RULES AND REGULATIONS

Title 50—Wildlife and Fisheries
CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination That Six Species of Butterflies are Endangered Species

The Director, U.S. Fish and Wildlife Service (herein referred to as the Director and the Service, respectively) hereby issues a Rule-making pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1533a; 84 Stat. 884; hereinafter the Act) which determines the following butterflies to be endangered species:

Lotis Blue (Lycaenides argyrophronom lotis)
El Segundo Blue (Stibitides lotis algirent)
Smith's Blue (Shticktides enoptes smithi)
Mission Blue (Icarola icariae missionensis)
San Bruno Elfin (Callophrys mossi hayensta)
Lange's Metalmark (Apodemus mormo langoet)

BACKGROUND

On March 20, 1975, the Service published a Notice of Review for 41 U.S. butterflies in the Federal Register (40 FR 1269) advising that sufficient evidence was on file to warrant a status review of the species with regard to their possible qualification for determination as Endangered or Threatened species under provisions of the Act. The six subject butterflies in this Final Rule were among the 41 reviewed.

Subsequently, on October 14, 1975, the Service published Proposed Rules in the Federal Register (40 FR 48139-48140) advising that sufficient evidence was on file to support proposing a determination that the six subject butterfly species were Endangered species as provided for by the Act. The Service summarized the factors thought to be contributing to the likelihood that such species could become extinct within the foreseeable future: specified the prohibitions which would be applicable to each species if such a determination were made; and solicited comments, suggestions, objections and factual information from any interested person.

Section 4(b)(1)(A) of the Act requires that the Governor of each State within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any species is determined to be a Threatened Species or an Endangered species. A letter was sent to the Governor of California on March 17, 1975, notifying him of the Review of Status Notice which included, among others, the six butterflies. As a direct result of this letter a report was prepared for the California Department of Food and Agriculture by Mr. Julian Donahue, Curator of Entomology at the Natural History Museum of Los Angeles County. Eighteen prominent professional and amateur California lepidopterists contributed data and opinions which contributed to the formulation of this report. The report was submitted to the California Department of Food and Agriculture on April 22, 1975. This report included that 24 California species were determined to be Threatened species and the data supporting such determinations were made: and solicited recommendations relating to the application of the Act to "insects, Arthropods, and lower Phyla," as well as a number of matters properly under the purview of Federal Endangered Species legislation. Mr. Fullerton also urged "that Federal funding be provided as soon as possible to gather the baseline knowledge needed to avert extinction of endangered forms and to better assess those which may be approaching endangerment."

In addition, Mr. Fullerton sent a second letter, dated June 20, 1975, which expressed a number of concerns, primarily relating to the application of the Act to "insecta, Arthropoda, and lower Phyla," as well as a number of matters properly under the purview of Federal Endangered Species legislation. Mr. Fullerton suggested that the Director provide clarification on these issues, and that the following be added to the list of butterflies: Lange's Metalmark, Smith's Blue, and Lange's Blue.

In a June 20, 1975 letter from Director Fullerton of the California Department of Fish and Game to the Director, the San Bruno Elfin, Mission Blue, El Segundo Blue, and Lange's Metalmark were among those thought to qualify as Endangered, while the Lotis Blue and Smith's Blue were among those thought to be Threatened.

In a letter to the Director on October 11, 1975, Mr. O'Connor responded to Mr. Fullerton stating the Office of Endangered Species staff was concerned with the clarifications sought on the State's recommendations, and that in addition, because of information not available to the State during their evaluation process, the Lotis Blue and Smith's Blue were felt to qualify as Endangered species.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register prior to adding any species to or removing any species from the "List of Endangered and Threatened Wildlife."

In the March 20, 1975, federal Register Notice (40 FR 12691) and the associated February 16, 1975, News Release, all interested parties were invited to submit data and comments which might contribute to the review of Status for the included butterfly species.

The October 14, 1975, Proposed Rule-making incorporating the Federal Register (40 FR 48139-48140) constituted the onset of the official 60-day public comment period. This period expired on December 12, 1975, and to better assess those which may be approaching endangerment.

In a letter dated January 7, 1976, Mr. Fullerton requested the information which led to the Director's inclusion of the Lotis Blue and Smith's Blue in the Proposed Rule of October 14, 1975 (40 FR 48139-48140). A summary of this information was also included in the March 30, 1976 letter from the Director to Mr. Fullerton. This information is summarized in this Final Rule, and is dealt with in further detail in an Environmental Impact Assessment on file at the Office of Endangered Species.

