Douglas). The elevational range of the species is 6,000–7,500 feet. It has usually been collected within 1 mile of a stream (Scott 1986). The skippers occur in dry, open, ponderosa pine woodlands on outcrops of Pikes Peak granite. The slopes are moderately steep. The understory is very sparse in the pine woodlands with generally less than 30 percent ground cover (Keenan *et al.* 1986). The grama grass (*Bouteloua gracilis*) and the prairie gayfeather (*Liatris punctata*) are two important components of the ground cover strata.

This species has always been very restricted and rare, occupying an area (though not necessarily all the available habitat within it) roughly 23 miles long and 5 miles wide (Keenan *et al.* 1986). The area occupied by the skipper is owned and/or administered by the U.S. Forest Service (Pike National Forest) and private individuals. Past habitat loss or degradation has probably occurred from off-road vehicle use, and the present range of the species is threatened by reservoir construction and associated construction activities and recreational development.

The Pawnee montane skipper was proposed for Federal listing on July 3, 1978 (43 FR 28939). The Endangered Species Act Amendments of 1978 mandated a 2-year limit on making listing proposals final; proposals already over 2 years old were subject to a 1-year grace period. The Service published a notice on March 6, 1979, announcing that certain proposals, including the Pawnee montane skipper proposal, would either be supplemented with regard to their critical habitats or withdrawn. The proposal expired on July 3, 1980, and was then officially withdrawn on September 2, 1980 (45 FR 58171).

Comments were received during the comment period for the 1978 proposal

from the U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, Denver Water Department, The Nature Conservancy, lepidopterists, and private individuals. The comments ranged from being supportive to being opposed to the listing, while some simply provided clarifying information. The questions raised concerned the butterfly's proper taxonomic treatment and whether it is more widely distributed than commonly believed. Scott's and Stanford's (1982) work has resolved the taxonomic question and further searches funded by the Denver Water Department in 1985 have not extended the range of the skipper from the South Platte River drainage. Another frequent comment against the proposal was the statement that the listing was motivated by political rather than biological factors. Those claiming a political motive believed that certain butterfly collectors wished to prevent the construction of the Two Forks Dam in order to protect a popular collection area. The Service only considers biological information in determining whether a species is endangered or threatened. The Service has examined all available information pertaining to the Pawnee montane skipper and has concluded that reproposal is warranted at this time.

The Service published a review of invertebrate wildlife for listing as endangered or threatened on May 22, 1984 (49 FR 21664), which included the Pawnee montane skipper as a category 1 species. Category 1 is comprised of taxa for which the Service has sufficient biological information to support their being proposed to be listed as endangered or threatened species. The Butterfly Specialist Group of the International Union for Conservation of Nature and Natural Resources, Species Survival Commission, recommended the Pawnee montane skipper as a high priority for listing in 1985.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et. seq.*) 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 the Pawnee montane skipper (*Hesperia leonardus montana*) are as follows:

A. *The present or threatened destruction, modification, or curtailment*

of its habitat or range. The Pawnee montane skipper is a very rare species that occurs in only one restricted area. Past habitat loss or degradation may have occurred when Cheesman Reservoir was constructed or when the communities within the skipper's range were developed. No early distribution or range information exists to determine if or to what extent this may have occurred. Off-road vehicle use exists within the butterfly's habitat and results in accelerated soil erosion. Destruction of skipper and/or their food plants may result from off-road vehicle use.

Construction of the Two Forks Reservoir will result in the elimination of individual skippers and portions of the species' habitat. Estimates of the amount of habitat to be inundated range from 6 to 50%. Keenan *et al.* (1986) estimate that 6 or 14% of the species' habitat will be lost depending upon whether, respectively, an 0.4 or 1.1 million acre-foot storage design is selected for the Two Forks Reservoir. Scott (1986) estimates that 50% of the skipper's habitat will be inundated by the Two Forks Reservoir. Additional studies are to be carried out during the 1986 flight season (mid-late August) to more precisely determine the expected impact of the reservoir.

