DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Endangered Status for Schwalbea Americana (American Chaffseed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the plant, *Schwalbea americana* (American chaffseed), a perennial herb of the figwort family (Scrophulariaceae), to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Twenty extant populations of *Schwalbea americana* are found in open pine flatwoods, savannas, and other open areas, in moist to dry acidic sandy loams or sandy peat loams in Florida, Georgia, Mississippi, New Jersey, North Carolina, and South Carolina. However, information received since publication of the listing proposal suggests that one of these populations in Florida may have been extirpated by residential development. The species is known historically from Alabama, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New York, Tennessee, and Virginia. The species is threatened by widespread habitat destruction due to development and from fire suppression, which allows invasion of vegetation that competes with *Schwalbea americana*. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Schwalbea americana*.

EFFECTIVE DATE: October 29, 1992.

ADDRESSES: The complete file for this species is available for inspection, by appointment, during normal business hours at the New Jersey Field Office, U.S. Fish and Wildlife Service, 927 N. Main Street, Bldg. D-1, Pleasantville, New Jersey 08232.

FOR FURTHER INFORMATION CONTACT: Dana M. Peters at the above address (telephone: 609/646-9310).

SUPPLEMENTARY INFORMATION:

Background

Schwalbea americana (American chaffseed), a perennial member of the figwort family (Scrophulariaceae), was described by Linnaeus in *Species Plantarum* in 1753, and named for Christian Georg Schwalbe, an eighteenth century botanical writer. Pennel (1935) recognized a southern and a northern species, *S. australis* and *S. americana* respectively. He distinguished *S. australis* by a pubescence of mostly upcurved hairs and leaves up to 1.5 cm (0.6 inches) wide, and *S. americana* by mostly recurved hairs and narrower leaves up to 1 cm (0.4 inches) wide or less. However, Fernald (1937) found characters of leaves and calyx lobes to vary over the total range so that recognition of two species was unwarranted. Following an examination of herbarium material, Musselman and Mann (1977) concurred that there was little taxonomic merit in recognizing more than a single species. Therefore, for the purposes of listing, *S. americana* and *S. australis* will be considered one species (*S. americana*) and will be referred to as the monotypic genus *Schwalbea*.

Schwalbea is an erect herb with unbranched stems or branched only at the base and grows to a height of 3 to 8 decimeters (12 to 31 inches). It is densely, but minutely hairy throughout, including the flowers. The leaves are alternate, lance-shaped to elliptic, stalkless, 2 to 5 cm (1 to 2 inches) long, and entire; the upper leaves are reduced to narrow bracts. Large, purplish-yellow, tubular flowers borne singly on short stalks in the axils of the uppermost, reduced leaves (bracts) form a many-flowered, spike-like raceme. The showy flowers have a high degree of bilateral symmetry elaborated for pollination by bees (Pennell 1935). The fruit is a long and narrow capsule, enclosed in a loose-fitting sac-like structure that provides the basis for the common name, chaffseed (Musselman and Mann 1978). Flowering occurs from April to June in the South, and from June to mid-July in the North (Johnson 1988). Fruits mature from early summer in the South to October in the North. *Schwalbea* is a hemiparasite, that is, a plant that is partially dependent on its host. Like most hemiparasitic Scrophulariaceae, it is not host specific, and its rarity, therefore, is not due to its preference for a specialized host.

Characteristically, the species occurs in sandy (sandy peat, sandy loam), acidic, seasonally moist to dry soils. It is generally found in habitats described as open, moist pine flatwoods, fire-maintained savannas, ecotonal areas between peaty wetlands and xeric sandy soils, and other open grass-sedge systems. On population, however, occurs in a heavy clay soil in a hayfield. *Schwalbea* is dependent on factors such as fire, mowing, or fluctuating water tables to maintain the crucial open to partly-open conditions that it requires. The species appears to be shade intolerant. Historically, the species existed on savannas and pinelands throughout the coastal plain and on sandstone knobs and plains inland where frequent, naturally occurring fires maintained these sub-climax communities. Under these conditions, herbaceous plants such as *Schwalbea* were favored over trees and shrubs. Most of the surviving populations, and the most vigorous, are in areas that are still subject to frequent fire. These fire-maintained habitats include plantations that are prescribed burned for management of quail and other game species, an army base impact zone that burns regularly because of live artillery shelling, forest management areas that are burned to maintain habitat for wildlife including the red-cockaded woodpecker, and various other private lands that are burned to maintain open fields. Fire may be important to the species in ways that are not yet documented or understood. Two small populations, one in New Jersey (along a roadside in Lebanon State Forests) and one in Mississippi (in a hayfield on the Noxubee National Wildlife Refuge) survive in frequently mowed areas that are not burned.

