50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for the Delhi Sands Flower-Loving Fly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This species originally consisted of two subspecies, the El Segundo flower-loving fly (*R. t. terminatus*) and the Delhi Sands flower-loving fly (*R. t. abdominalis*). The last individuals of the El Segundo Dunes fly were seen alive in the 1960's, and the subspecies is presumed to be extinct. The Delhi Sands flower-loving fly, the remaining representative of the species, is confined to a fraction of its original habitat, in areas of the Delhi Sands formation, all within an 8-mile radius in southwestern San Bernardino and northwestern Riverside Counties. Most of its former habitat was destroyed by agricultural conversions during the 1800's. Intensive urban and residential development imminently threaten the species' survival at present. Habitat existing today is less than one-half of what existed in 1975. Up until the fall of 1990, there were six extant colonies, but one of these, a 70-acre site, was recently destroyed by the construction of a shopping center. An 80-acre tract containing high quality habitat and a high density of the Delhi Sands flower-loving fly was mined to a depth of several feet since September of 1991, destroying all native vegetation in the area. Another colony was bisected and reduced in size by the construction of a county park in 1988. In addition to direct destruction by urban and residential development, the species' habitat is being degraded by removal of native vegetation for fire control, invasion of exotic vegetation, illegal dumping, and off-road vehicle (ORV) use. Moreover, the least degraded of the remaining population sites are all within the boundaries of joint city/county "Enterprise Zone" project, designed to encourage development through tax incentives. Finally, due to population and range reductions, the species may be prone to stochastic extinctions, more

vulnerable to the effects of adverse environmental conditions, and less able to recolonize areas previously occupied.

DATES: Comments from all interested parties must be received by January 19, 1993. Public hearing requests must be received by January 4, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003, 805/644–1766.

FOR FURTHER INFORMATION CONTACT: Lynn Wilson Oldt, Ventura Field Office, at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) is a large insect in the Dipteran family Apioceridae. It has an elongate body, much like that of a robber fly (*Asilidae*), but unlike asilids, it has a long tubular proboscis, used, as in butterflies, for extracting nectar from flowers. The flower-loving fly is approximately 2.5 centimeters (1 inch) long, orange-brown in color, and has dark brown oval spots on the upper surface of the abdomen. This species is a strong flier, and, like a hummingbird, is capable of stationary, hovering flight.

Rhaphiomidas terminatus consists of two subspecies, the El Segundo flower-loving fly (*Rhaphiomidas terminatus terminatus*) and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). Specimens of *R. terminatus* were misidentified as *Rhaphiomidas episcopus* by D. W. Coquillett, based upon material he collected in 1891 from Los Angeles, California. Townsend (1895) referred to these specimens as *Rhaphiomidas mellifex*. Cazier (1941) noted that both of these identifications were in error and used the specimens collected by Coquillett to describe *R. terminatus* as a new species. Later in the same publication, the Delhi Sands flower-loving fly was described as *Rhaphiomidas abdominalis*, based upon an adult male collected in August 1888, in Colton, California. In 1941, when both *R. terminatus* and *R. abdominalis* were described, Cazier had only two specimens of each taxa available for examination, and these individuals appeared to represent distinct species. However, when the genus was revised (Cazier 1985), it was determined that *abdominalis* is a subspecies of *R. terminatus*, based on abdominal maculations and other morphological characters. *Rhaphiomidas terminatus terminatus* is presumed extinct; thus *Rhaphiomidas terminatus abdominalis* is the only extant representative of this species. A complete description and illustration of these subspecies can be found in Cazier (1985).

The Delhi Sands flower-loving fly currently occurs at five locations in southern California: Four in southwestern San Bernardino County, and one in Riverside County, just south of the San Bernardino County line. All known colonies occur on privately owned land within an 8-mile radius circle.

The most characteristic feature of all collection sites for this animal is the presence of fine, sandy soils, often with wholly or partly consolidated dunes. These soil types are generally classified as the "Delhi" series (primarily Delhi fine sand). Delhi series soils cover approximately 40 square miles in several irregular patches, extending from Colton, California, to Ontario, Canada, and Chino, California, in western Riverside and San Bernardino Counties (USDA 1971, 1980). Much of the area of Delhi soils has been used for agriculture (chiefly grapes and citrus) since the 1800's. More recently, this area has been used for dairies, housing tracts, and commercial/industrial sites. The documented distribution of the Delhi Sands flower-loving fly extends from the eastern margin of the Delhi fine sand in Colton to near its western limits in Mira Loma. This distribution strongly suggests that this animal once occurred throughout much or all of the 40 square miles of Delhi fine sand. This notion is reinforced by the historic distribution of the closely related El Segundo flower-loving fly (now believed extinct), further west in the coastal dunes of Los Angeles County.

