

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
<i>Clitoria fragrans</i> .....	Pigeon wings .....	U.S.A. (FL) .....	T	500	NA	NA
<i>Crotalaria avonensis</i> .....	Avon Park harebells .....	U.S.A. (FL) .....	E	500	NA	NA
Polygalaceae—Milkwort family:						
<i>Polygala lewtonii</i> .....	Lewton's polygala .....	U.S.A. (FL) .....	E	500	NA	NA
Polygonaceae—Buckwheat family:						
<i>Eriogonum longifolium</i> var. <i>gnaphalifolium</i> (= <i>Eriogonum floridanum</i> ) .....	Scrub buckwheat .....	U.S.A. (FL) .....	T	500	NA	NA
<i>Polygonella myriophylla</i> .....	Sandlance .....	U.S.A. (FL) .....	E	500	NA	NA

Dated: April 8, 1993.

Richard N. Smith,  
Acting Director, Fish and Wildlife Service.  
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BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Puerto Rican Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines *Aristida chaseae*, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. These plants, including two shrubs and one grass species, are endemic to Puerto Rico, and all are restricted to the southwestern part of the island. With the exception of one site on the Cabo Rojo National Wildlife Refuge, the habitat of all three species is threatened with modification and loss due to various types of development. *Aristida chaseae* may also be affected by

competition from introduced grass species. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Aristida chaseae*, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii*.

**EFFECTIVE DATE:** May 27, 1993.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00822; and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331-3580).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Aristida chaseae* (no common name) was discovered by Agnes Chase near Boquerón in 1913. It was known only from the type collection for many years, until it was discovered by Paul McKenzie in 1987 on the Cabo Rojo National Wildlife Refuge. This new population, which contains from 150 to 175 plants, is approximately 8 km to the

south of the type locality. The species apparently has been eliminated from the type location, possibly as a result of competition from vigorous, introduced grass species (McKenzie et al. 1989; Proctor 1991).

Later in 1987, McKenzie and Dr. George Proctor located a third population on the rocky, exposed upper slopes of Cerro Mariquita in the Sierra Bermeja, a range of hills also found within the municipality of Cabo Rojo. This range of hills is the oldest geologic formation in Puerto Rico and is known for its high plant endemism. Additional localities on ridges to the west within the Sierra Bermeja were found in 1988. In these hills, it occurs at elevations between 150 and 300 meters (McKenzie et al. 1989; Proctor 1991).

*Aristida chaseae* is a perennial grass with densely tufted, wide-spreading culms which may reach from 50 to 60 cm in length. The leaf blades are involute, 2 to 3 mm wide and 10 to 15 mm long. The panicles are narrow and may be from 10 to 15 cm in length. The glumes are equal, 10 to 13 mm long and acuminate or awn-tipped. The lemma is approximately 12 mm long, narrowed at the summit but scarcely beaked and scaberulous of the upper half. The callus is 1 mm long and densely pilose. The awns are equal, somewhat

divergent, flat at the base, not contorted except with age and approximately 2 cm long.

*Lyonia truncata* var. *proctorii* was discovered in September of 1987 by Dr. George Proctor and described by Dr. Walter Judd in 1990 (Judd 1990). It is only known from the type locality, the upper slopes and summits of Cerro Mariquita (elevations of 250 to 300 m) in the Sierra Bermeja. Approximately 63 individual plants have been reported from two locations: 18 to the northwest of the summit and 45 just to the east of the summit (Proctor 1991).

*Lyonia truncata* var. *proctorii* is an evergreen shrub which may reach up to 2 meters in height. The leaves are alternate, elliptic to ovate, coriaceous, and from 0.9 to 4.5 cm long and 0.4 to 2.3 cm wide. The leaf margins may be toothed and the lower surface is sparsely to moderately lepidote and moderately to densely pubescent. The inflorescences are fasciculate with from 2 to 15 flowers. Pedicels are from 2 to 5 mm in length and sparsely pubescent. Flowers are small (0.7 to 1.6 mm in length), white, and urn-shaped. The fruit is a dry capsule, 3 to 4.5 mm in length and 2.5 to 4 mm in width, sparsely pubescent, and contain seeds approximately 2.5 mm in length.

*Vernonia proctorii* was discovered in September of 1987 by Dr. George Proctor, Dr. Horst Haneke and Paul McKenzie. It is known to occur only on the summit of Cerro Mariquita in the Sierra Bermeja of southwestern Puerto Rico at elevations between 270 and 300 meters. Plants are scattered throughout a scrub woodland which covers several acres. The population has been estimated at approximately 950 individual plants at this one known location (Proctor 1991).

*Vernonia proctorii* is a small erect shrub which may reach a height of 1.5 meters. The stems and trunk are densely pubescent with silvery uniseriate hairs and with a knobby appearance due to the persistent petiole bases. Leaves are alternate, ovate to orbicular, subsessile or with the petioles appressed to the stem, and from 1.5 to 3.5 cm long and 1.0 to 2.6 cm wide. The upper blade surface is green to olive-green and moderately strigose with scattered glistening globular trichomes. The lower surface is grayish-green, sometimes becoming rusty with age, and densely sericeous. The leaf margins are densely ciliate with silvery hairs. Flowers are borne in terminal clusters of 2 to 5 heads, each approximately 3 mm in length, and bright purple in color. Achenes are from 2 to 3 mm long and sericeous with silvery hairs.

*Aristida chaseae*, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* were recommended for listing by Dr. George Proctor during a September 1988 meeting concerning the revision of the candidate plant species list in Puerto Rico and the U.S. Virgin Islands. They were subsequently included as category 1 species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review for plants published February 21, 1990 (55 FR 6184). A proposal to list the three species as endangered was published in the Federal Register of September 3, 1992 (57 FR 40429).

#### Summary of Comments and Recommendations

In the September 3, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general comment was published in the San Juan Star on September 20, 1992, and in El Día on October 2, 1992. Nine letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Cabo Rojo National Wildlife Refuge, Fish and Wildlife Service, supported the listing of the three species. The Refuge biologist indicated that *Aristida chaseae*, found on the Refuge, was apparently suffering from the effects of competition from exotic vegetation.

Four letters were received from different areas within the Puerto Rico Department of Natural Resources that supported the listing of the three species. The Forest Service area of the Department expressed interest in the propagation of the species. Two letters originating from the Research area recommended that *Aristida chaseae* and *Lyonia truncata* var. *proctorii* be listed as threatened rather than endangered. The Department's primary response, however, emphasized the threat to the species' habitat, stating that the high scenic value of the area would attract developers and that current zoning regulations did not provide strong protection to the range of hills. The Service believes that development is a significant threat and that considering the highly restricted distribution of these species, a classification of

endangered is more appropriate than threatened.

