

peaks in North Carolina and Tennessee. Only three populations of *Solidago spithamaea* are known to exist; one is on public land administered by the U.S. Forest Service and the other two are on privately owned lands. Past loss of habitat and populations has occurred due to the recreational development of the high mountain peaks where this plant occurs. The continued existence of this plant is threatened by trampling and habitat disturbance due to heavy recreational use. This action will implement the protection provided by the Act, for *Solidago spithamaea*.

DATE: The effective date of this rule is April 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie, Asheville Endangered Species Field Station (see **ADDRESSES** above, 704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Solidago spithamaea (Blue Ridge goldenrod) was described from material collected in North Carolina by M. A. Curtis in the 1830's (Massey, Whitson, and Atkinson 1980). Today, three populations of the species are known: Two in Avery County, North Carolina, and one on the border of Mitchell County, North Carolina, and Carter County, Tennessee. Two populations are located on privately owned lands and one is located on public lands administered by the U.S. Forest Service. Two additional populations were historically known for the species, but both sites have been developed and no Blue Ridge goldenrod have been relocated there during recent searches. It is believed either that the plant is extirpated from these sites or that the original reports were erroneous.

Solidago spithamaea is an erect perennial herb that arises from a short, stout rhizome and is a member of the aster family. The yellow flowers are borne in heads arranged in a corymbiform inflorescence. *Solidago spithamaea* grows above 4,600 feet

(1,400 meters) in dry rock crevices of granite outcrops on the high peaks of the Blue Ridge Mountains. The continued existence of *Solidago spithamaea* is threatened by trampling and habitat disturbance due to heavy recreational use of its habitat by hikers. Construction on new trails and other recreational improvements at any of the three sites where populations of this plant exists could further jeopardize the plant's continued existence. This rule determines *Solidago spithamaea* to be a threatened species and implements the protection provided by the Endangered Species Act of 1973, as amended.

Past Federal Government actions affecting this plant began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review 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 Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). *Solidago spithamaea* was included in the Smithsonian report and the 1975 notice of review. On December 15, 1980, the Service published a revised notice of review of native plants in the **Federal Register** (45 FR 82480), and *Solidago spithamaea* was included in that notice as a category-1 species. Category-1 species are those for which date in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago spithamaea* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Solidago spithamaea* was warranted, and that although other pending proposals had precluded its proposal, expeditious

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Solidago spithamaea* (Blue Ridge Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Solidago spithamaea* M. A. Curtis (Blue Ridge goldenrod) to be a threatened species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. *Solidago spithamaea* is endemic to high mountain

progress was being made to add species to the list. Notice of the finding was published in the *Federal Register* on January 20, 1984 (49 FR 2485). On July 23, 1984, the Service published, in the *Federal Register* (49 FR 29629), a proposal to list *Solidago spithamaea* as a threatened species. That proposal constituted the next one-year finding as required by the 1982 Amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the July 23, 1984, proposed rule (49 FR 29629) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the *Avery Journal* on August 9, 1984, the *Elizabethton Star* on August 6, 1984, and the *Tri-County News Journal* on August 9, 1984. Seven comments were received and are discussed below.

The Commissioner of the North Carolina Department of Agriculture commented that that agency concurred with the Service's proposal to list the Blue Ridge goldenrod as a threatened species and agreed that designation of critical habitat could prove detrimental to the species.

The Natural Heritage Program of the North Carolina Department of Natural Resources and Community Development's Division of Parks and Recreation responded that its data indicate that the Blue Ridge goldenrod should be listed as a threatened species. It supported the decision not to designate critical habitat because of the potential harm such a designation might have on the species.

The Tennessee Department of Conservation's Ecological Services Division indicated that its data support the proposal to list the Blue Ridge goldenrod as a threatened species. It stated that protection of the Roan Mountain population of this species would provide protection for at least six other rare plant species. It concurred with the decision not to designate critical habitat.

The Tennessee Valley Authority's Regional Natural Heritage Project

agreed that *Solidago spithamaea* should be designated a threatened species. It suggested that the author of the species' name be used the first time that a scientific name is cited in future proposed or final rules. This is standard practice in biological writings, and in some cases the omission of the author's name could lead to confusion and ambiguity. This suggestion has been followed.

The U.S. Department of Agriculture's Forest Service concurred with the proposal to list the species as threatened and agreed with the conservation measures discussed in the proposed rule.

The International Union for Conservation of Nature and Natural Resources thanked the Service for providing a copy of the proposed rule and stated that it had no additional information to add concerning the status of Blue Ridge goldenrod.

The Southern Appalachian Highlands Conservancy stated that it agreed with and supported the comments of the Tennessee Department of Conservation.

