

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AB38

**Endangered and Threatened Wildlife and Plants; Final Rule to List *Potamogeton Clystocarpus* (Little Aguja Pondweed) as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines *Potamogeton clystocarpus* (Little Aguja pondweed) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from a single canyon in the Davis Mountains of Texas. The single population in an intermittent stream is threatened by recreational activities, possible changes in water quality, possible diversion of water, and other natural factors that are a consequence of its low population numbers. This action will implement Federal protection provided by the Act for *P. clystocarpus*. Critical habitat will not be designated for this species.

**EFFECTIVE DATE:** December 16, 1991.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412.

**FOR FURTHER INFORMATION CONTACT:** Rogelio Perez, at the above address (512/888-3346 or FTS 529-3346).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Potamogeton clystocarpus* is a member of the pondweed family (Potamogetonaceae). It was first collected in 1931 by Moore and Steyermark. The species was described by Fernald (1932) based on its large sepeloid connectives and distinctive fruit having swollen and tuberculate bases (Haynes 1974). The only other species with fruits similar to *P. clystocarpus* occur in Eurasia and Africa.

*Potamogeton clystocarpus* is an aquatic plant with a slender, branched, rounded to slightly compressed stem, usually with a pair of small translucent glands at the nodes. Leaves are submerged, linear, light green, translucent to sub-opaque, and 2-4.5 inches (5-11.5 cm) long. Peduncles are thread-like; spikes are emergent while flowering, but submerged while fruiting; cylindrical, and about 3/8 inch (0.95 cm) long, with 2 or 3 whorls of flowers. Fruits have two or more warty protuberances at the base, and develop from early May to October, or later.

*Potamogeton clystocarpus* is known from a single intermittent stream in Little Aguja Canyon in the Davis Mountains, Jeff Davis County, Texas. The plant occurs in isolated, quiet pools of water and is rooted in igneous derived alluvium in the deep and rocky streambed. The subterranean stream surfaces in only a few places. Most of its course is underground through gravel bars. Associated species include *Potamogeton foliosus*, *P. pectinatus* (Sago pondweed), *P. pusillus*, *P. nodosus*, and *Najas guadalupensis* (Guadalupe water nymph) Rowell 1983). The population occurs within the Trans Pecos Biotic Community (Gould 1975).

Many quiet pools are present in the stream bed of Little Aguja Canyon, but the species has a very scattered distribution. Where present, it is generally in small isolated colonies (Rowell 1983). One general collection locality for *P. clystocarpus* is known. It occurs on land owned by the Boy Scouts of America. The landowners were informed by letter of the presence of the plant on their land, the anticipated listing proposal, and how they may be affected.

Rowell (1983) made repeated trips to the area and examined pools in adjacent canyons. He found plants in only two pools in Little Aguja Canyon. He also examined Limpia Creek, also in the Davis Mountains of Jeff Davis County, but did not find this species in any of its pools. Other botanists have collected plant specimens from many areas of Trans-Pecos, Texas, since the species was named in 1931, but to date the species is known only from Little Aguja Canyon.

The single population of *P. clystocarpus* is threatened by periodic floods and droughts that may reduce plant numbers to levels below which the species can naturally recover and by possible recreational activities that could damage plants and their habitat. The low number of plants and limited distribution of the species contribute to its vulnerability from any present or anticipated threats.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Potamogeton clystocarpus* was included as "endangered" in the July 1, 1975, petition. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Potamogeton clystocarpus* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976.

*Potamogeton clystocarpus* was included as a Category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened. When the notice of review for native plants was again revised in 1983 (48 FR 53640), *P. clystocarpus* was included as a Category 2 species, which are those species for which the Service has information to indicate that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. In the 1985 revised notice of review for native plants (50 FR 39526), *P. clystocarpus* was returned to Category 1. The Service funded a status survey to determine the status of *P. clystocarpus*, and the final report for this survey was accepted by the Service in 1983. Additional information on the status of the species throughout its range and on threats to its continued existence have now been obtained by the Service.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of

the 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. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *P. clystocarpus*, were treated as being newly petitioned on October 13, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989 the Service found that the petitioned listing of *Potamogeton clystocarpus* was warranted but precluded by other listing actions of a higher priority. A proposed rule to determine endangered status for *P. clystocarpus* was published in the **Federal Register** on March 15, 1990 (55 FR 9741).

