

PART 101—FIXED MICROWAVE SERVICES

35. The authority for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309 and 554.

§ 101.149 [Amended]

36. Section 101.147 is amended by removing the number (22) from the entries 2,150–2,160 MHz (20) (22) and 2,650–2,690 MHz (22) from the frequency assignments in paragraph (a).
[FR Doc. 99–29785 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 99–2476; MM Docket No. 92–81; RM 7875]

Radio Broadcasting Services; Farmington and Gallup, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by KOB-TV, Inc. against our action in the *Report and Order*, 61 FR 08000 (1996) which reallocated Channel 3 from Gallup to Farmington and modified the construction permit for Station KOAV-TV to specify Farmington as its community of license.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket 92–81, adopted October 27, 1999 and released November 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 99–30173 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA No. 99–2452; MM Docket No. 98–196; RM–9325 & RM–9476]

Radio Broadcasting Services; Whitewright and Van Alstyne, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Petition for Rule Making filed by Chiquapin Creek Broadcasting Company, a Notice of Proposed Rule Making was issued proposing the allotment of Channel 260A at Whitewright, Texas. See 63 FR 67036, December 4, 1998. In response to a counterproposal filed by Chiquapin Creek Broadcasting this document allots Channel 260A to Van Alstyne, Texas, at coordinates 33–27–08 and 96–27–21. With this action, this proceeding is terminated. A filing window for Channel 260A at Van Alstyne, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective December 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–196, adopted October 27, 1999, and released November 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Van Alstyne, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–30169 Filed 11–19–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018–AE54

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant *Lesquerella thamnophila* (Zapata Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the plant *Lesquerella thamnophila* (Zapata bladderpod) to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Lesquerella thamnophila* is currently known from four locations in Starr and Zapata Counties, Texas. Increased urban development, roadway construction, invasion of exotic species, increased oil and gas activities, alteration and conversion of native plant communities to improved pastures, overgrazing, and vulnerability from low population numbers threaten this species.

EFFECTIVE DATE: This final rule is effective December 22, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (8:00 am to 4:30 pm, Monday through Friday), at the 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.

FOR FURTHER INFORMATION CONTACT: Field Supervisor of the Corpus Christi Ecological Services Field Office at the

above address (Telephone 316-994-9005; Facsimile 361-994-8262).

SUPPLEMENTARY INFORMATION:

Background

Lesquerella thamnophila, a member of the Brassicaceae (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 Starr and Zapata Counties in southern Texas.

Lesquerella thamnophila is a pubescent (hairy), somewhat silvery-green herbaceous (herblike) perennial plant, with sprawling stems 43-85 centimeters (cm) (17-34 inches (in)) long. The plant exhibits a taproot system indicating a perennial life habit. It possesses narrow basal leaves 4-12 cm (1.5-4.8 in) long, and 7-15 millimeters (mm) (0.3-0.6 in) wide, with entire to wavy or slightly toothed margins. 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 basal leaves. The inflorescences (arrangement of flowers on a single stalk) are loose racemes of bright yellow-petaled flowers (the flowers are arranged along an axis with the lower flowers maturing first), which appear at different times of the year depending upon timing of rainfall. Fruits are round and 4.5-6.5 mm (0.2-0.8 in) in diameter on short, downward curving pedicels (slender stalks) (Poole 1989).

Physical and climatic characteristics of Starr and Zapata Counties include level to rolling topography and an average of 45-51 cm (18-20 in) of precipitation, with major peaks of rainfall in September and May. Infrequent but heavy downpours associated with hurricanes and tropical storms contribute to wide fluctuations in rainfall from year to year, and skew the historical mean well above the yearly median. Drought, a recurring event in south Texas, has a profound effect on native vegetation. The range of *Lesquerella thamnophila* has been under an extreme drought situation for a number of years, making it likely that the plant would take advantage of any measure of rainfall to flower and reproduce. The numbers of plants present in known populations appear to fluctuate dramatically in response to precipitation (Poole 1989).

Lesquerella thamnophila can occur on graveled to sandy-loam upland terraces above the Rio Grande floodplain. The known populations are associated with three Eocene-age geologic formations—

Jackson, Laredo, and Yegua, which have yielded fossiliferous (containing fossils) and highly calcareous (containing calcium carbonate) sandstones and clays.