The Department of Biology of the University of Puerto Rico, Mayaguez Campus, supported the listing of the three species, emphasizing the threat that development poses to the Sierra Bermeja. Both the "Servicios Científicos y Técnicos" of Puerto Rico (Scientific and Technical Services), in two letters, and The Conservation Agency in Rhode Island provided letters of support for the listing of the species as endangered. The latter also recommended the designation of critical habitat. The Service's reasons for not designating critical habitat are discussed in detail under a subsequent section of this rule.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that these species should be classified as 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Aristida chaseae* Hitchcock, *Lyonia truncata* Urban var. *proctorii* Judd, and *Vernonia proctorii* Urbatsch are as follows:

##### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All three species are found on privately owned land currently subject to intense pressure for agricultural, rural and tourist development. The land is currently being cleared for grazing by cattle and goats. Adjacent land is being subdivided for sale in small farms, some destined for tourist and urban developments. Only *Aristida chaseae* occurs outside of the Sierra Bermeja, on the nearby Cabo Rojo National Wildlife Refuge, where the population occurs within and along a little used roadway.

##### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

##### C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

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

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Aristida chaseae*, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

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

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Wildfires are a frequent occurrence in this extremely dry portion of southwestern Puerto Rico. McKenzie et al. (1989) indicate that *Aristida chaseae* may have once extended throughout sandy coastal areas and rocky hillsides in southwestern Puerto Rico, but that competition from vigorous, introduced grasses such as *Brachiaria subquadripara* may have eliminated the species from the majority of this area.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Aristida chaseae*, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* as endangered. *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* are known to occur only on the upper slopes and ridges of the Sierra Bermeja. *Aristida chaseae* is currently known from only two areas. Deforestation for rural, agricultural, and tourist development are imminent threats to the survival of the species. *Aristida chaseae* appears to be threatened also by competition from introduced grasses. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be

endangered or threatened. The Service's regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) 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 (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for these species. The number of individuals of *Aristida chaseae*, *Lyonia truncata* var. *proctorii* and *Vernonia proctorii* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Taking is an activity that is difficult to control, and it is only regulated by the Act with respect to endangered plants in cases of (1) removal and reduction to possession of these plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the Federal Register would only increase the likelihood of such activities and would not provide offsetting benefits. No Federal involvement outside of the Cabo Rojo National Wildlife Refuge is known or anticipated at this time. The Service believes that any future Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

#### 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, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, 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)(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. No critical habitat is being proposed for these three species, as discussed above. Federal involvement is anticipated only for the population of *Aristida chaseae* located on the Cabo Rojo National Wildlife Refuge.

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 any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. 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 Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth 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 for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for

copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358-2104).

**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**

Judd, W.S. 1990. A new variety of *Lyonia* (Ericaceae) from Puerto Rico. Jour. Arnold Arb. 71:129-133.

McKenzie, P.M., R.E. Noble, L.E. Urbatsch, and G.R. Proctor. 1989. Status of *Aristida* (Poaceae) in Puerto Rico and the Virgin Islands. Sida 13(4):423-447.

Proctor, G.R. 1991. Status report on *Aristida chaseae* Hitchcock. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Lyonia truncata* Urban var. *proctorii* Judd. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G.R. 1991. Status report on *Vernonia proctorii* Urbatsch. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico 196 pp.

**Author**

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

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

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, and Transportation.

**Regulations Promulgation**

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended 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. Amend 17.12(h) by adding the following, in alphabetical order under Asteraceae, Ericaceae and Poaceae, 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					
Asteraceae—Aster family:						
<i>Vernonia proctorii</i>	None	U.S.A. (PR)	E	501	NA	NA
Ericaceae—Heath family:						
<i>Lyonia truncata</i> var. <i>proctorii</i>	None	U.S.A. (PR)	E	501	NA	NA
Poaceae—Grass family:						
<i>Aristida chaseae</i>	None	U.S.A. (PR)	E	501	NA	NA

Dated: April 9, 1993.  
Richard N. Smith,  
Acting Director, Fish and Wildlife Service.  
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**50 CFR Part 17**

RIN 1018-AB56

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Duskytail Darter, Palezone Shiner and Pygmy Madtom**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines endangered status for three fishes—the duskytail darter

(*Etheostoma (Catonotus) sp.*), palezone shiner (*Notropis sp.*, cf. *procne*), and pygmy madtom (*Noturus stanauli*)—under the Endangered Species Act of 1973, as amended (Act). The duskytail darter is presently known to inhabit only five short stream reaches—the Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; and Copper Creek and Clinch River, Scott County, Virginia. Two other historic duskytail darter populations are extirpated. The palezone shiner is presently known from only two stream

reaches—the Paint Rock River, Jackson County, Alabama, and the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky. Two other historic palezone shiner populations are extirpated. The pygmy madtom has been collected from only two short river reaches—the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The madtom may no longer exist in the Duck River. All three fishes presently coexist with other federally listed species in all stream reaches, except the Duck River. All these fishes and their habitats are impacted by deteriorated water quality, primarily resulting from poor land use practices. The limited distribution of these fishes also makes them very vulnerable to toxic chemical spills.

**EFFECTIVE DATE:** May 27, 1993.

**ADDRESSES:** The complete file of this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at the above address (704/665-1195, Ext. 228).

**SUPPLEMENTARY INFORMATION:**

**Background**

The duskytail darter (*Etheostoma catenotus* sp.) is being scientifically described by Robert Jenkins (Roanoke College, *in litt.*, 1992). This small (2-inch) fish, which coexists with other federally listed species in all stream reaches it inhabits, is straw to olivaceous in color. It inhabits rocky areas in gently flowing shallow pools and eddy areas of large creeks and moderately large rivers in the Tennessee and Cumberland River systems (Starnes and Etnier 1980; Burkhead and Jenkins, *in press*; Layman, *in press*; Clyde Voigtlander, Tennessee Valley Authority, *in litt.*, 1991). Historically, the duskytail was likely more widespread. However, it presently has a very fragmented distribution (Etnier and Starnes, *in press*; Jenkins and Burkhead, *in press*). The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Environment and Conservation recognize this fish as a threatened species (Starnes and Etnier 1980). The species is recognized as an endangered species by the Virginia Department of Game and Inland Fisheries (Sue Bruenderman, Virginia Department of Game and Inland Fisheries, *in litt.*, 1992).

Although the fish fauna of the Tennessee and Cumberland River systems has been extensively surveyed, the duskytail has been collected from only seven short river reaches—Little River, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee; Abrams Creek, Blount County, Tennessee; South Fork Holston River, Sullivan County, Tennessee; and Copper Creek and Clinch River, Scott County, Virginia. The duskytail is apparently extirpated from Abrams Creek and South Fork Holston River, as it has not been found in either area in recent years (Jenkins and Burkhead, *in press*).

