

considered. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those commenters desiring to be notified upon receipt of their comments by the docket section should include a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of their comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30117.

Issued on: August 16, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94-20635 Filed 8-22-94; 8:45 am]

BILLING CODE 4910-69-P

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1048

[Ex Parte No. MC-37 (Sub-No. 43)]

#### McAllen, TX Commercial Zone— Passenger Operations

AGENCY: Interstate Commerce Commission.

ACTION: Advance Notice of Proposed Rulemaking.

**SUMMARY:** The City of McAllen, TX (petitioner) has filed a petition seeking withdrawal of the commercial zone exemption provided in 49 U.S.C. 10526(b) so as to subject the local operations of motor passenger carriers that traverse the United States-Mexico border within the commercial zone of McAllen (and, if appropriate, other cities similarly situated) to the regulatory requirements normally applicable to the routes, rates, and services of motor carriers of passengers in interstate and foreign commerce. Petitioner alleges that the requested relief is necessary to alleviate problems of public safety, traffic congestion, and unfair competition by exempt foreign passenger carriers operating within the commercial zones of border municipalities. Petitioner alleges that these problems have been exacerbated by the recent passage of the North American Free Trade Agreement (NAFTA). Comments in support of the petition were filed by Valley Transit Company, Inc., the Railroad Commission of Texas, and the Attorney General of the State of Texas. Following receipt of public comments resulting from this advance notice of proposed rulemaking (ANPR), specific changes to our commercial zone regulations would be proposed for comment if we proceed

to the notice of proposed rulemaking stage.

**DATES:** Any person interested in participating in this proceeding as a party of record may file comments by October 24, 1994.

**ADDRESSES:** Send an original and 10 copies of pleadings referring to Ex Parte No. MC-37 (Sub-No. 43) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** For a more detailed discussion of the current regulations, the issues raised by the petition, and the information that we seek, see the Commission's separate decision. To obtain a copy of this decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commission, Washington, D.C. 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

#### Regulatory Flexibility Analysis

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct now an examination of its impact on small businesses pursuant to that Act. Nevertheless, we welcome any comments regarding the small entities considerations embodied in that Act. If we decide to issue a notice of proposed rulemaking, we will conduct an appropriate Regulatory Flexibility Act examination.

#### Environmental and Energy Considerations

Issuance of this ANPR will not significantly affect either the quality of the human environment or the conservation of energy resources because we merely seek information and are not proposing any change in current rules or policy.

We preliminarily conclude that, even if we subsequently decide to grant the relief sought by petitioner, an environmental assessment would not be necessary under our regulations because the proposed action would not result in changes in carrier operations that exceed the thresholds established in our regulations. See 49 CFR 1105.6(c)(2). Nonetheless, we invite comments on the environmental and energy impacts of petitioner's proposal.

#### List of Subjects in 49 CFR Part 1048

Commercial zones, Motor carriers.

Authority: 49 U.S.C. 10321 and 10526; 5 U.S.C. 553.

Decided: August 11, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,  
Acting Secretary.

[FR Doc. 94-20653 Filed 8-22-94; 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AC42

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Lesquerella Perforata* (Spring Creek Bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to determine endangered status for Spring Creek bladderpod pursuant to the Endangered Species Act (Act) of 1973, as amended. This rare plant is presently known from only a limited area within Tennessee's Central Basin. It is threatened by habitat alteration; residential, commercial, or industrial development; livestock-grazing; conversion of its limited habitat to pasture; and habitat encroachment by woody vegetation and herbaceous perennials. This proposal, if made final, would extend the protection and recovery provisions of the Act to Spring Creek bladderpod.

**DATES:** Comments from all interested parties must be received by October 24, 1994. Public hearing requests must be received by October 7, 1994.

**ADDRESSES:** Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. Currie at the above address (704/665-1195, Ext. 224).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Lesquerella perforata* (Spring Creek bladderpod), described by R. C. Rollins

(Rollins 1952), occurs within a small area in Wilson County in the vicinity of Lebanon, Tennessee. This winter annual is 2 to 4 decimeters (8 to 16 inches) tall. Its auriculate leaves are oblong to ovate in shape. The flowers have petals that are 7 to 10 millimeters (0.3 to 0.4 inches) long and are white to lavender in color. It has a broadly ovoid-shaped fruit that is hairless on the outside and densely pubescent on the inside. An internal partition between the two halves of the fruit is "perforated" or missing.

*Lesquerella perforata* is a winter annual that germinates in early fall, over-winters as small rosettes of leaves, and flowers the following spring. Flowering usually occurs in March and April. Soon after the flowers wither, the fruit matures and the plants die. The fruits split open and the enclosed seeds fall to the ground and lie dormant until the fall, when the cycle starts over again. If conditions are not suitable for germination the following fall, the seeds can remain dormant (but viable) for several years (Kral 1983, Rollins 1952, Rollins 1955, Baskin and Baskin 1990).