Construction activities (roads, access points, maintenance facilities, etc.) and recreational development associated with the Two Forks Reservoir or for other purposes could eliminate or further degrade the habitat of the Pawnee montane skipper. Recreational use of the area would be expected to increase, and increased trampling from foot traffic or off-road vehicles could result in the destruction of skippers or their two host plants at certain stages of their life cycles. Careful project planning could eliminate these threats by locating roads, access points, maintenance facilities and recreational development away from prime skipper habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Collection is not as large a problem for skippers as it is for some butterfly groups. Some collection of this species has occurred, but, to date, it has been primarily for scientific studies. With increased public awareness of its rarity, the Pawnee montane skipper could become more sought after by collectors or be subject to vandalism.

C. *Disease or predation.* Various predators and parasitoids are considered to hold insect populations under "natural control" and several are known to feed on various *Hesperia* butterflies; however, no such agents are believed to pose a serious threat to the

species' populations or continued existence.

D. *The inadequacy of existing regulatory mechanisms.* The Pawnee montane skipper is not presently protected by any State or Federal law. Listing under the Endangered Species Act would provide needed protection through recovery and interagency cooperation provisions.

E. *Other natural or manmade factors affecting its continued existence.* The use of insecticides for mountain pine bark beetle or other pests within the area where the Pawnee montane skipper occurs could result in the loss of skipper individuals or populations. Introduction of exotic vegetation could result in competition with and possible depletion of the food plant populations.

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 propose this rule. Based on this evaluation, the preferred action is to list *Hesperia leonardus montana* as a threatened species. This species fits the definition of threatened better than endangered since the species does not appear to be in danger of extinction throughout its range at this time. However, the species has a restricted range and portions of its range will be eliminated by the Two Forks Reservoir, thus justifying threatened status. Critical habitat is not being determined for reasons explained in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be 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. Collection and vandalism could become problems for this species through increased publicity if critical habitat maps were published as part of the listing process. All the involved agencies have been informed of the location of the populations of the Pawnee montane skipper. No further notification benefits would accrue from designating critical habitat. Protection of the species' habitat and its proper management will be addressed through the section 7 and recovery processes. Therefore, there would be no net benefit from designating critical habitat, and it would not be 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 of Federal agencies and the prohibitions against taking and harm 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 (see revision at 51 FR 19926; June 3, 1986). 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 proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 a 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.

The Pawnee montane skipper occurs on U.S. Forest Service administered lands (Pike National Forest). The U.S. Army Corps of Engineers is the permitting agency for the Two Forks Reservoir. Additional data is currently being gathered to more closely determine the extent of impact to the species from construction of this reservoir. The Service will work with the Forest Service, the Corps, and all other involved parties to achieve protection for the skipper while accommodating projects to the maximum extent possible.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened

wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service at State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specific period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal 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) The location of any additional populations of this 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 and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impact on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of 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 must be made in writing and addressed to the Regional Director of the Service (See ADDRESSES section).

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

Keenan, L.C., R.E. Stanford, S.L. Ellis, and B. Drummond. 1986. Status report on: Pawnee montane skipper. Prepared for Denver

Water Department, Denver, Colorado. 49 pp.
 McGuire, W.W. 1982. New oviposition and larval hostplant records for North American *Hesperia* (Rhopalocera: Hesperidae). Bulletin of the Allyn Museum, Number 72. 6 pp.
 Scott, J.A. 1986. Letter to Office of Endangered Species. March 5.
 Scott, J.A. and R.E. Stanford. 1982. Geographic variation and ecology of *Hesperia leonardus* (Hesperidae). Journal of Research on the Lepidoptera 20(1): 18-35.
 Skinner, H. 1911. New species or subspecies of North American butterflies. Entomological News 22:412-413.

Author

The primary author of this proposed rule is Dr. Jim Miller of the Service's Denver Regional Office staff (see ADDRESSES section).

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 Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read 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. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

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 (h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Butterfly, Pawnee montane skipper	<i>Hesperia leonardus montana</i>	U.S.A. (CO)	NA	T		NA	NA

Dated: September 12, 1986.
 Susan Recce,
 Deputy Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 21759 Filed 9-24-86; 8:45 am]
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