Known Starr County populations occur within the Jimenez-Quemado soil association and on Catarina series soils. Jimenez-Quemado soils are well-drained, shallow, and gravelly to sandy loam underlain by caliche (a hard soil layer cemented by calcium carbonate). This soil association is broad, dissected, and irregularly shaped, and occurs on huge terraces 6-15 meters (20-50 feet) above the floodplains of the Rio Grande. In most areas, the Jimenez soils occupy the slope breaks extending from the tops of ridges to the bottoms of the slopes, and narrow valleys between. Quemado soils occur as narrow areas on ridgetops, where the slope range is 3-20 percent. Steep escarpments can be present with rocky outcrops adjacent to the river floodplain. Catarina series soils consist of clayey, saline upland soils developed from calcareous, gypsiferous (containing gypsum), and or saline clays that usually contain many drainages and erosional features. The underlying material of the soils contain calcareous concretions (a rounded mass of mineral matter), gypsum crystals, and marine shell fragments (Thompson *et al.* 1972).

Bladderpod populations in Zapata County occur within the Zapata-Maverick soil association. Zapata soils are shallow, loamy or mixed, hyperthermic (high temperature), well-drained, and nearly level with undulating slopes ranging from 0 to 18 percent, primarily on uplands occurring over caliche. The upper portion of the soil horizon ranges 5-25 cm (2-10 in), with coarse fragments consisting of few to 25 percent of angular caliche 2.5-20 cm (1-8 in) long, and combined with chert gravel. Maverick soils consist of upland clayey soils occurring over caliche with underlying calcareous material containing shale and gypsum crystals (Thompson, *et al.* 1972). The upper zone consists of a moderately deep soft shale bedrock, sloping 1-10 percent, well-drained, and forming clayey sediments. Ancient deposition of rock material from the Rio Grande can be found in these portions of the soil, and rock and Indian artifact collection has become a pastime for residents and visitors in the area.

Lesquerella thamnophila occurs as an herbaceous component of an open *Leucophyllum frutescens* (cenizo) shrub community that grades into an *Acacia rigidula* (blackbrush) shrub community. Both plant communities dominate upland habitats on shallow soils near the Rio Grande (Diamond 1990). Other related plant species in the cenizo and

blackbrush communities include *Acacia berlandieri* (guajillo), *Prosopis sp.* (mesquite), *Celtis pallida* (granjeno), *Yucca treculeana* (Spanish dagger), *Zizyphus obtusifolia* (lotebush), and *Guaiaecum angustifolium* (guayacan). The coverage of an aggressively invasive, nonnative grass, *Cenchrus ciliaris* (buffelgrass), is extensive at three of the four extant sites and present at the fourth. *Dichanthium annulatum* (Kleberg's bluestem), which is used for erosion control on roadways, has also begun to invade natural areas and is present at all four *Lesquerella* sites, although not as extensively as buffelgrass. These shrublands are sparsely vegetated due to the shallow, fast-draining, highly erosional soils and semi-arid climate (Poole 1989).

Livestock production is one of the major land uses for the area, although wildlife rangeland production for hunting and recreational use is becoming increasingly important. Major game species include white-tailed deer (*Odocoileus virginianus*), quail (*Colinus virginianus* and *Callipepla squamata*), mourning dove (*Zenaidura macroura*), turkey (*Meleagris gallopavo*), javelina (*Pecari tajacu*), and feral pig (*Sus scrofa*). Oil and natural gas production has become one of the most significant forms of income in the area due to a drought-induced decrease in cattle production.

Overgrazing by livestock, root-planting of shrubs, and subsequent planting of buffelgrass for rangeland improvement has eliminated much of the natural habitat. Buffelgrass, the forage plant used by most ranchers in the area, has invaded natural areas and out-competed native plants. Results from various invasive grass studies indicate that there may be shade and root competition as well as possible allelopathic effects (suppression of growth of one plant species by another due to release of toxic substances) on native forbs and grasses (Nurdin and Fulbright 1990).

