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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0129; 4500030113]

RIN 1018–BA93

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Platanthera integrilabia (White Fringeless Orchid)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for *Platanthera integrilabia* (white fringeless orchid), a plant species from Alabama, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee. This rule adds this species to the Federal List of Endangered and Threatened Plants.

DATES: This rule is effective October 13, 2016.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/cookeville.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone: 931–528–6481; facsimile: 931–528–7075.

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **ADDRESSES**, above). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Please refer to the proposed listing rule for the white fringeless orchid (80 FR 55304; September 15, 2015) for a detailed description of previous Federal actions concerning this species.

Background

Below, we update and summarize information from the proposed listing rule for the white fringeless orchid (80 FR 55304; September 15, 2015) on the historical and current distribution of white fringeless orchid. Please refer to the proposed listing rule for a summary of other species information, including habitat, biology, and genetics.

Distribution

In this final rule, we are updating information on the species' distribution from the September 15, 2015, proposed rule to include two minor changes, which were brought to our attention following publication of the proposed listing rule. First, we are changing the 2014 status of the Forsyth County, Georgia, population from extant to uncertain (Table 1), because flowering plants have not been documented at this site since 1990 (Richards 2015, pers. comm.). In addition, we have added Georgia Department of Transportation (GDOT) to the list of local, State, or Federal government entities that own or manage lands where white fringeless orchid is present (Table 2). A revised summary of the species' distribution follows.

TABLE 1—COUNTY-LEVEL DISTRIBUTION OF EXTANT AND UNCERTAIN STATUS WHITE FRINGELESS ORCHID OCCURRENCES, CIRCA 1991 (SHEA 1992) AND 2014 (ANHP 2014, GDNR 2014, KSNPC 2014, MDWFP 2014, NCDENR 2014, SCDNR 2012, SCHOTZ 2015, AND TDEC 2014)

State	County	1991		2014	
		Extant	Uncertain	Extant	Uncertain
Alabama	Calhoun			2	
	Clay		1	1	
	Cleburne			1	
	DeKalb			1	
	Jackson				1
	Marion	1		1	2
	Tuscaloosa	1		1	
	Winston	1		1	
Georgia	Bartow			1	
	Carroll	2		2	
	Chattooga			1	
	Cobb	1			
	Coweta	1		1	
	Forsyth		1		1
	Pickens			1	
	Rabun	1		1	
	Stephens	1		1	
Kentucky	Laurel			2	2
	McCreary	4		2	1
	Pulaski	1	1	2	
	Whitley			1	
Mississippi	Alcorn				1
	Itawamba			2	1
	Tishomingo			1	1
South Carolina	Greenville	1			1
Tennessee	Bledsoe		2	2	1
	Cumberland			1	
	Fentress			2	
	Franklin	3	2	5	5

TABLE 1—COUNTY-LEVEL DISTRIBUTION OF EXTANT AND UNCERTAIN STATUS WHITE FRINGELESS ORCHID OCCURRENCES, CIRCA 1991 (SHEA 1992) AND 2014 (ANHP 2014, GDNR 2014, KSNPC 2014, MDWFP 2014, NCDENR 2014, SCDNR 2012, SCHOTZ 2015, AND TDEC 2014)—Continued

State	County	1991		2014	
		Extant	Uncertain	Extant	Uncertain
	Grundy	5	5	4	4
	Marion	2	.....	8	.....
	McMinn	1	.....	1	.....
	Polk	.....	.....	1	.....
	Scott	.....	.....	1	.....
	Sequatchie	2	1	1	1
	Van Buren	2	.....	5	1
Total	.....	30	13	57	23

TABLE 2—STATUS AND NUMBER OF WHITE FRINGELESS ORCHID OCCURRENCES ON PUBLICLY OWNED OR MANAGED LANDS

[**Note:** One site is on privately owned lands that the Georgia Department of Natural Resources (GDNR) leases for use as a wildlife management area]

Ownership	Extant	Uncertain	Extirpated	Historical
National Park Service	3	.....	.....	.....
U.S. Forest Service	9	3	3	.....
U.S. Fish and Wildlife Service	2	.....	.....	.....
Alabama Department of Conservation and Natural Resources	.....	1	.....	.....
Georgia Department of Natural Resources	2	.....	.....	.....
Georgia Department of Transportation	1	.....	.....	.....
Kentucky State Nature Preserves Commission	1	.....	.....	1
Mississippi Department of Fish, Wildlife, and Parks	1	.....	.....	.....
North Carolina Plant Conservation Program	.....	.....	1	.....
South Carolina State Parks	.....	1	.....	.....
Tennessee Department of Transportation	1	.....	.....	.....
Tennessee Division of Forestry	7	.....	.....	.....
Tennessee State Parks	5	1	.....	1
Tennessee Wildlife Resources Agency	1	.....	1	.....
Forsyth County, Georgia	.....	1	.....	.....
Total	33	7	5	2

All other information from the ''Distribution'' discussion in the proposed rule (80 FR 55304; September 15, 2015) remains unchanged.