As indicated by Kral (1983), *Schwalbea* occurs in species-rich plant communities where grasses, sedges, and other colorful savanna dicots are especially numerous. One South Carolina population co-occurs with two other plant species being considered for listing under the Act, *Parnassia caroliniana* and *Eulophia ecristata* (Rawinski and Cassin 1986).

In 1986 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Schwalbea* (Rawinski and Cassin 1986). More recently The Nature Conservancy's New Jersey Field Office prepared an Element Stewardship Abstract for *Schwalbea* (Johnson 1988). Based on these reports and additional input from various sources in the respective States, it is known that the species occurred historically in 15 States including Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maryland, Massachusetts, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, and Virginia at a total of approximately 78 sites. One historic record from Louisiana is considered erroneous (Annette Parker, Louisiana Heritage Program, *in litt.*, 1986). Today, 20 populations of the species are known, including: one on the Lebanon State Forest in New Jersey (Burlington County), one on Fort Bragg, North Carolina (Hoke County), one on the Noxubee National Wildlife Refuge in Mississippi (Noxubee County), four on the Francis Marion National Forest in South Carolina (Berkeley and Charleston Counties), four on private land in Georgia (Baker and Dougherty Counties), two on private land in Florida (Gadsden and Leon Counties), and seven on private land in South Carolina (Berkeley, Horry, Jasper, Sumter, and Williamsburg Counties). According to a report received since publication of the proposed rule, one of the populations in Florida may have been recently extirpated by residential development (Loran Anderson, The Florida State University, *in litt.*, 1991), thus reducing the number of extant populations to 19. The species is extirpated from Alabama, Connecticut, Delaware, Kentucky, Maryland, Massachusetts, New York, Tennessee, and Virginia, 9 of the 15 states where it was historically reported. This plant, always considered rare, appears to have suffered a drastic decline in populations and range. The one small population in New Jersey is the only population north of North Carolina. Despite intensive searches of historic stations and potentially suitable habitat, this species remains very rare, and many historic populations are confirmed extirpated due to habitat destruction, mostly by development (Rawinski and Cassin 1986).

Federal consideration of this plant for listing began with acceptance by the Service of *Endangered and Threatened Plants of the United States* (Ayensu and DeFilipps 1978) as a listing petition within the context of Section 4 of the Act. This report recommended *Schwalbea americana* for "threatened status." The Service's subsequent actions in relation to the Smithsonian petition are explained in detail in the "Relationship to Petition Requirements' section of the February 21, 1990 (55 FR 6184) comprehensive plant notice of review.

Additional petition findings involving *Schwalbea* were published on January 20, 1984 (49 FR 2485), May 10, 1985 (50

FR 19761), January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), and April 25, 1990 (55 FR 17475). The Service published the proposed rule for this species on September 11, 1991 (56 FR 46277). That proposal constituted the Service's final finding on the petition, required by the Endangered Species Act.

Summary of Comments and Recommendations

In the September 11, 1991, proposed rule (56 FR 46277) and associated notifications, all interested parties were requested to submit factual reports or information by November 12, 1991, that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in The Horry Independent, The News, Sumter Item, The Albany Herald, The Fayetteville Observer, The Beaufort Gazette, The Macon Beacon, Gadsden County Times, Burlington County Times, and The News and Courier between September 25 and September 27, 1991, which invited general public comment. A total of 15 comments were received. One letter was from a private citizen in South Carolina who requested a public hearing to discuss concerns regarding the proposed listing and its potential curtailment of activities on private land. The Service contacted this citizen and provided further information on the species and on the Endangered Species Act. This citizen considered his concerns adequately addressed by this additional information and subsequently withdrew the request for a public hearing. One letter, from the Tennessee Valley Authority, requested additional locational information on the species, which the Service is addressing. One letter, from Burlington County in New Jersey, offered information on proposed highway improvements near the one extant New Jersey population. The remaining 12 letters, from The Pinelands Commission, U.S. Forest Service, The Florida State University, Florida Office of the Governor, Florida Game and Fresh Water Fish Commission, Florida Department of Agriculture and Consumer Services, Florida Natural Areas Inventory, The New Jersey Department of Environmental Protection and Energy, The Nature Conservancy (Mississippi Office), The Nature Conservancy (Georgia Field Office), the Center for Plant Conservation, and a private botanist known for his knowledge of the species supported the proposal. Comments updating the data presented in the Background of Summary of Factors Affecting the Species are incorporated in those sections of this final rule.