Lesquerella thamnophila occurred historically in Starr and Zapata Counties in the United States. We do not have information on Mexican populations, although we have contacted biologists and botanists in Mexico regarding its possible occurrence there and use as a medicinal plant. One response indicated that the plant was historically found in northern Mexico and was used as a poultice for open sores, wounds, and skin eruptions (Garcia *in Litt.* 1999).

Since the first collection of *Lesquerella thamnophila* in 1959, and nine additional populations of the plant

have been located since then. Of the ten total known populations, four are believed to have been extirpated, two populations have not been surveyed since 1996 due to restricted access to private lands, and four sites are known to support extant populations.

Sites Believed To Be Extirpated

R. C. Rollins originally discovered *Lesquerella thamnophila* in 1959 in Zapata County, in a subdivision near Falcon Lake. This type locality was relocated in 1985, when approximately 1,000 plants were seen within a 5-hectare (ha) (15-acre (ac)) area. In 1986, the site was under a drought condition, and no plants were found. Plants were located again in 1988, but the numbers of plants were not recorded. Biologists from the Texas Parks and Wildlife Department (TPWD) relocated the site in 1996, but saw no plants. Our personnel also found no plants in September 1998 or April 1999. The habitat at this site has become severely degraded. Soil has eroded into roadside ditches, buffelgrass has invaded the sloping hillside, and housing construction has eliminated much of the natural habitat of the area. The population has likely been extirpated from this site.

In 1994, a site along an electric transmission line in southwestern Starr County was reported, however, no specimen was collected, and no plants have been seen at this site since then. In 1996, we discovered another site consisting of about 50 plants, less than 1.6 kilometers (1 mile) northeast of the above-mentioned site along a roadside cut of Highway 83. Surveys for this population were performed in 1997–1999. In 1998, one plant was observed, and in 1999, we found no plants at this site. In 1995, we discovered a small site in the Highway 83 right-of-way south of the city of Zapata. The TPWD and Service biologists found one plant in 1998, but none were found in our April 1999 survey.

Extant Populations

In April 1994, TPWD personnel discovered a new Starr County population of about 50 plants. We purchased this site as part of the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) complex and began to monitor population numbers. In 1996, LRGVNWR biologists recorded a total of 131 plants, 84 of which exhibited no seedling productivity. In 1997, after high precipitation, the number of individuals increased to several thousand within an approximately 1-ha (2–3-ac) portion of the tract. In September 1998, we surveyed the site and found few

individuals, but one plant had produced two fruits. The majority of plants seen were located under the canopy of associated brush species. Previous to the survey, high amounts of precipitation fell at the site, eroding soils, exposing the calcareous sandstone, and leaving the root structure of some *Lesquerella thamnophila* plants partially exposed. Where *Lesquerella thamnophila* individuals were protected by associated plants, topsoil was retained, and the species was less affected by heavy rains.

In April 1999, after resumption of drought conditions, only a few *Lesquerella thamnophila* plants were found. However, in June we visited the site after 10–15 cm (4–6 in) of rain had fallen in the area and observed a large number of *Lesquerella thamnophila* plants flowering and producing fruit. During a survey one week later, few flowers, but many pods at various stages of development, were present. Close inspection of the plants revealed possible predation on seeds within developed pods. Botanists at the LRGVNWR are currently conducting habitat and community structure studies of *Lesquerella thamnophila* and associated species present at this site. The studies include investigations on habitat composition and productivity in relation to shade effects, relationships with other plant species, and the degree of successful species propagation.

Another historical site in Zapata County, originally reported by Lundell and Lundell in 1941, was re-verified by TPWD in 1985 (Poole 1989). Approximately 5,000 plants were found in this area on the east side of Highway 83 located near the Arroyo Tigre Chiquito bridge. In 1986, during drought conditions, only 28 plants were seen. Plants were again located in 1988, but no counts recorded. The TPWD and the Texas Department of Transportation (TDOT) established a management agreement to protect the site, and we and TPWD monitor this population annually. The TPWD recorded 10 reproductive plants in 1991, no plants in 1992, and 7 nonreproductive plants in 1995. No plants were found during 1996–1998 surveys, however, TDOT biologists found five plants at the site in 1999.