The Little River population inhabits about 9 river miles (Layman, *in press*). Layman (*in press*) stated that the duskytail in the lower reaches of the Little River was undoubtedly lost when the area was impounded. This population is potentially threatened by water withdrawal and increasing residential and commercial development in the watershed (Clyde Voigtlander, *in litt.*, 1991).

The duskytail exists downstream of U.S. Forest Service lands in about 0.5 river mile of Citico Creek (Peggy Shute, Tennessee Valley Authority, personal communication, 1991). Although the majority of the Citico Creek watershed is controlled by the Forest Service, much of the populated reach is privately owned, and stream-side habitat destruction has been observed in the area (Clyde Voigtlander, *in litt.*, 1991).

The duskytail inhabits about 17 river miles of Copper Creek. Although the duskytail is characterized as generally rare or uncommon in Copper Creek (Burkhead and Jenkins, *in press*), this creek may support the largest population of the fish (Clyde Voigtlander, *in litt.*, 1991). According to the Virginia Department of Game and Inland Fisheries (Bud Bristow, *in litt.*, 1991), this population is threatened by siltation, riparian erosion, and agricultural pollution. Jenkins (Roanoke College, *in litt.*, 1992) stated that, during three visits to Copper Creek in 1992, the fish was very rare at sites where the largest numbers were found in the early 1970s. He further stated, "This doesn't look good for the species or Copper Creek."

One duskytail specimen was collected from the Clinch River in 1980, about 1 river mile below the mouth of Copper Creek (Burkhead and Jenkins, *in press*). This area has been well sampled since 1980, but not additional specimens have been encountered. This one fish may represent periodic downstream movement from Copper Creek, and a

viable duskytail population may not exist in the Clinch River.

Duskytail darters have been taken from only one site on the Big South Fork of the Cumberland River. Although other collections have been made in the Big South Fork, no other populations have been found (Jack Collier, National Park Service, personal communication, 1990; Melvin Warren, Southern Illinois University, personal communication, 1990). This population, although within the Big South Fork National Recreational Area (BSFRA), is potentially threatened by runoff from coal mines in the upper watershed above the BSFRA (Jack Collier, personal communication, 1990).

The duskytail darter populations are threatened by the general deterioration of water quality resulting from siltation and other pollutants from poor land use practices, coal mining, and waste discharges. Etnier and Starnes (*in press*) stated that this darter " \* \* \* and other darters dependent upon silt-free, rocky pools in large streams and rivers, such as the ashy darter, have apparently suffered more from the effects of siltation than have darters typical of swift riffles."

The palezone shiner (*Notropis* sp., cf. *procne*) is being scientifically described by Melvin Warren (personal communication, 1990). This small (2-inch), slender fish, which coexists with other federally listed species in all stream reaches it inhabits, has a translucent and straw-colored body with a dark midlateral stripe. It occurs in large creeks and small rivers in the Tennessee and Cumberland River systems and inhabits flowing pools and runs with sand, gravel, and bedrock substrates (Warren and Burr 1990).

The fish is listed by the Kentucky State Nature Preserves Commission (Kentucky State Nature Preserves Commission 1991) as an endangered species. In Alabama, the species is considered threatened (Pierson 1990). Although the species is believed to be extirpated from Tennessee, the Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Environment and Conservation recognize this fish as a species in need of management (Starnes and Etnier 1980).

Although numerous and extensive fish collections have been made in the Tennessee and Cumberland River systems, the palezone shiner has been taken from only four rivers—the Paint Rock River, Jackson County, Alabama; the Little South Fork Cumberland River, Wayne and McCreary Counties, Kentucky; Marrowbone Creek,

Cumberland County, Kentucky; and Cove Creek, Clinch River drainage, Campbell County, Tennessee (Starnes and Etnier 1980; Warren and Burr 1990; Richard Hannan, Kentucky State Nature Preserves Commission, *in litt.*, 1990). Based on the results of a recent status survey (Warren and Burr 1990), only two palezone populations remain. No palezone shiners were found in either Marrowbone or Cove Creek. However, the fish still exists in about 3 river miles of the Paint Rock River and in about 30 river miles of the Little South Fork Cumberland River.

The palezone shiner's distribution has apparently been reduced by such factors as impoundments and the general deterioration of water quality from siltation and other pollutants contributed by coal mining, poor land use practices, and waste discharges. Richard Hannan (*in litt.*, 1990) stated that the palezone possibly inhabited the main stem of the Cumberland River in Kentucky prior to impoundment. Warren and Burr (1990) reported that diversity and density of the benthic fish community in the Little South Fork of the Cumberland River has been severely reduced. Anderson (1989) found that nearly all freshwater mussels in the lower third of the South Fork were eliminated in the 1980s; he attributed the loss to toxic runoff from surface coal mines. Warren and Burr (1990) stated, "The limited distribution of the species in the Paint Rock River definitely appears correlated with increasing agriculture and associated increase in stream siltation \* \* \*". Clyde Voigtlander (*in litt.*, 1992) stated that the Tennessee Valley Authority (TVA) had identified that the Paint Rock River palezone shiner population was in the timber-sourcing area for three proposed wood-chip mills. He further stated, "Subsequent analysis of potential effects of large-scale timber harvesting (clear-cutting) led us [TVA] to conclude that the palezone shiner would likely experience population-level effects, i.e., effects on individuals and populations of the species, but not the species as a whole."

The pygmy madtom (*Noturus stanuli*) was described by Etnier and Jenkins (1980). This species, which is known from two populations separated by about 600 river miles, was once likely more widespread (O'Bara 1991). However, like some other catfish in the genus *Noturus*, the pygmy madtom is presently rare and has a fragmented distribution (Etnier and Jenkins 1980). The pygmy madtom is the smallest (maximum length 1.5 inches) of the known madtoms (Etnier and Jenkins 1980). It has a very distinctive

pigmentation pattern; it is very dark above the body midline and light below. The species is found in moderate to large rivers on shallow pea-size gravel shoals with moderate to strong current. The Tennessee Wildlife Resources Agency and the Tennessee Heritage Program of the Tennessee Department of Environment and Conservation recognize this fish as a threatened species (Starnes and Etnier 1980).

The fish fauna of the Tennessee River valley has been extensively surveyed (O'Bara 1991); however, the pygmy madtom has been collected from only two short river reaches. It has been taken from the Duck River, Humphreys County, Tennessee, and from the Clinch River, Hancock County, Tennessee. Based on the results of recent surveys (O'Bara 1991), the fish still exists in the Clinch River, and it is possibly extirpated from the Duck River. Five specimens were taken at one of the two known historic sites in the Clinch River by O'Bara (1991) in the fall of 1990. O'Bara (1991) did not find the species in the Duck River during his 1990 survey and reported that the species had not been taken from the Duck River since 1974.