This species is typically found growing on floodplains. It requires annual disturbance in order to complete its life cycle. Historically, this disturbance was probably provided by periodic flooding of the streams along which it occurs. This flooding is thought to have removed the perennial grasses and woody plants that quickly invade the floodplains without regular natural or artificial disturbance. Cultivation of annual crops, such as corn, provides an excellent means of artificially maintaining the habitat, provided there is no fall plowing, and herbicide use is limited. No-till farming techniques are believed to adversely affect the species because of the extensive use of herbicides required to successfully implement the technique. Row-crop cultivation, which avoids the use of fall plowing and delays spring plowing until the majority of the plants have set fruit, does not seem to adversely affect the species (Somers *et al.* 1993; Shea *et al.* 1993; Somers, Massachusetts Natural Heritage and Endangered Species Program, personal communication, 1992).

*Lesquerella perforata* is known from four populations consisting of 13 extant sites in Wilson County, Tennessee. Three additional sites no longer support the species. One of the extant populations occurs along Spring Creek and consists of five groups of plants. Another, consisting of four groups of plants, is found along Lower Bartons Creek. Two sites are located farther upstream and are designated the Middle

Bartons Creek population. The fourth population consists of two sites and is located along a tributary of Bartons Creek. All of the known sites for the species are found within a few miles of each other; with only one exception, sites are within the floodplains of Spring and Bartons Creeks or within the floodplain of a Bartons Creek tributary. The only nonfloodplain location is within a glade-like area slightly above the floodplain of Spring Creek (Somers *et al.* 1993). All of the known sites supporting *L. perforata* are privately owned, and none are protected through cooperative management agreements with the State or the Service.

The following site specific information is from Somers *et al.* (1993).

**Spring Creek Population:** Site 1 is the largest known site for the species and is also the *L. perforata* type locality. In 1992 the site supported over 100,000 individuals. Although this is a significant population, plants were much denser, and the area supporting them was larger, in 1980. Site 2 is a field that supported about 500 plants in 1992. Site 3 supported 25,000 to 50,000 plants in 1992. Site 4 is a small area, about 90 feet long and 43 feet wide, supporting between 1,000 and 5,000 in 1992. Site 5 is the only non-floodplain site for the species and was discovered during the 1992 field work to update the status of *L. perforata*. The area is a triangular-shaped glade that is about 150 feet long and about 100 feet wide at its widest point. The site was estimated to support between 500 and 1,000 plants in 1992.

**Lower Bartons Creek Population:** Site 6 is a small site that supported about 1,000 plants in 1992. Site 7 is a small site that supported two small clumps (30 feet by 5 feet) of the species in 1992. Site 8 is a small site that supported only a few plants in 1992. Site 9 is a medium-sized site that supported about 10,000 plants in 1992.

**Middle Bartons Creek Population:** Site 10 is a small tract in an industrialized area near Lebanon that supported about 600 plants in 1992. Site 11 is near Site 10 but supports a larger colony of about 5,000 plants.

**Bartons Creek Tributary Population:** Site 12 is located along 1,000 feet of the floodplain of an ephemeral tributary of Bartons Creek. In 1992 it supported about 450 plants. Site 13 is a small area located near Site 12; it contains only a few individuals. In 1992 the area was overgrown with dense herbaceous growth.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et 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)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Lesquerella perforata* was included in the Smithsonian report and the July 1, 1975, notice of review. 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; *L. perforata* 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. *Lesquerella perforata* 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 information that indicates that proposing to list them as endangered or threatened is appropriate. This species was maintained in category 1 when the notice of review for native plants was revised in 1983 (48 FR 53640) and again in 1985 (50 FR 39526), 1990 (55 FR 6184), and 1993 (58 FR 51144).

The Service funded a survey in 1992 to update the status information on *L. perforata*. A final report was received in February 1993. During the 1992 and 1993 field seasons, personnel with the Tennessee Department of Environment and Conservation conducted extensive inventories of all the known and potential sites for this species.

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. This was the case for *L. perforata* because of the acceptance of the 1975 Smithsonian report as a petition. Each year between 1983 and 1993 the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority and that

additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final 1-year finding.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lesquerella perforata* Rollins (Spring Creek bladderpod) are as follows:

##### A. The present or threatened destruction, modification, or curtailment of its habitat or range

Most of the known locations for this species are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants. Active management is required to ensure that the species continues to survive at all sites. Direct destruction of habitat for commercial, residential, or industrial development is the most significant threat to the species at this time. *Lesquerella perforata* is threatened by the loss of habitat through conversion of land to uses other than cultivation of annual crops. Historically, its habitat was maintained by natural events, such as flooding. Annual crop production is apparently the primary mechanism by which essential habitat is now maintained. Residential, business, or industrial construction removes the species' preferred habitat directly or creates an environment where succession is allowed to proceed or more competitive plant species are intentionally established or are allowed to invade the area. Conversion of sites to pasture or other uses that maintain a perennial cover crop are a significant threat. In order for this annual plant to complete its life cycle each year, it is essential that the sites not be plowed or disked after the seeds have germinated in the fall and that spring plowing and planting be delayed until the plants have matured in the spring. This requirement is easily met through the production of crops such as corn, provided that traditional cultivation methods are used. Use of no-till cultivation techniques does not appear to maintain the species' habitat. This is probably because of the lack of physical disturbance of the soil and the dependence upon herbicides that

characterize the technique (Shea *et al.* 1993, Somers *et al.* 1993).

##### B. Overutilization for commercial, recreational, scientific, or educational purposes

There is little or no commercial trade in *Lesquerella perforata* at this time. Most populations are very small and cannot support the collection of plants for scientific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a threat to the species.

##### C. Disease or predation

Disease and predation are not known to be factors affecting the continued existence of this species at this time.

##### D. The Inadequacy of Existing Regulatory Mechanisms

*Lesquerella perforata* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act. This law regulates the sale of endangered plants and prohibits anyone from knowingly taking an endangered plant without the permission of the landowner or land manager.

Should this species be added to the Federal list of endangered and threatened plants, additional protection from taking will be provided when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade would also be provided.

##### E. Other Natural or Manmade Factors Affecting its Continued Existence

None are known at this time.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lesquerella perforata* as an endangered species. This species is faced with imminent threats from loss of habitat to development and other uses incompatible with the species' survival, and by competing vegetation that is no longer controlled by natural flood regimes. These threats are compounded due to the species' restricted range and limited number of populations. In accordance with the definitions for endangered and threatened species found in section 3(6) and (19) of the Act, endangered is the most appropriate classification for *L. perforata*.

##### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum

extent prudent and determinable, the Secretary designate any habitat of a species, which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. Title 50, Part 424 of the Code of Federal Regulations, Section 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. Both situations apply to *L. perforata*.

Publication of critical habitat maps would increase public interest and possibly lead to additional threats for the species from collecting and vandalism. This species occurs at a limited number of sites, and most are fairly accessible. Publication of critical habitat descriptions and maps would make *Lesquerella perforata* more vulnerable and would increase enforcement problems.

Critical habitat also would not be beneficial in terms of adding additional protection for this species under Section 7 of the Act. Regulations promulgated for the implementation of Section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Because of the highly limited distribution of this species, any Federal action that would destroy or have any significant adverse effect on its habitat would likely result in a jeopardy biological opinion under Section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

The owners and managers of all the known populations of this species will be made aware of the plants' locations and of the importance of protecting the species and its habitat. Should Federal involvement occur, habitat protection will be addressed through the Section 7 consultation process, utilizing the jeopardy standard. Protection of the species' habitat will also be addressed through the recovery process. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Lesquerella perforata*.

##### 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 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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All of the known *Lesquerella perforata* populations are on privately owned land where there is no known or anticipated Federal involvement at the present time.

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, would 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 endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage

or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered 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 threatened 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 listed plants and inquiries regarding prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Attention: Endangered and Threatened Species Permits, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679-4000).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lesquerella perforata*;
- (2) The location of any additional populations of *Lesquerella perforata* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Lesquerella perforata*.

Final promulgation of the regulations on *Lesquerella perforata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and

Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

- Baskin, J.M., and C.C. Baskin. 1990. Seed Germination Biology of the Narrowly Endemic Species *Lesquerella stonensis* (Brassicaceae). *Plant Species Biol.* 5:205-213.
- Kral, R. 1983. A Report on Some Rare, Threatened, or Endangered Forest-related Vascular Plants of the South. USDA, Forest Service Tech. Pub. R8-TP2, Vol. 1. 718 pp.
- Rollins, R.C. 1952. Some Crucifers of the Nashville Basin, Tennessee. *Rhodora* 54:182-192.
- Rollins, R.C. 1955. The Auriculate-leaved Species of *Lesquerella* (Cruciferae). *Rhodora* 57:241-264.
- Somers, P., A. Shea, and A. McKerrow. 1993. Status Survey Report on *Lesquerella perforata* Rollins (Spring Creek Bladderpod). Unpublished report to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC. 81 pp.

#### Author

The primary author of this proposed rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665-1195, Ext. 224).

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

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

#### Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### 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. Section 17.12(h) is amended by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Brassicaceae—Mustard family:						
Lesquerella perforata	Spring Creek bladderpod	U.S.A. (TN)	E		NA	NA

Dated: July 28, 1994.  
**Mollie H. Beattie,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 94-20596 Filed 8-22-94; 8:45 am]  
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