In 1996, TPWD discovered about 100 plants in a vacant lot near the Siesta Shores Subdivision in Zapata County, and in January 1998, located many rosettes (plants whose leaves are spread flat at ground level). We found one plant in July 1999, but extensive housing construction had begun, which eliminated much of the potential habitat. The population at the site could

be extirpated unless conservation measures can be implemented in the very near future.

In 1986, TPWD found 20 plants on a 2-ha (5-ac) tract of a privately owned ranch in southwestern Starr County (Poole 1989). The TPWD personnel observed the species again in 1994 but did not count individuals. The TPWD biologists observed 20 or fewer individuals in 1996. In 1999, the site was confirmed to support plants, but no information is available on the number of plants observed.

Populations for Which Status Is Unknown

Three Starr County populations, including the one above, were known from private ranch sites near the towns of Roma and Los Saenz. Two of the private ranch sites have not been visited by us or TPWD personnel because we do not have permission to access these sites. Therefore, we do not know the status of *Lesquerella thamnophila* at these sites.

Previous Federal Action

Federal action involving this species began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. The report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we 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 we would initiate a review of the status of those plants. *Lesquerella thamnophila* was included as threatened in the Smithsonian report and in our notice.

On June 16, 1976 (41 FR 24523), we published a proposed rule to determine approximately 1,700 species of 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), we 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), we published a list of plants under review for listing as threatened or endangered, which included *Lesquerella thamnophila* 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 we make findings on 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, and 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, we determined that listing *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 designating the species as a category 1 candidate and to support preparation of a proposed rule to list *Lesquerella thamnophila* as endangered. "Category 1 candidates" were those species for which we 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.

Upon publication of the February 28, 1996, Notice of Review (61 FR 7605), we ceased using category designations and included *Lesquerella thamnophila* as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered species. We retained *Lesquerella thamnophila* as a candidate species in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398). On January 22, 1998 (63 FR 3301), we published a proposed rule to list *Lesquerella thamnophila* as endangered, without critical habitat, in the **Federal Register**. We invited the public and State and Federal agencies to comment on the proposed listing.

The processing of this final rule conforms with our Listing Priority

Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

The January 22, 1998, proposed rule and associated notification requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We published newspaper notices of the proposed rule in the Brownsville Herald on February 4, 1998; the Monitor (McAllen), the Valley Morning Star (Harlingen), the Rio Grande City Herald, and the Zapata News on February 5, 1998; and the February monthly issue of LareDOS (Laredo). The public comment period was open for 60 days, from January 22 to March 23, 1998.

Five commenters, including the State and four individuals or groups, commented on the proposed rule. Three commenters opposed the listing; one commenter was neutral on listing; and one supported the listing. Issues raised by the commentors are discussed below.

Issue 1: The listing of the plant poses a threat to landowners who earn their livelihood by cattle ranching or oil and gas production. Listing would also threaten the success of the North American Free Trade Agreement (NAFTA) by postponing construction of various roadways within south Texas.

Response: The Act prohibits us from considering economic and other nonbiological factors in listing decisions. However, once a species is

listed, we strive to minimize adverse economic impacts when considering how best to conserve listed species. The Act provides protection to listed plant species when landowners seek Federal permits, funding, or Federal loans for a land development project or other activities that may affect the species. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities (such as road building) 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. Early coordination with State and Federal agencies can help minimize economic impacts and avoid unnecessary delays in project implementation.

Endangered plants are not protected on private lands except when taken in knowing violation of a State law or regulation, including State criminal trespass law. However, we hope that listing the species will alert private landowners to the need to protect it and encourage them to work with us to develop conservation measures that will benefit both the landowner and the species.

Issue 2: Additional surveys should be performed after rain events, and biological information should be gathered prior to listing, possibly to preclude listing.