#### Summary of Comments and Recommendations

In the March 15, 1990 (55 FR 9741) proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period originally closed May 14, 1990, but was extended to August 6, 1990 (55 FR 27662), to allow individuals to submit comments after the public hearing. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Alpine Avalanche* on April 19, 1990, which invited general public comment.

The Service received a request for a public hearing and scheduled one for July 19, 1990, in Fort Davis, Texas. Interested parties were notified of the hearing, and notices of the hearing were published in the **Federal Register** on July 5, 1990 (55 FR 27662), and the *Alpine Avalanche* on July 12, 1990.

About 150 people attended the hearing. A transcript of this hearing is available for inspection (see ADDRESSES). Oral or written comments were received from 23 parties at the hearing; all 23 opposed the proposed listing.

In total, 37 comments were received, 1 from a state agency and 36 from private organizations, companies, and individuals. Three comments supported the proposed listing and 34 opposed the proposed listing. Some individuals or organizations submitted more than one comment, but they were only counted as one. Written and oral comments presented at the public hearing and received during the comment period are

covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each, are discussed below.

**Issue 1:** Some commenters questioned the accuracy or sufficiency of the data used to support the conclusions in the proposed rule and requested that the listing proposal be withdrawn. **Response:** The Service, as detailed in the "Summary of Factors" section, concludes there is sufficient evidence to determine that *Potamogeton clystocarpus* meets the standards required to receive protection as an endangered species. An endangered species is one which is in danger of extinction throughout all or a significant portion of its range. With only one population known, *Potamogeton clystocarpus* is in danger of extinction throughout its range from any of the threats described in the "Summary of Factors" section. The low numbers and limited range of this species makes it more vulnerable to extinction from threats that might have a relatively low incidence of occurrence. If a proposal is withdrawn, section 4(b)(6)(B)(ii) of the Act provides that the finding upon which the withdrawal is based shall be subject to judicial review.

**Issue 2:** Some commenters questioned the validity of scientific findings, especially those attributed to Kenneth Wurdack. **Response:** The specimens collected by Mr. Wurdack were incorrectly identified. Therefore, the threats attributed to his observations were not considered in the final determination on this species. The Service has considered all sources of information on the distribution and threats or lack thereof to *Potamogeton clystocarpus* in making a final determination that the species is endangered.

**Issue 3:** Some commenters stated the mere presence of *P. clystocarpus* in Little Aguja Creek indicates it is adapted to natural floods and droughts and thus not threatened by these climatic conditions. **Response:** The magnitude and timing of natural events that reduce populations cannot be predicted. The fact that extinction has not already occurred does not mean that events acting on presently small populations will not cause extinction in the foreseeable future.

**Issue 4:** Some commenters were concerned that illegally obtained information was used as a basis for initiating the proposed listing. **Response:** The scientific information upon which the Service relied concerning this species was initially provided by the Smithsonian Institution in a report to

Congress on January 9, 1975 (House document no. 94-51). The Service also funded a survey to determine the status of *P. clystocarpus*, and the final report for this survey was accepted by the Service in 1983. The alleged unlawfully collected specimens, obtained between 1985 and 1987, were determined not to be *P. clystocarpus* and, therefore, have no bearing on the decision to list this species. In every aspect of the business conducted by, or on behalf of the Service, it is Service policy to advise cooperators that the Service cannot grant permission to enter onto private property and that it is the responsibility of the cooperator to obtain landowner permission for access to private property.