Etnier and Jenkins (1980), in their description of this species, report that it has been taken in only about one-half of the collections made at the Clinch River sites and only about one-fourth of the collections at the Duck River site. Thus, although the species has not been taken in recent years in the Duck River, it may still survive there.

The pygmy madtom, which coexists with other federally listed species in the Clinch River, is threatened by the general deterioration of water quality from siltation and other pollutants associated with poor land use practices and waste discharges. The section of the Duck where the species has historically been taken is being seriously threatened by stream-bank erosion. The aquatic resources of the Clinch River are potentially threatened by increased urbanization, coal mining, and poorly managed agricultural practices. Because the pygmy madtom may exist in only one short river reach, this population could easily be lost from a single toxic chemical spill.

In the Service's notice of review for animal candidate species, published in the Federal Register of January 6, 1989 (56 FR 58840), September 18, 1985 (50 FR 37958), and December 30, 1982 (47 FR 58454), the palezone shiner and pygmy madtom were indicated to be category 2 candidates. A category 2 species is one that is being considered for possible addition to the Federal lists of endangered and threatened wildlife

and plants, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. During October and November of 1990, the Service mailed 138 notification letters to potentially affected government agencies and interested individuals requesting comments regarding the possible listing of these three fishes. None of the commenters expressed opposition, and some provided additional information on the species' status and distribution. In early 1991, based on all available information, the Service concluded that each of these fishes qualified as a category 1 species, with the palezone shiner and pygmy madtom being assigned a listing priority of 2, and the duskytail darter a priority of 5 (see Federal Register of September 21, 1983 (48 FR 43098) for a discussion of the Service's listing priority guidelines). All three species were proposed for listing as endangered in the Federal Register of July 8, 1992 (57 FR 30191).

#### Summary of Comments and Recommendations

In the July 8, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated July 14, 1992, and requested to comment. Legal notices were published in the following newspapers: News-Democrat, Waverly, Tennessee, July 24, 1992; Huntsville Times-News, Huntsville, Alabama, July 24, 1992; Kingsport Times-News, Kingsport, Tennessee, July 26, 1992; McCreary Record, Whitley, Kentucky, July 28, 1992; and The Morning Daily Times, Maryville, Tennessee, July 28, 1992.

Five written comments were received. Four were from various government agencies (Tennessee Valley Authority, Virginia Department of Game and Inland Fisheries, Kentucky State Nature Preserves Commission, and Tennessee Wildlife Resources Agency), and one was from an individual. None expressed opposition to the proposed rule. All additional pertinent information provided by these commenters has been incorporated into the final rule.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the duskytail darter, palezone

shiner and pygmy madtom should be classified as endangered species. Procedures found a 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the duskytail darter (*Etheostoma (Catonotus) sp.*), palezone shiner (*Notropis sp., cf. procne*), and the pygmy madtom (*Noturus stanauli*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

The Tennessee and Cumberland Rivers previously supported one of the world's richest assemblages of temperate freshwater river fishes (Starnes and Etnier 1986), but these rivers are now two of our most severely altered river systems. Most of the main stem of both rivers and many of the tributaries are impounded (over 2,300 river miles, or about 20 percent, of the Tennessee River and its tributaries with drainage areas of 25 square miles or greater are impounded (Tennessee Valley Authority 1971)). In addition to the loss of riverine habitat within impoundments, most impoundments also seriously alter downstream aquatic habitat.

Coal mining-related siltation and associated toxic runoff have adversely impacted many stream reaches. Numerous streams have experienced fish kills from toxic chemical spills, and poor land use practices have fouled many waters with silt. The runoff from large urban areas has degraded water and substrate quality. Because of the extent of habitat destruction, the aquatic faunal diversity in many of the basins' rivers has declined significantly. Many species that once existed throughout major portions of these basins now exist only as isolated remnant populations (Neves and Angermeier 1990). Because of this destruction of riverine habitat, 8 fishes and 24 mussels in the Tennessee and Cumberland River basins have already required Endangered Species Act protection, and numerous other aquatic species in these two basins are currently considered candidates for Federal listing.

The fish fauna of the Tennessee and Cumberland River systems have been extensively surveyed (Ronald Cicerello, Kentucky State Nature Preserves Commission; David Etnier, University of Tennessee; Robert Jenkins, Roanoke College; Christopher O'Bara, Tennessee

Technological University; Charles Saylor, Tennessee Valley Authority; Melvin Warren and Brooks Burr, Southern Illinois University; personal communications, 1990). Yet, only a few isolated populations of the duskytail darter, palezone shiner, and pygmy madtom remain (see "Background" section for a discussion of the current and historic distribution of and threats to the remaining populations). These fishes have been and are presently adversely impacted by the factors described above. Unless steps are taken to protect these fishes, the number and size of their populations are expected to decline.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The specific areas inhabited by these fishes are presently unknown to the general public. As a result, their overutilization has not been a problem. However, vandalism could pose a problem, especially if the specific inhabited reaches were to be revealed, such as through the designation of critical habitat. Most of the stream reaches inhabited by these fishes are extremely short and could easily be lost through the act of vandals using readily available toxic chemicals. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if left unregulated. Federal protection of these species will help to minimize illegal or inappropriate take.

*C. Disease or Predation*

Although these fishes are undoubtedly consumed by predators, there is no evidence that predation is a threat to them.

*D. The Inadequacy of Existing Regulatory Mechanisms*

States within these species' ranges prohibit the taking of fishes and wildlife for scientific purposes without a State collecting permit. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Because the existing duskytail darter, palezone shiner, and pygmy madtom populations inhabit short river reaches,

they are vulnerable to extirpation from accidental toxic chemical spills. As the populated stream reaches of all three fish species are isolated from each other by impoundments, recolonization of any extirpated population would not be possible without human intervention. The absence of natural gene flow among populations of these fishes leaves the long-term genetic viability of these isolated populations in question.

Additionally, several madtom species have, for still unexplained reasons, been extirpated from portions of their range. Etnier and Jenkins (1980) speculated that this may " \* \* \* in addition to visible habitat degradation, be related to their being unable to cope with olfactory 'noise' being added to riverine ecosystems in the form of a wide variety of complex organic chemicals that may occur only in trace amounts." If madtoms are adversely impacted by increased concentrations of complex organic chemicals, an increase in these materials could be a problem for the pygmy madtom.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these three fishes in determining to make this rule final. Based on this evaluation, the preferred action is to list the duskytail darter (*Etheostoma (Catonotus) sp.*), palezone shiner (*Notropis sp., cf. procne*), and pygmy madtom (*Noturus stanauli*) as endangered. Presently, the duskytail darter inhabits only five short stream reaches, the palezone shiner is known from only two stream reaches, and the pygmy madtom possibly occurs in only one short stream reach. All three fishes and their habitat have been and continue to be impacted by water quality deterioration resulting from poor land use practices and by water pollution. The limited distribution of these fishes also makes them vulnerable to toxic chemical spills. Because of the restricted nature of these populations and their vulnerability, endangered status appears to be the most appropriate classification for the species. (See Critical Habitat section for a discussion of why critical habitat is not being designated for these fishes.)