In a letter dated December 8, 1975, which was addressed to the Director, Dr. H. S. Shirakawa, Acting Director, National Program Planning Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, specifically commented on the qualification of the six subject species for determination under provisions of the Act.

Dr. Shirakawa suggests that "no scientific case has been made for listing any of the six proposed species." This assessment was made primarily because no biometric or population surveys exist for any of the species. In addition, he asserts that the data for the Lotis Blue is vague. He states further that the host plant of Lange's Metalmark, Eriogonum nudum asp., should be listed instead of the butterfly itself, since this species cannot exist on other subspecies of E.
Eriogonum nudum. With regard to the San Bruno Elfin, he states that "its habitat is an excellent natural area with a high human population density," and that "there is some confusion as to what species and subgenus this butterfly belongs." For the El Segundo Blue he mentions the fact that the caterpillar host plant has a range many times that of the butterfly, and that implies that the entire range of the plant may not have been adequately surveyed for the butterfly.

With regard to the adequacy of data employed in the status assessment for the six subject species, Section 4(b)(1) of the Act states: "The Secretary shall make determinations required by subsection (a) of the section on the basis of the best scientific and commercial data available to him." Thus, even though accurate population estimates for all these species may not be available, their determination is not precluded. In fact, the small limits of ranges of these butterflies and potential threats to their continued existence, rather than their absolute population numbers, constitute the chief basis for their determination as Endangered.

With regard to the Lotus Blue, the status of one population is known, while that of another has not been documented. The Lange's Metalmark feeds only on Eriogonum nudum var. pauciflorum, the only Eriogonum which exists on its host range; although the Antioch population (Contra Costa County, California) of this plant appears to be differentiated, that variety ranges from southern Oregon to southern California according to Dr. James Reveal, the expert botanist knowledgeable about this group of plants. Lange's Metalmark is an isolated subspecies of a widespread butterfly which feeds on many species of Eriogonum throughout its range. Thus, determination of the host plant as endangered or threatened would not serve the plight of the insect, and it is not justified on the basis of present biological and taxonomic information.

The San Bruno Elfin's habitat does not presently have high population density, although portions of its range, those which are not too steep, might have potential real estate value. In any event, neither of these factors is pertinent to the determination of Endangered or Threatened species according to the stipulations of Section 4(b). In regard to the San Bruno Elfin's scientific name, the butterfly has been most recently considered to belong to the subgenus Incisalia of the genus Calliphrys. Relegation to the species mossi is based upon the recent discovery that it is not conspecific with Calliphrys (Incisalia) jolii.

Eriogonum parvijolium, the El Segundo Blue's host, is a plant of southern California's coastal sand dune ecosystems. Most sand dunes where this plant occurs have been lost to development, and the El Segundo Blue has been found only on remnants of the El Segundo Dune ecosystem. Among the individuals who disproved the proposal all were either amateur or professional lepidopterists who were concerned with the taking prohibitions for listed species. Most of these individuals cited the fact that many individuals of most of the candidates could be collected in a single day with no apparent ill effect on the populatons' long-term survival. As an argument against a proposed Endangered determination together with the mandatory application of the Act's Section 9 taking prohibition. An examination of the available data summarized in another part of this Final Rule indicates factors other than collecting are responsible for the present Endangered state of the six subject species. Once determined to be Endangered, taking of these butterflies for scientific purposes, or to mandatorily benefits, are considered or survival could be allowed by permit. For any species as narrowly delimitied as those under present consideration any further significant reduction of their population numbers might bring about a serious loss of genetic variability and a concomitant loss of evolutionary adaptability.

The initial point is not germane. The Act defines the term "species" as follows: The term "species" includes any subspecies of fish or wildlife or plants and any part or parcel of a group of organisms the same or so nearly related to each other that they are naturally understood to reproduce when mature. Thus, subspecies of wildlife in the nomenclatural sense are considered as species in the legal intent of the Act.

That professional biologists might be more likely to obtain a permit for taking of the subject species than would amateur lepidopterists is not true, as the qualifications for prospective permittees do not include stipulations of professional, lepidopterists; and that determination of Endangered or Threatened species that occur on private property is an attempt to control or contain development there.

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Effect of the Rulemaking

The effects of these determinations and this rulemaking include, but are necessarily limited to, those discussed below.