Ballmer (1989) reported the results of searches for the Delhi Sands flower-loving fly in potential habitat (undeveloped or abandoned areas of Delhi sand). No additional sites for the species were found; these absences were variously attributed to a lack of native vegetation (possibly associated with heavy ORV use), degradation by past agricultural use, solid waste disposal, freeway construction, and conversion to housing. It may be possible to restore the habitat in some of these areas for future reintroduction. The results of extensive searches by Ballmer and others indicate that this animal now occupies less than 2.5 percent of the total area of Delhi fine sands. Thus, it appears that over 97 percent of the habitat of the fly has been eliminated.

The life history of the Delhi Sands flower-loving fly is not well known, but is probably similar to that of other members of this genus (Cazier 1985). All members of the genus *Rhaphiomidas* inhabit arid or semi-arid regions and many favor sand dunes with sparse vegetation. Adults of some species, probably including *R. t. abdominalis*, take nectar from flowers by means of their elongate proboscis. The preference of *Rhaphiomidas* for sparsely vegetated areas may be related to the insect's behavior of flying low, usually a meter or less above ground, and frequently landing on the surface (Ballmer 1989). Cazier (1985) suggested that vegetation may aid in the selection of oviposition (egg-laying) sites as in *Apiocera*, another apiocerid fly genus.

Collection records for the Delhi Sands flower-loving fly indicate a single annual flight period during August and September. A skewed ratio of males to females (about 2:1) suggests that, as with many other insect species, males are more active, spending much of their time flying and investigating vegetation or the sand surface for resting females. Mating of this animal has not been observed, but it is known that eggs are deposited in sand. In captivity, one female survived for 10 days and produced over 50 eggs (Ballmer 1989). Larval development apparently also takes place in the sand. The single annual flight suggests that development to metamorphosis takes a full year. Pupae work their way to the surface prior to emergence as adults. Hogue (1967) describes the emergence of an El Segundo flower-loving fly from a pupal case in a remnant coastal dune in Manhattan Beach, California.

Circumstantial evidence suggests that sparse native vegetation is important in the biology of *R. t. abdominalis*, though specific plant associations are not known. Dominant native plant species in its habitat include wild buckwheat (*Eriogonum fasciculatum*), croton (*Croton californicus*), and telegraph weed (*Heterotheca grandiflora*) (Ballmer 1989). Additional native plants found with *R. t. abdominalis* include *Ambrosia acanthocarpa, Amsinkia intermedia, Eriastrum sapphirinum, Eriogonum thurberi*, and *Lessingia glandulifera*. Cazier (1985) reported that several specimens of *Rhaphiomidas terminatus terminatus* had been collected associated with a phlox (*Eriastrum filifolium*).

On October 30, 1989, the U.S. Fish and Wildlife Service (Service) received a petition from Mr. Greg Ballmer, an entomologist affiliated with the University of California at Riverside, to list the Delhi Sands flower-loving fly as an endangered species. A petition also had been submitted to the California Fish and Game Commission on October 18, 1989. This petition was referred to the Department of Fish and Game (CDFG), who found the petitioned action may be warranted. The petition was later voluntarily withdrawn when the petitioner learned that it could be rejected by the State, because CDFG had not yet determined whether they had authority to list insects (see Factor D under the Summary of Factors Affecting the Species section). On July 19, 1990, the Service received a letter from Mr. Ballmer requesting reactivation of this petition. In accordance with section 4(b)(3)(A) of the Endangered Species Act (Act), on October 30, 1990, the Service found that substantial information had been presented indicating that the petitioned action may be warranted. That finding was published in the Federal Register on December 24, 1990 (55 FR 52852). On November 21, 1991, when the Service published the Animal Notice of Review (56 FR 58804), the Delhi Sands flower-loving fly was included as a category 1 candidate species for future listing action. Category 1 comprises those taxa for which the Service has on file sufficient information to support proposals for endangered or threatened status. On March 25, 1992, Mr. Ballmer petitioned the Service to list the Delhi Sands flower-loving fly as an endangered species on an emergency basis, due to ongoing and anticipated construction projects within its habitat. This rule constitutes the Service's final finding on the petitioned action, that the listing of the Delhi Sands flower-loving fly as endangered is warranted.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be 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 Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range. The major threats to the Delhi Sands flower-loving fly are habitat loss and degradation. Historic and recent agricultural, residential, and commercial development has significantly reduced suitable habitat for the animal.