*Critical Habitat*

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 7(a)(2) of the Act, and regulations codified at 50 CFR part 402, require Federal agencies to insure, in

consultation with and with the assistance of the Service, that activities they authorize, fund or conduct are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat, if designated. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) 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 (2) such designation of critical habitat would not be beneficial to the species. Such a determination would result in no known benefit to these three species.

As part of the development of this final rule, Federal and State agencies were notified of these fishes' distributions, and they were requested to provide data on proposed Federal actions that might adversely affect the species. Should any future project be proposed in areas inhabited by these fishes, the involved Federal agency will already have the distributional data needed to determine if the species may be impacted by their action. Each of these species occupies a very limited range, and any adverse modification of any inhabited river reach would likely jeopardize the species' continued existence. Therefore, habitat protection for these species can be accomplished through the section 7 jeopardy standard and the section 9 prohibitions against take. Thus, no additional benefits would accrue from critical habitat designation that would not also accrue from the listing of these species.

In addition, as these species are very rare, with populations restricted to extremely short stream reaches, unregulated taking for any purpose could threaten their continued existence. The publication of critical habitat maps in the *Federal Register* and local newspapers, and other publicity accompanying critical habitat designation, could increase the collection threat and increase the potential for vandalism, especially during the often controversial critical habitat designation process. (See the "Summary of Factors Affecting the Species" section, Part B, "Overutilization for commercial, recreational, scientific, or educational purposes," for a further discussion of threats to the species from vandals.) The locations of populations of these species have consequently been described only in general terms in this final rule. Precise locality data are available to appropriate Federal, State, and local

government agencies and individuals from the Service office described in the "ADDRESSES" section.

#### 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. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. 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 Service notified Federal agencies that might have programs affecting these species. Three projects that could impact the palezone shiner were identified. Three wood-processing companies have applied to the Nashville District, U.S. Army Corps of Engineers (Corps), for permits under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act and to TVA for shoreline leases and section 26-A permits to construct and operate wood-chip mills located between Bridgeport, Alabama, and New Hope, Tennessee. The construction of the facilities will not impact the palezone shiner. However, the potential timber-harvest area for the wood-chip mills encompasses the reach of the Paint Rock River that is populated by the palezone shiner (TVA 1992). The Service has recently conducted a formal conference with TVA and the Corps regarding the potential impact of the wood-chip mills to the palezone shiner.

The Service concluded that harvesting logs for the wood-chip mills in the Paint Rock River watershed would likely jeopardize the continued existence of the palezone shiner. However, the Service offered a reasonable and prudent alternative involving controls on timber-harvest methods that would avoid the likelihood of jeopardy to the palezone shiner.

Additional Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, coal mining, reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are found at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

#### 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).

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Author

The primary author of this final rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665-1195, Ext. 228).

List of Subjects in 50 CFR Part 17

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

Regulations 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 § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Darter, duskytail .....	<i>Etheostoma (Catonotus)</i> sp..	U.S.A. (TN and VA)	Entire .....	E	502	NA	NA
Madtom, pygmy .....	<i>Noturus stanauli</i> .....	U.S.A. (TN) .....	Entire .....	E	502	N/A	NA
Shiner, palezone .....	<i>Notropis</i> sp. ....	U.S.A. (AL, KY, and TN).	Entire .....	E	502	NA	

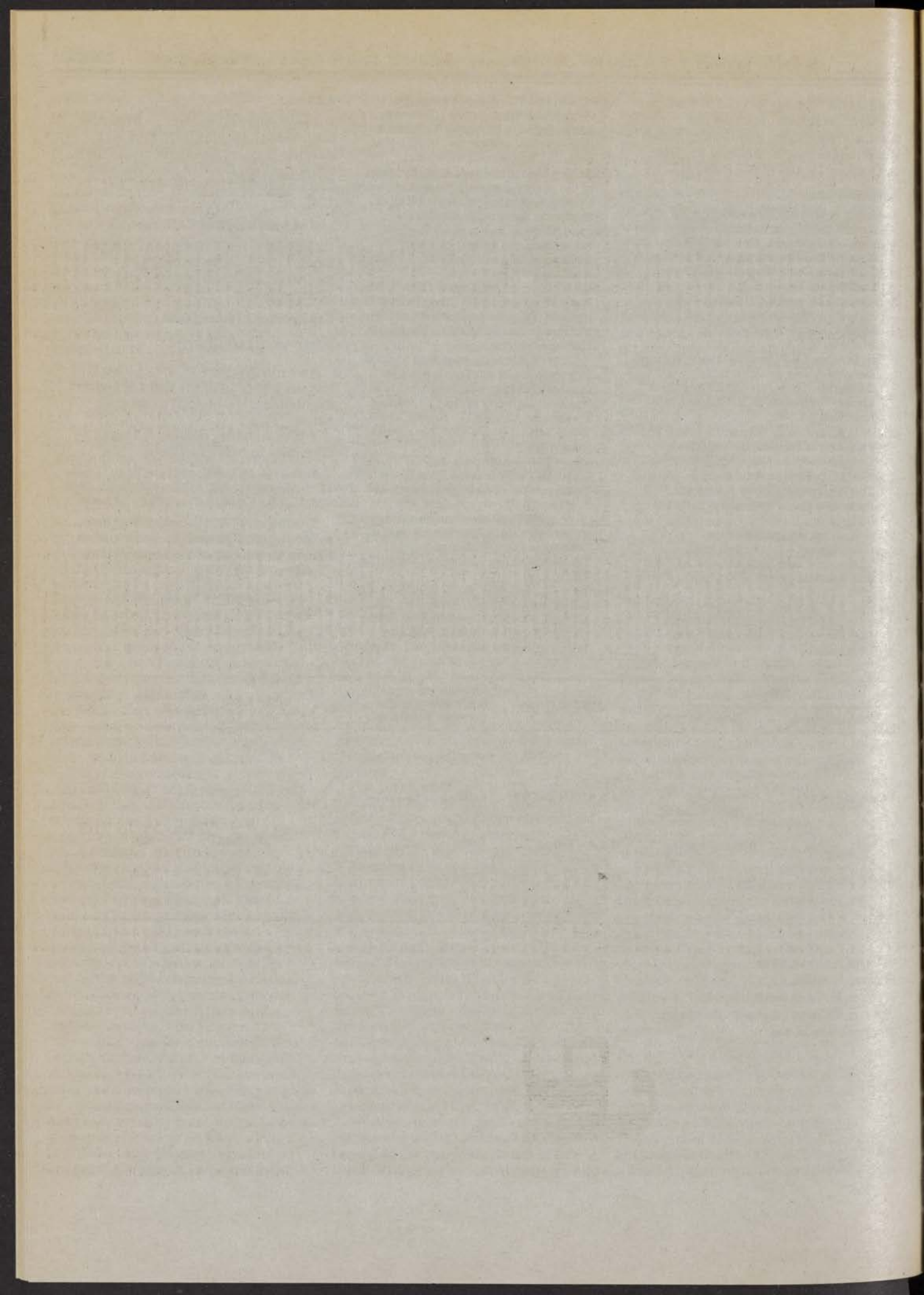
Dated: April 12, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93-9750 Filed 4-26-93; 8:45am