**Issue 5:** Some commenters stated that there was no objectivity in the status report because Dr. Rowell was told not to look beyond Little Aguja Canyon. **Response:** According to the status report, Dr. Rowell made repeated trips to Little Aguja Canyon and examined pools in adjacent canyons. He also examined many crossings of Limpia Creek. Despite these searches, Dr. Rowell found the plant in only two pools of little Aguja Creek. Other botanists have collected plant specimens throughout the Trans-Pecos Region of Texas for many years, yet *P. clystocarpus* has only been found in Little Aguja Canyon.

**Issue 6:** Some commenters stated that the plant may be a hybrid, which they felt would make it ineligible for protection under the act, and that chemotaxonomic and chromosomal studies had not been done to verify that the plant is a good species. **Response:** The best scientific information available indicates that *P. clystocarpus* is a good species. The vast majority of species have been named without use of chemotaxonomy, chromosome analysis, or other sophisticated techniques now available to taxonomists. Although these techniques are sometimes helpful to taxonomists, they are not required to confirm the status of a species.

**Issue 7:** One commenter indicated that a statement in Johnston (1988) under *P. clystocarpus* that, "recent workers indicate this may be only a form of one of the other species," casts doubt on the validity of *P. clystocarpus* as a good species. **Response:** Such doubts about species are common when there are few specimens available to study. *Potamogeton clystocarpus* differs from other closely related species by several character differences involving several different parts of the plant, which indicates it is not merely a form of a more common species. No studies have

been published that question the status of *P. clystocarpus* as a species.

**Issue 8:** Some commenters stated that the plant really is not rare or that it is just naturally rare and no direct or indirect human action has caused this rarity to occur. **Response:** The best scientific information available to the Service indicates *P. clystocarpus* is restricted to Little Aguja Creek. The rarity of this plant makes it more vulnerable to extinction from a variety of threats that might have a relatively low incidence of occurrence. It is not necessary to show that the rarity of a species is the result of any direct or indirect human action. It is only necessary to find that the species is now vulnerable to extinction from any of the five listing factors stated in the Endangered Species Act.

**Issue 9:** Some commenters raised the question of the effect javelina, deer, elk, and exotic game might have on *P. clystocarpus*. **Response:** Wild as well as domestic animals could constitute threats to *P. clystocarpus*.

**Issue 10:** Some commenters claimed that listing *P. clystocarpus* would increase threats to the species from botanists wanting specimens for their collections. **Response:** *Potamogeton clystocarpus* was already known as rare to botanists prior to the Service's listing proposal. The Service does not believe listing will increase threats to this species from scientific or other collectors. In addition, listing will make it a violation of the Act to collect plants from private lands if done in violation of State criminal trespass laws.

**Issue 11:** Some commenters questioned the success of any management techniques that can be used to protect *P. clystocarpus*. **Response:** The potential for management and recovery of *P. clystocarpus* is addressed briefly in the "Available Conservation Measures" section of this rule and will be addressed in detail in the development of a recovery plan for this species. The Service cannot base listing on the potential for recovery, which is not one of the factors considered in the listing process.

**Issue 12:** Some commenters questioned why the government should proceed with the listing when the plant only occurs on private property and the landowner does not want government assistance in protecting or managing the plant. **Response:** The listing of a species is based only on the five criteria in the Act. The potential for recovery and management will be addressed following the listing process.

**Issue 13:** Some commenters believed there is limited support for listing within

the scientific community, so *P.*

*clystocarpus* should not be listed.

**Response:** The listing of species is based on the five factors stated in the Act. Comments from the scientific community in support or opposition to a listing are considered for their contribution to the biological understanding of the species and for their bearing on the listing factors.

**Issue 14:** Some commenters raised the question of why the Service disregarded the recommendation in the status report made by Dr. Rowell to list the species as threatened instead of endangered.