Further information received after the comment period provided reports of two additional locations for the species: one in Florida, and one in Georgia (Wilson Baker, Tall Timbers Research Station, Tallahassee, Florida, pers. comm., 1992). Since other recently received information suggests that another Florida population may have been extirpated, the total number of extant sites is now 19 or 20. Based upon available information on rarity and threats, the Service retains the position that *Schwalbea* is most appropriately designated as "endangered," as it is in danger of extinction in the foreseeable future.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) 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 *Schwalbea americana* L. (American chaffseed) are as follows:

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

Schwalbea has been and continues to be endangered by destruction and adverse alteration of its habitat. Since discovery of this species, 60 (three-fourths) of the known populations have been extirpated due to conversion of the habitat to residential and commercial purposes, incompatible agriculture and forestry practices, and succession of the vegetative community due to fire suppression. Sandy pineland communities where the species exists have proven to be especially vulnerable to development because soils are level, deep, and suitable for building sites. Also, many *Schwalbea* populations were or are very near the Atlantic Coast where development pressures are severe (Rawinski and Cassin 1986). Habitat destruction presently taking place on Cape Cod, Massachusetts exemplifies the situation throughout much of the range of *Schwalbea*. None of the 10 historic Massachusetts populations of this plant have been relocated and other potentially suitable habitat is being destroyed at a rapid rate. In Florida, four of the seven historic sites are confirmed extirpated because of habitat destruction (Rawinski and Cassin 1986). In New Jersey, a population was extirpated in 1988 by the construction of a street for new housing (David Snyder, New Jersey Natural Heritage Program, *in litt.*, 1988). Development was a factor in the demise of at least 15 other populations rangewide (Johnson 1988).

Current threats to extant populations include destruction of habitat due to development, agriculture, or forestry practices, succession of vegetation, and improper management that renders the habitat unsuitable. Impending development is an immediate threat to two of the extant populations in South Carolina, and a report received since the publication of the proposed rule states that a population in Florida may have been recently extirpated by residential development. Development or succession of habitat is a potential threat to four other populations on private land. Development adjacent to extant populations may also pose a threat since urbanization generally results in fire suppression and thus possible succession of field habitats. The threats due to fire suppression will be discussed in more detail under Factor E.

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

One extant population has been adversely affected due to removal of plants by an employee of a botanical garden for transplanting to the garden. This population was also adversely affected by a local photography club that dug up plants to photograph them under studio conditions, and by careless photographers and onlookers who have trampled the site. Attention due to listing could result in further threats to accessible populations due to collection and trampling from curiosity seekers and vandals.

C. Disease or Predation

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

D. The Inadequacy of Existing Regulatory Mechanisms

In Mississippi, *Schwalbea* is not on an official list and there is no protection for the species.

In Georgia, *Schwalbea* is currently being proposed as endangered on the official State list. If this listing is completed, the species will receive protection under The Georgia Wildflower Preservation Act of 1973.

This Act prohibits digging, removal, or sale of State listed plants from public lands without the approval of the Georgia Department of Natural Resources. However, the four *Schwalbea* populations in Georgia are on private land and would not benefit from the protection of this Act. Three of these populations receive limited protection through voluntary, informal landowner agreements with The Nature Conservancy.

In South Carolina, *Schwalbea* is recognized as "of national concern" by the South Carolina Advisory Committee on rare, threatened, and endangered plants; however, this State offers no legal protection to recognized species.

In Florida, *Schwalbea* is listed as endangered by the State of Florida under the Preservation of Native Flora of Florida Act, Section 581.185–187, Florida Statute. This Act prohibits removal of State-listed plants from public lands or from private lands without written permission of thelandowners.

In North Carolina, *Schwalbea* is officially recognized as endangered. North Carolina General Statute 19–B, 202.12–202.19, provides State listed plants protection from intra-state trade without a permit, provides for monitoring and management of listed populations, and prohibits taking of plants without written permission of landowners.

In New Jersey, *Schwalbea* is listed as endangered on the Endangered Plant Species List authorized by the Endangered Plant Species List Act (N.J.S.A. 7:5C). This list provides recognition to listed plants, but does not provide regulatory protection to the species from collection, habitat loss, or degradation. The population in New Jersey occurs within the Lebanon State Forest and within the Pinelands Reserve. The State Forest does not provide any specific protection to the species. Pursuant to the policy to preserve, protect, and enhance the diversity of plant communities through regulation of development, the Pinelands Protection Act (N.J.S.A. 13;18–1 et seq.) states that no development within the Pinelands Reserve shall be carried out unless it is designed to avoid irreversible adverse impacts to the survival of populations of threatened or endangered plants listed therein. Despite the location of the New Jersey population within the Pinelands Reserve, it is still subject to severe adverse impacts. It is located next to a roadway in an area maintained by the highway department. This type of maintenance is exempt from the aforementioned protection of threatened or endangered species. Current management of this population consists of yearly mowing and is conducted through an informal agreement involving several parties, including the New Jersey Department of Environmental Protection and Energy, a local concerned botanist, a farmer who leases the State land supporting the population, and the Burlington County Highway Department. Protection of the site is inadequate. Vehicles routinely pull off of the road, damaging plants and disturbing the habitat. The New Jersey Office of Natural Lands Management is currently proposing to formalize an agreement with all involved parties to protect and properly manage this population.