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# Federal Register

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Tuesday  
April 27, 1993

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## Part V

### Department of Transportation

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Coast Guard

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33 CFR Part 168

Escort Requirements for Vessels in the  
Navigable Waters of the United States;  
Proposed Rule

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 168

[CGD 91-202a]

RIN 2115-AE-10

## Escort Requirements for Vessels in the Navigable Waters of the United States

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

**SUMMARY:** In this advance notice of proposed rulemaking (ANPRM), the Coast Guard seeks comment on where an escort should be required for vessels navigating in the waters of the United States and which vessels should be required to comply with an escort rule. Recommendations are also sought on what the escort vessel should be expected to do.

**DATES:** Comments must be received on or before June 28, 1993.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-202a), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

**FOR FURTHER INFORMATION CONTACT:** Captain Gerald T. Willis, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6732.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD XX-XXX) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a

stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and any late comments to the extent practicable. It may change this proposal in view of the comments.

**Drafting Information**

The principal persons involved in drafting this document are Captain Gerald T. Willis, Project Manager, and Ms. Joan Tilghman, Project Counsel, OPA 90 Staff.

**Background and Purposes**

The Coast Guard has been delegated broad authority to control vessel movement in the navigable waters of the United States under the Ports and Waterways Safety Act of 1972 (PWSA) (Pub. L. 92-340) as amended by the Port and Tanker Safety Act of 1978 (Pub. L. 95-474), found at 33 U.S. Code 1221-1236. Under section 1223(a)(4), the Coast Guard may control vessel traffic in areas determined to be hazardous by, among other things, establishing vessel size, speed, and draft limitations and vessel operating conditions. In accordance with section 1224, prior to imposing such controls, various factors, including the following, are to be considered:

1. The scope and degree of the risk or hazard involved;
2. Vessel traffic characteristics and trends, including traffic volume, sizes and types of vessels involved, and the presence of unusual cargoes;
3. Port and waterway configurations and variations in local conditions of geography, climate, and other similar factors;
4. Environmental factors; and
5. Economic impact.

Specific, but limited, authority regarding escort of certain tankers also exists in the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). Section 4116(c) of OPA 90 requires the Coast Guard, as delegated by the Secretary of Transportation, to define areas where single hull tankers over 5,000 gross tons (GT) transporting oil in bulk must be escorted by at least two towing vessels, or by some other vessel which the Secretary considers appropriate. These defined areas must include Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction). On July 7, 1992, the Coast Guard proposed a rule to implement section 4116(c) in Prince William Sound and Puget Sound (57 FR 30058). The comment period was

reopened on March 26, 1993, to obtain additional information 958 FR 16391).

In the NPRM, the Coast Guard sought comment on whether to extend the applicability of the OPA 90 escort rule to other areas and to other kinds of vessels, and stated that there would be a separate rulemaking to address these issues. An option presented for expanding an escort rule beyond section 4116(c) of OPA 90 was to use Coast Guard authority under the PWSA.

This ANPRM solicits further comment on applying an escort rule to other areas of the navigable waters of the U.S. and other vessels. Before it can issue workable and effective national escort rules, the Coast Guard must decide what the escort vessels are expected to accomplish, so that the regulatory approach results in reducing the risk of harm in the event of a vessel casualty. To establish a sensible approach, it is necessary to assess what existing escort vessels can do, given current technological capability and design of the escort vessel and the characteristics of the vessel being escorted.

*Why there is a need for providing escorts for certain vessels.* A principal focus of OPA 90 is reducing the risk of spills of oil and hazardous substances, and the injury to human health and damage to the environment resulting from such spills. The PWSA focuses on broad preventive measures to improve vessel navigation in U.S. waterways to reduce the risk of collision or grounding. With the introduction of supertankers, as well as the increased shipment of hazardous substances by vessel, the risk of a serious pollution incident as the result of a marine casualty has increased. Traffic volumes in confined harbors and narrow channels has increased; larger vessels are less maneuverable than smaller ones used in earlier years.

Although OPA 90 focuses on minimizing the risks of casualties from vessels carrying oil as cargo, oil tankers are not the only types of vessels which may pose a substantial risk of collisions or groundings, with resultant environmental damage. Many other vessels pose a risk of high-consequence environmental or public health incidents because of the quantity of bunker oil (fuel) they carry, or the vessel's transit near congested areas, sensitive environmental areas, or in confined waterways. Vessels carrying hazardous materials, hazardous substances, or other dangerous cargo also pose a potential risk of harm from spills, and a vessel which itself does not pose a risk may be the cause of a spill from an oil tanker or other vessel carrying dangerous cargo.

*Which vessels should require an escort.* Several comments to the NPRM suggested that the Coast Guard include the following vessels in the escort rule: All single or double-hull oil tankers, irrespective of tonnage; all vessels over 5,000 gross tons (GTs); and all ships over 10,000 long tons displacement. Some comments stated that the Coast Guard should consider the character of the area the vessel is transiting in determining whether to require an escort. For example, any ship transiting an area defined as a "marine sanctuary" would require an escort.

The Coast Guard seeks further comment on the criteria it should use to determine if any vessels, in addition to those covered by section 4116(c) of OPA 90, should have an escort. Should the type of cargo carried, the vessel size or configuration, the proximity to areas where serious consequences may result from a spill, or a combination of these factors, determine which vessels must be escorted? Is there some other principle which should be applied to make this determination?

*What should an escort vessel be expected to do.* A paramount question is what should an escort vessel be expected to do. In making this decision, the Coast Guard must decide what it means "to escort," and whether there are vessels in service that are capable of escorting.