The other subspecies of this taxa, the El Segundo flower-loving fly historically occurred in coastal dunes of southwestern Los Angeles County, California (Cazier 1985). All known localities for this animal were on coastal sand dunes. Surveys conducted during 1987, 1988, 1990, and 1991, at the Airport Dunes, the largest remaining coastal sand dune system south of Point Conception in California, did not locate any El Segundo flower-loving flies, and apparently other known sites for the subspecies are no longer suitable habitat, due to urbanization (Ballmer, *in litt.*, 1989; Rudi Mattoni, private entomologist, pers. comm. to C.D. Nagano 1991). There are no extant sites known for this subspecies.

Most of the former habitat for the Delhi Sands flower-loving fly was destroyed by agricultural conversion in the 1800's. The remaining fragments of suitable habitat continue to be destroyed by the construction of homes, businesses, and associated roads and infrastructure. Based on the distribution of the Delhi Sands soil type, the present distribution of the Delhi Sands flower-loving fly most likely represents 2 to 3 percent of its former range; the amount of habitat existing today is approximately one-half of what existed in 1975 (Ballmer 1989).

The five remaining sites occupied by Delhi Sands flower-loving fly occur within an 8-mile radius circle on private land, totalling between 350 and 700 acres. These sites are divided approximately equally by Interstate 10 (I-10) and adjacent Southern Pacific railroad tracks. The portion north of I-10 is undergoing rapid and intensive urbanization. The largest site in this area, encompassing 70 acres, was destroyed sometime after 1990 by the construction of a shopping center. Another area north of I-10 that once supported the largest population of the animals was bisected and reduced in size by a county park in 1988. The resultant two sites and a third small site north of I-10 are threatened by numerous factors including adjacent urban development, invasion of exotic vegetation, removal of native vegetation for fire prevention, dumping, and ORV use. All three remaining habitat parcels north of I-10 are offer for sale, and one already has roads and streetlights installed (Ballmer 1992).

A significant amount of habitat for the Delhi Sands flower-loving fly is located south of I-10 in the city of Colton, California. The owner of this site has sold some adjacent property and has plans to develop the area containing the habitat of the animal (Greg Ballmer, pers. comm. 1992). This habitat is surrounded by petroleum facilities, railroad storage yards, a landfill, a cement quarry, and a sewage treatment plant. An adjoining parcel, which contained the greatest concentration of the Delhi Sands flower-loving fly observed in 1991, was sand mined some time between September 1991 and March 1992. The only other San Bernardino County site south of I-10 occurs within a powerline right-of-way and adjacent to a major road. Portions of this area are also being advertised for sale.

All of the sites containing suitable habitat for the Delhi Sands flower-loving fly located in San Bernardino County south of I-10 are within the Agua Mansa Enterprise Zone (County of San Bernardino 1986). This is a joint project of the cities of Colton, Rialto, and Riverside, and the counties of Riverside and San Bernardino. Its purpose is to encourage industrial development of the area through various tax and other economic incentives. The few remaining colonies of the Delhi Sands flower-loving fly would quickly be eliminated from increased development in this region.

In 1990, a small site in Riverside County, just south of the San Bernardino County line, was found to be occupied by the Delhi Sands flower-loving fly. However, this site may now be too small to persist; residential units were recently constructed on land adjacent to this location. As with most of the other sites, this area too is being degraded, as described below.

All of the known occupied sites are presently being degraded by ongoing soil disturbances, caused by grading, plowing, discing to remove vegetation for fire control, and off-road vehicle use. The Delhi Sands flower-loving fly is rare to absent in areas where these activities occur. Service biologists noted, during a 1991 survey, that the animals tended to occupy portions of habitat least disturbed by these activities. The absence of these insects from disturbed habitat may be due to the direct effects of the disturbance or to the growth of tumbleweeds (*Salsola kali*) and other non-native vegetation such as European grasses (chiefly *Avena* spp. and *Bromus* spp.) that increase following soil

disturbance. Tumbleweeds often form dense thickets covering extensive areas of soil and grow to more than one meter high; these and introduced grasses may eliminate open areas of sand by forming dense patches. Tumbleweeds occur to some extent at every extant fly location. The use of off-road vehicles in the tiny areas of the fly's remaining habitat may contribute to loss of native vegetation and subsequent invasion of these weedy, non-native species. Illegal dumping of abandoned automobiles and other trash has also contributed to habitat degradation.

In summary, one colony has been lost due to urban development since 1990, one was partially destroyed by sand mining some time between late 1991 and early 1992, and four colony sites are currently offered for sale. Given the rate and interest in residential and commercial development in this area and the added incentive of the Agua Mansa Enterprise Zone plan, these sites are likely to be purchased and developed in the immediate future. Finally, virtually all of the sites presently occupied by this fly are being degraded by soil-disturbing activities that reduce native vegetation and promote the invasion of non-native, weedy species.