**Response:** The Service has considered the listing recommendations of all parties, including Dr. Rowell. The decision to list this species as endangered was based on the Service's assessment of available data. This assessment, which is applied to the five listing factors, may not always agree with the assessment of the contractor doing the status survey. Listing this species as threatened would not be appropriate. Threatened species are ones that will become endangered if their numbers are further reduced. With only one known population, *P. clystocarpus* must be listed as endangered because its numbers could not be reduced without becoming extinct.

**Issue 15:** Some commenters expressed the possibility of listing this species on Subcategory 3C of the plant notice of review. Category 3C includes species that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threats. **Response:** The Service has determined that based on the best scientific information available, *P. clystocarpus* qualifies to be listed as endangered as explained in the "Summary of Factors" section of this rule.

**Issue 16:** Some commenters stated that the Federal government can always use an emergency listing to protect the plant if an unforeseen threat appears instead of listing it as endangered now. **Response:** The Service is listing *P. clystocarpus* at this time due to the threats explained in the "Summary of Factors" section and finds no reason for delay.

**Issue 17:** One commenter stated that the Texas Parks and Wildlife Department (TPWD) never comments in opposition to Federal proposed plant listings because listings qualify TPWD to receive Federal money. **Response:** The Service is unaware of any basis of TPWD comments other than its biological evaluation of the listing proposal.

**Issue 18:** Some commenters stated that recovery teams are self-serving. Team members suggest more listings to keep their jobs. **Response:** Recovery team members are only reimbursed for the costs of travel to and from meetings, and no salary is paid for their services.

**Issue 19:** Some commenters questioned the value of the plant. **Response:** The Act states that, "species of \* \* \* plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." The Act also requires species be listed on the basis of threats without consideration of relative value.

**Issue 20:** Some commenters believed there was insufficient notice to landowners prior to the publication of the proposed rule and insufficient public notice prior to the hearing. **Response:** The Service sent a letter to the landowners on June 30, 1988, informing them that *P. clystocarpus* was under consideration for proposed listing. The Service mailed letters to individuals announcing the proposed rule and hearing. Newspaper notices were published in the Alpine Avalanche announcing the proposed rule and the hearing, and a local paper ran a story on the proposed listing including details on the public hearing. The Service has complied fully with all notification requirements.

**Issue 21:** Some commenters stated that additional threats to the species were described at the public hearing that were not included in the listing proposal. Since the public was unaware of these threats, it was unable to comment and the proposal should therefore be withdrawn. **Response:** Time was available from the date of the public hearing (July 19, 1990) until August 6, 1990 to comment on any issues or information brought forth in the public hearing.

**Issue 22:** Some commenters questioned what recreational activities will be impacted on the Boy Scout Ranch. **Response:** No activities will be impacted unless the landowner voluntarily agrees that actions might be needed to recover the species after listing.

**Issue 23:** Some landowners stated that the listing would result in loss of their ability to develop their land and that this should be considered confiscation of privately-owned property without just compensation. **Response:** Listing of a species as endangered or threatened does not constitute confiscation of property. Section 7 duties to consult and to avoid jeopardy apply only to Federal activities, funds and permits. Section 9

prohibitions on taking species are subject to a number of exceptions.

*Issue 24:* One commenter believed that the listing was an action that requires a Takings Implication Assessment (TIA) as directed by Executive Order 12630, and requested that the Service conduct such an assessment. *Response:* Listing decisions are confined to the consideration of biological factors only. Therefore, TIA's are prepared after, rather than before, the agency finalizes the decision upon which its discretion is restricted.

Such TIA's shall not be considered in the making of administrative decisions which must, by law, be made without regard to their economic impact upon the public or the agency.

*Issue 25:* Some commenters stated that if listed, the Service would use the Act to exercise control of the land by regulating species that look like *P. clystocarpus*. *Response:* The Service may by regulation of commerce or taking, treat an unlisted species as an endangered species if there is such a similarity of appearance between the unlisted species and the listed species that law enforcement personnel would have difficulty in distinguishing between them, if the effect of this difficulty would be an additional threat to the endangered species, and if such treatment of the unlisted species would substantially facilitate the enforcement and further the policies of the Endangered Species Act. It is not believed that the difficulty in distinguishing *Potamogeton clystocarpus* from other species adds to the threats to its existence. Nor is it believed that treatment of similar species as endangered will further the goal of conserving *P. clystocarpus*. Therefore, the Service has no plans to treat any other species as endangered or threatened based on similarity of appearance to *P. clystocarpus*.