*The meaning of "escort."* Tugboats (tugs) have traditionally been used in ship handling to assist larger vessels when maneuvering at slow speeds in confined waters, such as during berthing. OPA 90 contemplates that escorts should be required when oil tankers are transiting in more open waters at higher speeds.

The demands placed on escort vessels have increased commensurately. There are expectations that in the event of a casualty on the vessel being escorted, the escorting vessel will be able to control the movement of the escorted vessel sufficiently to avoid a collision or grounding, as well as the traditional assistance in berthing. Some newer tugs are highly maneuverable and can perform these services for escorted vessels at speeds higher than that achievable by a conventional tug. In addition, there are expectations that the escorting vessel should be capable of assisting in spill containment and cleanup and possibly have firefighting capability.

The question arises whether providing an escort means: being available to facilitate transit through narrow or confined waterways at other than slow speeds and berth a vessel; steer or tow the vessel in the event of

a propulsion or steering failure, either running free or made fast to the vessel; and provide spill mitigation and firefighting in the aftermath of a casualty. The Coast Guard envisions that in the most basic definition, "escorting" must encompass the ability to render timely assistance to a disabled ship to prevent a grounding or collision, as well as perform the traditional services of facilitating slow speed transit and berthing.

In some circumstances, a timely response must be accomplished in minutes (e.g., a steering gear failure at a critical moment when the vessel is negotiating a narrow channel). In this situation, a timely response may be possible only if the escorted ship is traveling at a relatively slow speed and the escort vessel already is tethered to the ship.

In other circumstances, an assist may take hours and still be satisfactory (e.g., a propulsion failure in the middle of Prince William Sound thirty miles from the nearest shore). In that circumstance, an escort vessel might be free-running nearby or ready to get underway from a strategic location within the sound.

In any event, the question must be addressed concerning which tugs can render service in an emergency to prevent a grounding or collision. A conventional tug, with forward and astern propulsion thrust, generally has stability characteristics to tolerate only moderate transverse towline forces. Further, the amount of force it can generate is largely proportionate to its horsepower and propeller configuration. Horsepower and tug configuration are factors in setting the speed at which the tug escort can travel safely relative to the speed of the ship it escorts. Because it maneuvers with some difficulty in close quarters at speeds greater than 6 knots, a conventional tug may be incapable of providing the type of emergency service which the Coast Guard believes is inherent in all phases of "escorting."

Tractor tugs have a propulsion configuration which allows these vessels to thrust throughout 360 degrees from the tug's fore and aft axis. In addition to the traditional duties of straight ahead pushing or pulling, tractor tug design offers another potential advantage. The hull form and stability characteristics permit the vessel to operate with high transverse towline forces.

Should the Coast Guard prescribe specifications for escort service? If so, should they be design or performance specifications? Alternatively, should the Coast Guard set forth specific items for vessel owners or operators to consider

when selecting an escort? Are there simulator programs which could aid in verifying escort vessel performance? How should weather and sea conditions be accounted for in setting specifications for escorts? Should the performance or design requirements for escort vessels be tailored to the environment in which the vessel will serve? Should the escort vessels be subject to any type of inspection for verification of physical capabilities such as towing gear, hull attachments, horsepower, stability, or other operating parameters? What other factors should be considered in setting specifications for the escort vessel?

Should vessels subject to escort regulations be required to have specific towing connections? The Coast Guard published proposed rules concerning removal equipment requirements in the *Federal Register* on September 29, 1992 (57 FR 44912), which would require that certain tankers entering U.S. waters be fitted with an emergency towing arrangement. Which, if any, of the vessels not subject to the removal equipment requirements proposed regulation, should be required to have similar equipment? Should the regulations require that these vessels be able to deploy an emergency towline from a "dead ship" with minimal crew member assistance? Should these vessels be required to conduct periodic emergency towing drills?

*Other than Prince William Sound, Alaska, and Puget Sound, Washington, in what areas should the Coast Guard require escorts?* An approach the Coast Guard has considered is to require escorts in areas designated as "environmentally sensitive" by Area Committees established under OPA 90. However, there are other approaches that could be used. Comments to the NPRM suggested defining escort areas by the volume of traffic carrying hazardous cargo, the amount of tanker and barge traffic, or the presence of single hull tankers transporting bulk oil or vessels transporting chemicals. Are there other approaches for determining where to require escorts? What is the relative merit of the various approaches? Is there a single standard for defining other areas or should each waterway be assessed individually? Which of the various factors contained in section 1224 of the PWSA are relevant?

Comments to both the NPRM and this ANPRM will be considered during development of any rule. Commenters to this notice are requested to address in which specific areas of the United States, other than Prince William Sound and Puget Sound, tug escorts should be required and the rationale for those

requirements. Comments should be as specific as possible on why tug escorts are needed for each geographic area. What is the expected benefit for that particular area? The discussion should include hazards, sensitive areas, economic benefits or disadvantages and any other factors considered appropriate for the Coast Guard to consider.

#### Regulatory Evaluation

The Coast Guard anticipates that any proposed rule would be non-major under Executive Order 12291 and would not be significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979); however, the Coast Guard cannot quantify the economic impact at this stage of the process, because it has yet to choose an option.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether the proposed

rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because the ANPRM is not proposing any particular rules, considering small entity impacts is premature. However, the Coast Guard welcomes preliminary information and data on the expected small entity impact of any of the options discussed.

#### Collection of Information

There have been no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) identified at this stage of the rulemaking.

#### Federalism

The Coast Guard has analyzed this ANPRM under the principles and

criteria contained in Executive Order No. 12612. It does not have enough information to determine whether this proposal has sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard has concluded that it is premature to make an assessment of the environmental impact of any rules that might be adopted, because there is no action proposed right now. The Coast Guard will conduct any required assessment under the National Environmental Policy Act if it develops a notice of proposed rulemaking.

Dated: April 21, 1993.

A. Cattalini,

Captain, U.S. Coast Guard, Acting Chief,  
Office of Navigation Safety and Waterway  
Services.