Response: Extirpations at historical sites and the apparent decline of extant *Lesquerella thamnophila* populations necessitates protecting the few known surviving plants under the Act. Should additional surveys and biological data indicate that the populations are more viable than most recently demonstrated, we would consider that information in formulating a recovery strategy for the species. Although the decrease in population number and size appears correlated with drought conditions, it is not known whether the remaining populations would rebound sufficiently following future rain events to justify not listing the species. Furthermore, delaying the listing process would increase the risk that more bladderpod populations would disappear. Because there are only four known populations scattered over a large geographical area, each loss decreases genetic variability and reduces the chances of the species' survival even after normal rainfall returns. The best scientific and commercial information available indicates that the species' existence is too precarious to delay the protections afforded by the Act.

Peer Review

Our July 1, 1994, Peer Review Policy (59 FR 34270) requires that we solicit

the opinions of at least three independent specialists regarding pertinent scientific or commercial data on proposed species listings. We provided the proposed rule to 29 botanists and biologists outside the Service and asked for their review of the proposed action. We received responses from three biologists. Two supported listing the species and provided corrections to the proposed rule and other information. One respondent opposed listing on the grounds that further surveys would likely reveal additional populations, however, this scientist agreed that current information supports listing the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determined that *Lesquerella thamnophila* should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and the regulations implementing the listing provisions of the Act (50 CFR part 424). We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella thamnophila* (Zapata bladderpod) (Rollins and Shaw), 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 nonnative 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).

A common practice in south Texas to improve rangeland for livestock production is to remove native shrubs through root-plowing or aerial herbicide application and then re-seeding the area with nonnative grasses. This practice potentially destroys *Lesquerella thamnophila* and its habitat. Buffelgrass has spread beyond improved pastureland and is now present throughout a large portion of south Texas. This invasive nonnative grass outcompetes and displaces native grasses, herbs, and small shrubs.

Possible mechanisms for displacement of native species by invasive nonnatives could be loss of sites for native plant seedling establishment, light and moisture competition, and possibly allelopathic effects (Nurdin and Fulbright 1990).

Much of south Texas has been affected by long-term grazing, and grazing continues to be an established practice on private lands. 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 situation has led to severe depletion of the often highly erodible south Texas soils (Schlesinger, *et al.* 1990). It is impossible to calculate how much habitat occupied by Zapata bladderpod may have been lost due to the effects of long-term grazing and conversion of native rangeland to improved pasture.

Lesquerella thamnophila is also threatened by potential urban development. Habitat at the type locality for this species has been reduced to a small vacant lot in a resort subdivision near Falcon Reservoir in the City of Zapata, Texas. This area is undergoing rapid development. Another *Lesquerella thamnophila* population, which had occurred in an abandoned trailer park, has disappeared. The current trend toward urbanization, including increased construction of convenience stores in the area, could extirpate remaining populations.

South Texas is experiencing a rapid increase in highway improvements and construction to handle increased traffic stimulated by NAFTA. Existing roads that may be proposed for widening and/or paving lie adjacent to *Lesquerella thamnophila* populations. In addition, nonnative Kleberg's bluestem (*Dichanthium annulatum*) is used for erosion control, and that species is present at the known *Lesquerella* sites.

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 impact *Lesquerella thamnophila* populations and habitat. Seismic exploration requires clearing of extensive, temporary rights-of-way to facilitate equipment traffic. The construction of well pads, access and egress roads, electrical lines, and petroleum gathering lines from wells, if not planned properly, may destroy native habitat. The re-seeding of nonnative grasses in pipeline rights-of-way not only hampers re-colonization by native species but further spreads invasive species that will displace native vegetation.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although reported to have medicinal values, the species is not known to be a product in commercial trade.

C. *Disease or predation.* The populations of *Lesquerella thamnophila* have shown no evidence of disease. However, Poole (1989) reports that cattle graze *Lesquerella* to the extent that numbers of plants in populations subjected to grazing are severely reduced compared to those in adjacent, ungrazed lands. In addition, our biologists surveying for the plant at a site owned and protected by the LRGVNR found evidence of browsing by native animal species on the plants. While consumption by herbivores is a natural event, browsing can be a greater threat during drought conditions when range quality is reduced and other forage species have been reduced or removed. The small number of extant sites and the low number of plants can result in greater susceptibility to browsing than likely was present when populations were at historical levels. The plants in this portion of south Texas are sensitive to browsing during drought conditions due to the semi-arid environment and the sparseness of vegetation, even under ideal range conditions. Additionally, biologists have discovered evidence of predation on seed material of Zapata bladderpod during status surveys.