*Issue 26:* One commenter asked if the Service pre-determines areas that need protection and then finds species to list. *Response:* The Service lists species based on the five criteria in the Act and not on location of occurrence.

*Issue 27:* Some commenters believe the Service has singled out the Davis Mountains-West Texas area and is purposely finding species to list in an attempt to acquire land. *Response:* Listing of a species is based on consideration of rarity and threats only and not because it occurs in the Davis Mountains-West Texas area or any other particular area.

*Issue 28:* Some commenters stated that the Service would use the listing of *P. clystocarpus* to acquire private land through condemnation. *Response:*

Section 5 of the Act gives the Service authority to acquire land for protection and recovery of endangered species. The Service, however, prefers to recover species on private land through cooperation with landowners because this is the most cost effective means of recovery. With the nature of the threats to *P. clystocarpus*, recovery would not be enhanced by Service land acquisition. The Service, therefore, has no plans to acquire land for the recovery of this species.

*Issue 29:* One commenter asked if someone participates in an Agricultural Stabilization and Conservation Service (ASCS) program, even if it is beneficial to a species on the list, does the Service still have to be consulted. *Response:* ASCS would be responsible for consulting informally with the Service to obtain information about the presence of listed species within the area affected by the project. If listed species occur within the project area, ASCS must then determine if the project might adversely affect the species. If ASCS determines the action will not adversely affect the species and the Service concurs, no formal consultation with the Service is required.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Potamogeton clystocarpus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act 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 *Potamogeton clystocarpus* Fernald (Little Aguja pondweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The known range of *P. clystocarpus* is restricted to two pools of water within several miles of the intermittent stream course in Little Aguja Canyon. This distribution is smaller than described in the proposed rule because two specimens attributed to *P. clystocarpus* were found to be misidentified. The entire known range of the species is within a Boy Scout ranch.

Both horses and wildlife occur on the scout ranch. Animals drinking or grazing near the water may affect water quality through deposition of manure and subsequent nutrient enrichment of the water promoting algal blooms that

smother aquatic vegetation. The likelihood of this occurring is greatest when water levels are low and water temperatures are warm during summer months. If the number of horses is increased or wildlife herds are not controlled by hunting or predators, deterioration of water quality in Little Aguja Canyon could be significant.

Dam construction to enlarge pools in the creek for recreation or livestock use would change water depth, water temperature, and substrate characteristics likely making that portion of the stream unsuitable for *P. clystocarpus*. Dam construction in portions of the creek not presently occupied by the plant would reduce the amount of habitat available to the species.

Petrochemical or pesticide spillage upstream from the *P. clystocarpus* population could have a serious impact on water quality or on the plants themselves. Any such spillage downstream from the population could make that portion of the stream unsuitable for establishment by the plant.

Water is a precious asset in a desert environment. Landowners upstream from the *P. clystocarpus* site have indicated they intend no changes in water use that might affect the amount or quality of water in Little Aguja Canyon. However, land ownership and land management can change and future managers may wish to improve their property through development of impoundments or wells that could affect the amount of water available downstream for *P. clystocarpus*, particularly during periods of drought.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known, although unregulated scientific collecting could have adverse effects on this plant.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* No existing Federal or State law specifically protects *P. clystocarpus* or provides for its recovery. The Act will offer additional protection to the species because it is a violation of the Act for any person to remove, cut, dig up, damage, or destroy an endangered plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law. In addition, the Act requires that recovery actions be undertaken for listed species as discussed below under "Available Conservation Measures."