The Service agrees with the comments that the Blue Ridge goldenrod qualifies for protection under the Endangered Species Act and that designation of critical habitat could be detrimental to the species. The Service also concurs with the comment that use of the author's name for a plant species is appropriate in order to avoid confusion and ambiguity. A public hearing was neither requested nor held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solidago spithamaea* (Blue Ridge goldenrod) should be classified as a threatened 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 (to be codified at 50 CFR Part 424, 49 FR 38900, October 1, 1984) 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 *Solidago spithamaea* M. A. Curtis (Blue Ridge goldenrod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Three populations of *Solidago spithamaea* are known to exist in Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. Two other historically known populations are

assumed extirpated or the original reports are believed to be erroneous; both sites have been developed and the Blue Ridge goldenrod has not been relocated at the sites for over 60 years, although searches have been conducted. Of known extant populations, two are located on privately owned lands and one is located on public land administered by the U.S. Forest Service. The greatest damage to *Solidago spithamaea* in the past probably came from the commercial development of the open mountain summits where it occurs. The construction of observation platforms, trails, parking lots, roads, suspension bridges, etc., has taken its toll either through the actual construction process or later by trampling due to hikers and sightseers (Kral, 1979). Today, heavy recreational use occurs at two locations where *Solidago spithamaea* is known to be extant (Massey *et al.*, 1980). Some of the open areas where this plant grows might be better protected by routing visitors away from the sites so that trampling could be avoided. With anticipated increased usage by sightseers, rock climbers, and hikers at all three localities where *Solidago spithamaea* occurs, significant impact on this species in the form of increased soil erosion, soil compaction, and trampling could occur if protection is not provided. Likewise, additional development at any of the locales, such as expansion of trails or sidewalks, could further threaten this species if proper planning does not occur. To quote one botanist, *Solidago spithamaea* ". . . seems to have an instinct for growing in the most scenic sites, thus coming underfoot and underseat."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* In 1979, North Carolina passed legislation to protect its rare plants. *Solidago spithamaea* is protected under that State law (North Carolina General Statute 19-B, 202.12-202.19) as an endangered species. This legislation provides protection from intrastate trade and provisions for monitoring and proper management. Tennessee does not currently have State legislation to protect endangered plants.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR Part 261). These regulations, however, are difficult to enforce. The Endangered Species Act

will offer additional protection to this species through Section 7—interagency cooperation requirements and recovery planning.

E. Other natural or manmade factors affecting its continued existence. *Solidago spithamaea* is an early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion of ericaceous shrubs may occur, which could eliminate *Solidago spithamaea* by over-crowding and shading. This is a very slow process. However, proper management planning for *Solidago spithamaea* would need to address this aspect of the species' biology. Natural rock slides, severe storms, or other natural events may also eliminate populations of this plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Solidago spithamaea* as threatened. Critical habitat is not being determined for reasons discussed below. With only three populations known to exist, this plant warrants protection under the Endangered Species Act. Threatened status is preferred since one population is located on public lands (affected by section 7 of the Act) and the present private land owners are cooperative.

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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Solidago spithamaea* at this time. As discussed in the "Summary of Factors" section, all known locations for *Solidago spithamaea* receive visitor use, and associated trampling is a major threat to this species. Designation of these areas as critical habitat would increase public interest and possibly lead to vandalism and taking at the heavily used sites and thereby increase the threat to the plant. No public notification benefits would be derived from a critical habitat designation since the owners and managers of the three sites are already aware of the presence of *Solidago spithamaea*. Vandalism and taking of listed plants are not regulated by the Endangered Species Act, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. These regulations and those

of the Forest Service are also extremely hard to enforce. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Solidago spithamaea* 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 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. 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of 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. One population of *Solidago spithamaea* occurs on public lands administered by the U.S. Forest Service; proper protection and management plans are needed for the species at this site, but no major conflicts are expected.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Solidago spithamaea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from those prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Solidago spithamaea* is not common in cultivation or in the wild.

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. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Solidago spithamaea* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) 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 it is anticipated that these will be made final following public comment. 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 or FTS 235-1903).

National Environmental Policy Act

The 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

- Kral, R. 1979. *Solidago spithamaea*, individual species reports submitted to the U.S. Forest Service, Southeastern Area, as part of Cooperative Agreement #42-283.
- Massey, J.R., P.D. Whitson, and T.A. Atkinson. 1980. Endangered and Threatened Plant Survey of Twelve Species in the Eastern Part of Region 4.

Report submitted to U.S. Fish and Wildlife Service, Region 4, under contract 14-16-004-78-108.

Authors

The primary author of this final rule is Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28802. Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

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, under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Asteraceae—Aster family:							
<i>Solidago spithameae</i>	Blue Ridge goldenrod	U.S.A. (NC, TN)	T	172	NA	NA

Dated: March 8, 1985.
J. Craig Potter,
Acting Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 85-7330 Filed 3-27-85; 8:45 am]
BILLING CODE 4310-55-M