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

Although flies in general are not especially popular with collectors (Pyle *et al.* 1981), *Rhaphiomidas* flies are prized because of their unusual size, coloration, and rarity (C.D. Nagano, pers. obs.). A dedicated collector or collectors could readily eliminate the Delhi Sands flower-loving fly, given its small, isolated populations. Even scientific collecting, or repeated handling and marking (particularly of females and/or in years of low abundance) could eliminate or seriously damage the populations through loss of genetic variability. Collection of females dispersing from a colony could also reduce the probability that new colonies will be founded.

C. Disease or Predation

Not known to be applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

The Delhi Sands flower-loving fly is not specifically protected under any state or local laws. The CDFG has stated that they are unable to protect insects under their current regulations (Bontadelli 1990).

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

The small colony sizes and habitat fragmentation of the Delhi Sands flower-loving fly make this taxa especially vulnerable to random extinction events and to loss of genetic variability. Small population size increases rates of inbreeding and may allow the expression of any deleterious recessive genes occurring in the population (known as "inbreeding depression"). Loss of genetic variability, through random genetic drift, is a further danger for small populations, reducing their ability to respond successfully to environmental stresses. In the remaining vestiges of its former habitat and with its reduced genetic variability, the Delhi Sands flower-loving fly is vulnerable to random fluctuations or variation of annual weather patterns, availability of food, and other environmental stresses.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Delhi Sands flower-loving fly in issuing this proposed rule. As described under the "Summary of Factors Affecting the Species," the available information indicates that one subspecies is already extinct. Over 97 percent of the other subspecies' historic habitat has been eliminated; the five fragments of its remaining habitat are imminently threatened by urban development, unauthorized trash dumping, off-road vehicle use, and stochastic events. This fly and its habitat receive no protection at any location. Based on this information, the Service concludes that the Delhi Sands flower-loving fly is in imminent danger of extinction throughout the remainder of its range and believes that a proposal to list as endangered is appropriate.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary may designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for the Delhi Sands flower-loving fly at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or more of the following situations exist: (1) The species is imperiled 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 beneficial to the species.

In the case of the Delhi Sands flower loving fly, both criteria are met. As discussed under "Summary of Factors Affecting the Species," the animal is especially vulnerable to the removal of specimens for scientific or personal collections, an activity that could be carried out by a few people, and would be very difficult to regulate or control. The precise pinpointing of localities that would result from publication of critical habitat descriptions and maps in the **Federal Register** would render the species more vulnerable to collecting. Furthermore, such maps and associated information would increase the threat of vandalism to these sites. For these reasons, the Service concludes that the designation of critical habitat is not prudent for the Delhi Sands flower-loving fly at this time. Additionally, there is no known or anticipated Federal involvement at any of the sites where the species occurs. Affected agencies and principal landowners will be notified concerning management requirements of this species and protection will be sought through private landowner coordination after the species is listed and through the recovery process. Therefore, the Service finds that designation of critical habitat for the Delhi Sands flower-loving fly would be of no benefit to the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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 may be initiated following listing. Some activities may be initiated prior to listing if circumstances permit. 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) of the Act 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 agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is expected for activities occurring within habitats currently occupied by the Delhi Sands flower-loving fly.

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 (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also 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 at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship in certain circumstances. *Rhaphiomidas terminatus abdominalis* spends all but a short flight period between August and September in close association with the sandy soil, and under such circumstances destruction of the species habitat could be interpreted to constitute take. Applicants may apply for incidental take permits under such circumstances where grading or other activities may result in take.

Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358-2104).

Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Delhi Sands flower-loving fly;

(2) The location of any additional populations of the Delhi Sands flower-loving fly and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the Delhi Sands flower-loving fly; and

(4) Current or planned activities in the subject area and their possible impacts on the Delhi Sands flower-loving fly.

The final decision on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to an action that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Ventura Field Office of the Southern California Field Station (see **ADDRESSES** section).

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

Ballmer, G. 1989. Petition to the U.S. Fish and Wildlife Service to list *Rhaphiomidas terminatus abdominalis* as endangered. 11pp.

Ballmer, G. 1992. Petition for emergency listing of *Rhaphiomidas terminatus abdominalis* as an endangered species. 2pp.

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Cazier, M. A. 1941. A generic review of the family Apioceratidae with a revision of the North American species (Diptera-Brachycera). Am. Midl. Nat. 25:589-631.

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United States Department of Agriculture. Soil Conservation Service. 1980. Soil Survey of San Bernardino County Southwestern Part, California. U.S. Government Printing Office, Washington, D.C., 65 pp + 12 maps.

Authors

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List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under INSECTS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
INSECTS							
Fly, Delhi Sands flower-loving	*Rhaphiomidas terminatus abdominalis*	U.S.A. (CA)	NA	E		NA	NA

Dated: September 28, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

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