[FR Doc. 93-9840 Filed 4-26-93; 8:45 am]

BILLING CODE 4910-14-M

# Federal Register

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Tuesday  
April 27, 1993

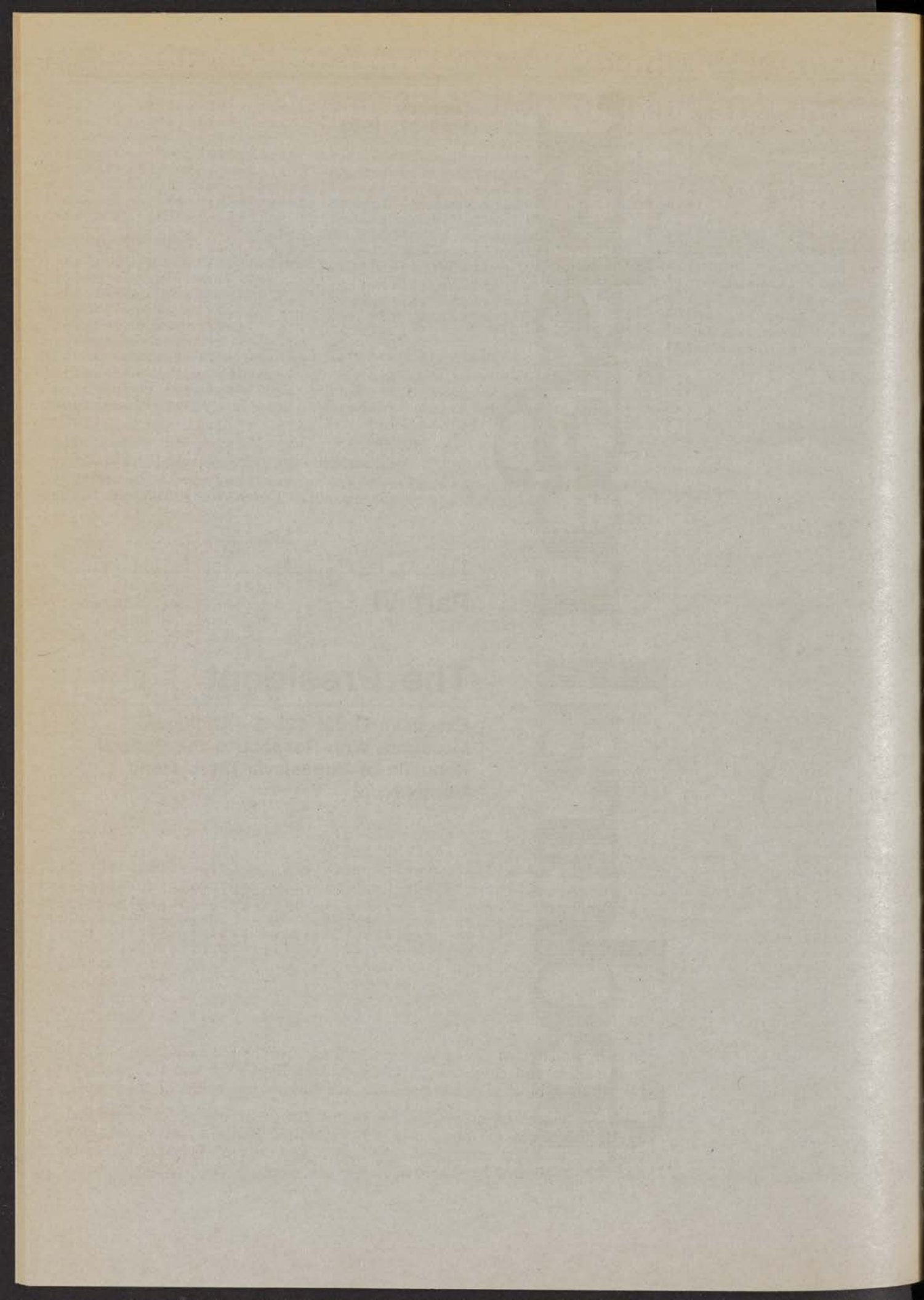
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## Part VI

### The President

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Executive Order 12846—Additional  
Measures With Respect to the Federal  
Republic of Yugoslavia (Serbia and  
Montenegro)





## Presidential Documents

Title 3—

Executive Order 12846 of April 25, 1993

The President

## Additional Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution No. 757 of May 30, 1992, No. 787 of November 16, 1992, and No. 820 of April 17, 1993, and in order to take additional steps with respect to the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the national emergency described and declared in Executive Order No. 12808 and expanded in Executive Order No. 12810 and No. 12831,

I, WILLIAM J. CLINTON, President of the United States of America, hereby order:

**Section 1.** Notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order:

(a) All property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), including, without limitation, the property and interests in property of entities (wherever organized or located) owned or controlled by such undertakings or entities, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked;

(b) All expenses incident to the blocking and maintenance of property blocked under Executive Order Nos. 12808, 12810, 12831 or this order shall be charged to the owners or operators of such property, which expenses shall not be met from blocked funds. Such property may also be sold or liquidated and the proceeds placed in a blocked interest-bearing account in the name of the owner;

(c) All vessels, freight vehicles, rolling stock, aircraft and cargo that are within or hereafter come within the United States and are not subject to blocking under Executive Order Nos. 12808, 12810, 12831 or this order, but which are suspected of a violation of United Nations Security Council Resolution Nos. 713, 757, 787 or 820, shall be detained pending investigation and, upon a determination by the Secretary of the Treasury that they have been in violation of any of these resolutions, shall be blocked. Such blocked conveyances and cargo may also be sold or liquidated and the proceeds placed in a blocked interest-bearing account in the name of the owner;

(d) No vessel registered in the United States or owned or controlled by United States persons, other than a United States naval vessel, may enter the territorial waters of the Federal Republic of Yugoslavia (Serbia and Montenegro); and

(e) Any dealing by a United States person relating to the importation from, exportation to, or transshipment through the United Nations Protected Areas in the Republic of Croatia and those areas of the Republic of Bosnia-Herzegovina under the control of Bosnian Serb forces, or activity of any kind that promotes or is intended to promote such dealing, is prohibited.

Sec. 2. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate the authority set forth in this order to other officers and agencies of the Federal Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 3. Nothing in this order shall apply to activities related to the United Nations Protection Force, the International Conference on the Former Yugoslavia, and the European Community Monitor Mission.

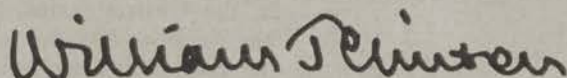
Sec. 4. The definitions contained in section 5 of Executive Order No. 12810 apply to the terms used in this order.

Sec. 5. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 6. This order shall not affect the provisions of licenses and authorizations issued pursuant to Executive Order Nos. 12808, 12810, 12831 and in force on the effective date of this order, except as such licenses or authorization may hereafter be terminated, modified or suspended by the issuing federal agency.

Sec. 7. (a) This order shall take effect at 12:01 a.m. Eastern Daylight Time, April 26, 1993.

(b) This order shall be transmitted to the Congress and published in the Federal Register.



THE WHITE HOUSE,  
April 25, 1993.

[FR Doc. 93-10012

Filed 4-26-93; 9:55 am]

Billing code 3195-01-P

Editorial note: For the President's message to Congress on these additional economic measures against Serbia and Montenegro, see issue 17 of the *Weekly Compilation of Presidential Documents*.