E. *Other natural or manmade factors affecting its continued existence.* The

intermittent stream in which *P. clystocarpus* exists is subject to complete drying during extended droughts and scouring during floods, which usually occur in conjunction with violent summer thunderstorms. These events reduce the population of *P. clystocarpus* to stem segments and seeds imbedded in mud and rock cracks. The entire population must then regenerate from these propagules. Despite floods and droughts, the species has historically maintained its marginal existence. However, future events could reduce the population to such low numbers that it can no longer recover.

Natural dispersal of this species to a more suitable environment is highly unlikely. Dispersal by water only carries plants to more unfavorable and intermittent habitat downstream. Aquatic plants are typically transported to different watersheds by waterfowl that either ingest seeds or carry plant parts on their feet or feathers. Since Little Aguja Creek is small and intermittent, it provides little suitable habitat to attract waterfowl. Even if waterfowl are present, the scarcity of *P. clystocarpus* within the stream reduces the chance that the plant will be transported. Thus, present conditions make it unlikely *P. clystocarpus* can expand its range naturally to the point where it is safe from extinction.

When the number of organisms of a species is reduced to very low levels and remains so for several generations, the species passes through a genetic "bottleneck" caused by inbreeding and genetic drift. This can reduce the genetic variability within a species, thus limiting its adaptability to changing environmental conditions. The habitat for *P. clystocarpus* is subject to drastic fluctuations. The continued existence of *P. clystocarpus* in small numbers may reduce its ability to adapt to these fluctuations.

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 *Potamogeton clystocarpus* as endangered. Listing as threatened would not be appropriate. A threatened species is one that is likely to become endangered if its numbers and distribution become further reduced. With only one known population, the numbers of *P. clystocarpus* could not be reduced without extinction. Critical habitat is not being designated for the reasons discussed below.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The population of this species is small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Publication of a critical habitat description and maps would increase the vulnerability of the species without significantly increasing protection. The population of *Potamogeton clystocarpus* is found on private land where Federal involvement in land-use activities does not generally occur. In general, additional protection resulting from critical habitat designation is often achieved through the section 7 Consultation process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat in this instance, its designation would not appreciably benefit the species. For these reasons, the Service concludes that it is not prudent to designate critical habitat for *P. clystocarpus* 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 cooperation with the States and possible land acquisition, although under present circumstances this is not believed necessary for the recovery of *P. clystocarpus*. Recovery actions for *P. clystocarpus* might include monitoring, particularly following floods or during periods of prolonged drought, to determine how the species survives such events; propagation of plants off-site in an established refugium to provide materials for research or for reintroduction should the natural population be lost; and education to teach scout camp visitors and others about the sensitivity of the species and the need to protect it. Some of these recovery activities may require greater resources or technical capability than the landowner can provide, and their successful accomplishment may require cooperation between the landowner and outside groups or individuals. Recovery activities will be addressed in detail in

the recovery plan for this species. The Service will seek the participation of interested individuals and parties in plan development, and the draft plan will be available for public review and comment. 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 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. 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 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 known population of *Potamogeton clystocarpus* is on privately-owned land. There are no known current or planned Federal activities that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-476) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because

the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22201 (703/358-2104).

**National Environmental Policy Act**

The U.S. 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**

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Rowell, C.M., Jr. 1983. Status report, *Potamogeton clystocarpus* Fern. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 9 pp.

**Author**

The primary author of this final rule is Charles McDonald, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico (505/766-3972 or FTS 474-3972).

**List of Subjects in 50 CFR Part 17**

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

**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 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 the family Potamogetonaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	When listed	Status	Critical habitat	Special rules
Scientific name	Common name					
Potamogetonaceae—Pondweed family:						
<i>Potamogeton clystocarpus</i> .....	Little Aguja pondweed .....	U.S.A. (TX).....	450	E	NA	NA

Dated: September 27, 1991.  
**Richard N. Smith,**  
 Acting Director, Fish and Wildlife Service.  
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**BILLING CODE 4310-55-M**