Endangered Species regulations already published in Title 50 of the Code of Federal Regulations set forth a number of general prohibitions and exceptions which apply to all Endangered Species. The regulations referred to above, which pertain to Endangered Species, are found at Section 17.21 of Title 50 and, for the convenience of the reader, are reprinted below:

1721 Prohibitions. (a) Except as provided in paragraph (b) of this section, it is unlawful to: (1) Import or export any endangered wildlife. Any shipment through the territory of any State, or the United States, is an importation and an exportation, whether or not it has entered the country for customs purposes.

(b) Import or export. It is unlawful to import or export any endangered wildlife.

(c) Possession. It is unlawful to possess, sell, deliver, carry, transport, or ship any endangered wildlife without a permit.

(d) Threat. It is unlawful to threaten any endangered wildlife.

(e) Solicitation. It is unlawful to cause any person subject to the jurisdiction of the United States or any State to commit, to attempt to commit, or to solicit another to commit, to temport to commit, to tell another to commit, or to cause to be committed, any of the acts described in paragraphs (a) through (f) of this section, and to publicize the fact that such an act has been committed.

17.22 Section 17.22 of Title 50 of the Code of Federal Regulations is amended as follows:

California has State laws which recognize the List of Threatened or Endangered Wildlife promulgated pursuant to the Act and provide State protection to these species. This determination will make these six species eligible for such consideration as those State laws provide.

Effect Internationally

In addition to the protection provided by the Act, the Service will review these six species to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendix(ices) to that Convention or whether they should be considered under other, appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared in conformity with the Service’s Washington Office of Endangered Species. It addresses this action as it involves all six butterflies. The assessment is the basis for a decision that these determinations are not major Federal actions which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Format

These final Rules are published in a format different from that set forth in the Proposed Rulemaking. This final format was adopted by Rules published in the Federal Register of September 25, 1975 (40 FR 44412) and represents no substantive change.

Effective Date

Considering the long period during which the public has had notice of the Proposal to determine these species to be Endangered, and in view of the precarious status of these species and in view of the fact that the adults flights of four of these insects will closely follow the publication date, it has been determined that there is good cause to make this rule effective immediately, effective June 8, 1976.

LYNN A. GREENWALT
Director, Fish and Wildlife Service.
RULES AND REGULATIONS

Title 14—Aeronautics and Space
CHAPTER I—FEDERAL AVIATION ADMINISTRATION. DEPARTMENT OF TRANSPORTATION

PART 39—AIRWORTHINESS DIRECTIVES

Beech Models 214, B200, R201, R202 and R203 Propellers

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) requiring initial and repetitive inspections of the wood blades used in Beech Models 214, B200, R201, R202 and R203 propellers, was published in the Federal Register on March 11, 1976 (41 FR 10447).

Interested persons have been afforded an opportunity to participate in the making of the amendment. Only one comment was received. The commentator recommended the maximum time interval for inspection of the blade shanks be three years instead of the five years proposed in the notice, because he believes the problem is related to time in service rather than operational factors. The available evidence does not indicate that blade failures to date are primarily related to aging of the wood. In addition, there is evidence that the blades are experiencing heavy mechanical loads due to acceleration of the propeller by the engine. The FAA believes that sufficient information will be obtained during the first inspection to either prove the accuracy of the five-year interval or establish the necessity for a shorter interval. Accordingly, for the present, the five year inspection interval will be retained in the adopted rule.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 119.1 (41 FR 13971), §39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

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Beech Propeller Assembly

1. Using a 10-power glass, visually inspect the blade surface for cracks and separation as shown on the reproduction of a deteriorated blade in Figure 1.
2. If no deterioration is found, reinstall the plastic film over the exposed area in accordance with Unitvar Process (P-200) or an FAA-approved equivalent procedure.
3. If the blade shows any sign of deterioration prior to further flight, replace it with an approved blade.
4. Only an approved propeller repair station is authorized to accomplish the inspection required in this paragraph.
5. The inspection is to be performed at intervals not exceeding 100 hours' time in service or one year, whichever comes first, after the effective date of this AD and thereafter at intervals not exceeding 300 hours' time in service or five years, whichever comes first, from the last inspection, visually inspect the blades as follows:
   a. Carefully remove the plastic coating to expose the shank of the blade for a minimum distance of 4 1/2" outboard of the tip.
   b. Using a 10-power glass, visually inspect the blade surface for cracks and separation as shown in Figure 1.
   c. If the blade shows any sign of deterioration, replace it with an approved blade.

This amendment becomes effective June 2, 1976.

This amendment is made under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1324(a), 1421 and 1423), and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Missouri, on May 14, 1976.

C. R. McLucan, Jr.,
Director, Central Region.