Only North Carolina and Florida have legislation protecting *Schwalbea* from taking, and only New Jersey has some protection for the plant's habitat. The primary threat to *Schwalbea* is habitat destruction and lack of habitat management, therefore, existing legislation is inadequate.

E. Other Natural or Manmade Factors Affecting Continued Existence

As mentioned in Factor "A," fire or another suitable form of disturbance, such as well-timed mowing, is essential to maintain the sub-climax community where this species exists. Although corroborating research is lacking, botanists familiar with the species believe that *Schwalbea* may be adapted to a regular fire regime. Historically, naturally-occurring lightning-strike fires throughout *Schwalbea*'s range and more frequent burning, as practiced by pre-European human populations, maintained these conditions. These fires were possibly frequent enough that fuel did not accumulate and, thus, they were generally of low-intensity. Herbaceous species were favored over tree and shrub species and thrived in these conditions. With the general suppression of natural fires in this century, the habitat for this species has been greatly reduced. Without fire, open grass-sedge communities proceed through seral stages and become dominated by trees, shrubs and dense herbaceous growth that overtops *Schwalbea*. The species appears to be shade intolerant. If fire is suppressed for more than three years, the *Schwalbea* population declines as other species shade and out-compete it (Douglas Rayner, Wofford College, pers. comm., 1991). Without naturally occurring fires, management in the form of prescribed burns or mowing may be necessary to maintain the sub-climax community and perpetuate *Schwalbea* populations. However, excessive mowing or disturbance could eliminate populations, and there are questions concerning the optimal timing and frequency of burning or mowing. Further research on the effects of prescribed burning and mowing, and on soil moisture variation is needed to determine the best management techniques that will maintain viable populations of the species Also, research is needed to determine the extent and viability of seed banks for the species at historic locations.

Twelve of the 20 known populations of *Schwalbea* contain fewer than 100 plants with 6 of these populations having less than 20 plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *Schwalbea* could persist following a natural event such as drought or high-intensity fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Schwalbea americana* as endangered. The species is extirpated from over half of its historic range. Only 20, or possibly 19, populations, approximately one-fourth of the recorded historic populations, are known to persist. Existing populations are threatened by the continuation of fire suppression, development, and potential mismanagement of habitat. Specific habitat requirements and optimum management regimes are unknown; lack of such critical information greatly hampers efforts to protect and perpetuate this species. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

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 that is considered critical habitat at the time the species is determined to be endangered or threatened. Designation of critical habitat is not prudent if 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 threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

The Service finds that designation of critical habitat is not prudent for *Schwalbea americana* at this time because such designation will exacerbate threats from collecting and trampling. As noted under Factor "B", above, collecting and careless trampling by photographers have already adversely affected at least one population. The Act furnishes listed plants with very limited protection from take, prohibiting collection and harm only when plants are located on Federally administered lands or in situations where take is perpetrated in knowing violation of a State law or regulation. Only six *Schwalbea* populations are located on lands under Federal jurisdiction. Most populations are small to moderate in size and, therefore, even occasional collecting and trampling could exert significant adverse impacts on them. Publication of critical habitat descriptions and maps in the **Federal Register** could increase these threats to the survival of the species, overriding any protection that such designation might provide.

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 Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such activities are initiated by the Service following listing.

Conservation and management of *Schwalbea* will likely involve a combination of site protection through acquisition or landowner agreements and habitat manipulation to maintain early successional habitats. Listing *Schwalbea americana* will encourage research on critical aspects of its life history and population ecology, and the effects of fire, mowing and soil moisture variation on population establishment and maintenance. This information is necessary to determine the optimal timing and frequency of these management techniques.

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 listed species or result in destruction or adverse modification of critical habitat. If a proposed Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions that could impact *Schwalbea* include, but are not limited to, incompatible forestry and wildlife management practices, and construction of access roads to accommodate changes in military bombing practice areas on lands under Federal jurisdiction. The Service will work with the involved agencies to secure protection and proper management of *Schwalbea* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Rm 432, 4401 N Fairfax Dr., Arlington VA 22203-3507 (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

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Rawinski, T., and J. Cassin. 1986. Final status survey reports for 32 plants. Unpublished report to U.S. Fish and Wildlife Service. Newton Corner, MA. Eastern Heritage Task Force of The Nature Conservancy.

Author

The primary author of this final rule is Dana M. Peters (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Scrophulariaceae—Snapdragon family:						
*	*	*	*	*	*	*
Schwalbea americana	American chaffseed	U.S.A. (AL, CT, DE, FL, GA, KY, MA, MD, MS, NC, NJ, NY, SC, TN, VA).	E	478	NA	NA
*	*	*	*	*	*	*

Dated: August 31, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–23580 Filed 9–28–92; 8:45 am]

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