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.* *Lesquerella thamnophila* populations adjacent to maintained highway rights-of-way are exposed to herbicides used to control vegetation around bridges, guardrails, signs, and reflector posts. Maintenance crews may also use herbicides to kill woody species encroaching into the rights-of-way and along fence lines. Any plants within these areas are also threatened by maintenance practices such as blading, disking, and re-seeding with erosion control seed mixtures that contain primarily non-native invasive grasses.

Only four known *Lesquerella thamnophila* populations are known to exist, and these have widely fluctuating numbers of plants from year to year. The low plant numbers usually seen in these populations during drought years can result in genetic drift which can restrict genetic variability reducing the species' ability to overcome environmental stresses. The reduced number of plants during drought years, with populations

in some areas falling to zero above-ground vegetative individuals, also makes the species vulnerable to extinction from prolonged drought situations. The extreme rarity of this species makes populations vulnerable to extirpation and extinction from the variety of random environmental events mentioned, as well as human exploitation of its habitat.

In finalizing this rule, we carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species. Based on this evaluation, the preferred action is to list *Lesquerella thamnophila* as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is defined as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. 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.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Lesquerella thamnophila* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service

determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Lesquerella thamnophila* would be prudent.

Due to the small number of populations, *Lesquerella thamnophila* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Lesquerella thamnophila* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Lesquerella thamnophila*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudence and

determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Lesquerella thamnophila* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Lesquerella thamnophila* without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Lesquerella thamnophila* as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, preservation programs, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, as well as by private organizations and individuals. The Act provides for possible land acquisition, cooperation with the States, and requires that all Federal agencies use their authorities to carry out programs for the conservation of 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 threatened or endangered 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)(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 destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with us.

Federal agency actions that may require consultation as described in the preceding paragraph include, but are not limited to, brush clearing for flood control in arroyos within the jurisdiction of the International Boundary and Water Commission; technical assistance to landowners by the Natural Resource Conservation Service (formerly Soil Conservation Service) for activities funded by the Consolidated Farm Service Agency (formerly Agricultural Stabilization and Conservation Service); and rangeland herbicide or pesticide 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, as well as some maintenance practices. The U.S. Department of Housing and Urban Development will need to consider this species when it permits or funds water, sewer, and power services for settlements. The Federal Energy Regulatory Commission will need to consider the occurrence of the species when it approves interstate pipelines and electrical transmission lines, especially in previously undisturbed natural areas.

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 in areas under Federal jurisdiction. In addition, the Act prohibits the 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, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Fish and Wildlife 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. We anticipate that few trade permits would ever be sought or issued because this species is not in cultivation nor common in the wild.

Our policy (59 FR 34272) is 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.

We believe that, based on the best information available at this time, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing laws and regulations, including State laws and regulations, and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, construction or maintenance of pipelines or utility lines), when conducted in accordance with any reasonable and prudent measures given by us in a consultation under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., birding, sightseeing, photography, camping, or hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of

vegetation around one's personal residence as a fire break.

We believe that the following might result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Collection, damage, or destruction of *Lesquerella thamnophila* on Federal lands without a Federal permit.

Lesquerella thamnophila occurs on Federal lands under our jurisdiction.

(2) Collection, damage, or destruction of this species on non-Federal land if conducted in knowing violation of State law or regulations, or in the course of any violation of a State criminal trespass law.

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits are available for purposes of scientific research and enhancement or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Corpus Christi Ecological Services Field 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, PO Box 1306, Albuquerque, New Mexico 87103 (telephone 505-248-6920; facsimile 505-248-6922).

National Environmental Policy Act

We determined we do not need to prepare Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This rule does not alter that information collection requirement.

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List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

For the reasons outlined in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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:

§ 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)	* Cruciferae	* E	* 671	* N/A	* N/A
*	*	*	*	*	*		*

Dated: November 16, 1999.
Jamie Rappaport Clark,
 Director, Fish and Wildlife Service.
 [FR Doc. 99-30378 Filed 11-19-99; 8:45 am]
 BILLING CODE 4310-55-P