Summary of Comments and Recommendations

In the proposed rule published on September 15, 2015 (80 FR 55304), we requested that all interested parties submit written comments on the proposal by November 16, 2015. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. On April 14, 2016 (81 FR 22041), we reopened the comment period for an additional 60 days, ending June 13, 2016. Newspaper notices inviting general public comment were published in the Asheville Citizen Times, Birmingham News, Chattanooga Times Free Press, Greenville News, Huntsville News, Knoxville News, Lexington Herald-Leader, and Northeast Mississippi Daily Journal. We did not receive any requests for a public hearing.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with white fringeless orchid and its habitat, biological needs, and threats or general conservation biology of orchids. We received responses from two of the peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the listing of white fringeless orchid. The peer reviewers generally concurred with our evaluation and the conclusion we reached regarding the proposal to list the white fringeless orchid as a threatened species. One peer reviewer commented on the information on the species' habitat, biology, and threats, and provided minor updates regarding the status and distribution of white fringeless orchid in the State of Georgia. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) Comment: One reviewer commented on subtle differences in descriptions of white fringeless orchid habitat that have been recorded over time, suggesting that descriptions from the 1970s (Luer 1975, p. 186; Shea 1992, p. 19) or later might represent altered conditions, as compared to the earliest published habitat description (Correll 1941, pp. 156–157). This reviewer noted that Correll (1941, pp. 156–157) used the term ''grassy,'' citing an herbarium specimen label, in describing the habitat, possibly implying the presence of more open conditions in which a grassy herbaceous community would have been present. This reviewer speculated that the shaded, forested conditions, discussed in more contemporary descriptions of white fringeless orchid habitat, might have

resulted from land use and regulatory changes (*i.e.,* regulation of impacts to wetlands) that have favored the development of more densely stocked, heavily shaded contemporary forest conditions in habitats where the white fringeless orchid occurs. This reviewer opined that current habitat conditions where the white fringeless orchid occurs do not, in many cases, represent the optimal range of habitat variation for the species. This reviewer also cited short-term positive responses of white fringeless orchid populations to timber removal in adjacent uplands, a phenomenon that we discussed in the proposed listing rule, as evidence of the positive influences of increased light and water availability, but which diminish with regrowth of even-aged hardwood stands in the absence of ecological disturbance, such as fire. One commenter also suggested that fire could be a beneficial management tool in conservation efforts for the white fringeless orchid.

Our Response: We agree with the peer reviewer's observations about the potential beneficial effects of ecological disturbance, such as fire, in creating environmental conditions that stimulate population growth and increased flower production in the white fringeless orchid. The proposed listing rule (80 FR 55304; September 15, 2015) discusses short-term positive responses to timber harvesting that have been observed in some white fringeless orchid populations and notes that Schotz (2015, p. 4) suggested that fire could play a role in regulating woody vegetation growth in uplands surrounding white fringeless orchid habitats. The proposed rule also reports on Hoy's (2012, p. 26) suggestion that high stem densities, which resulted from succession following canopy removal, shortened the hydroperiod of wetlands at a white fringeless orchid site in Kentucky. Evaluating the potential role of fire or other ecological disturbance in managing habitat for the white fringeless orchid will be considered during preparation of a recovery plan (see discussion about recovery plans under the heading Available Conservation Measures, below) for the species after it is listed.

(2) Comment: One peer reviewer commented that the use of herbicides on industrial and small-scale timber operations appears to be increasing significantly in the State of Georgia and that we should include it as a threat of significant concern not only to the white fringeless orchid but also to the herbaceous plant community of which it is part, as well as pollinators. The reviewer did not provide specific data in support of this comment.

Our Response: We agree that increased use of herbicides in timber operations in or near habitats where the white fringeless orchid occurs could be detrimental to the species, as well as other herbaceous plants and pollinators, but we are not aware of specific instances where adverse effects to the white fringeless orchid have occurred due to herbicide use in silvicultural operations, nor do we have data regarding the rates at which herbicides are used in silvicultural operations presently or in the past. Therefore, we have not added a discussion of herbicide use in silvicultural operations in the analysis of factors affecting the white fringeless orchid.

(3) Comment: One peer reviewer commented that Atlanta Botanical Garden (ABG) has developed asymbiotic (in the absence of symbiotic fungi), aseptic (free from contamination caused by harmful bacteria, viruses, or other microorganisms) *in vitro* propagation protocols that achieve much higher germination rates than the rate (less than 3 percent) observed by other researchers in separate studies of *in vitro* and *in situ* seedling development (Zettler and McInnis 1992, pp. 157–160; Zettler 1994, p. 65).

Our Response: The Service is aware of the success that ABG has achieved in propagating the white fringeless orchid; however, we are not aware of specific rates of seedling germination that we can include in this rule. Effective propagation protocols could be a valuable tool, combined with science-based habitat management practices, for augmenting currently small populations or restoring populations in sites where the species is no longer extant but suitable habitat conditions remain. We will consider this information during development of a recovery plan for the species.

(4) Comment: One peer reviewer commented on the discussion in the proposed listing rule about rates of fruit set in relation to population size, which cited Zettler *et al.* (1996, p. 22) and Zettler and McInnis (1992, p. 160) in suggesting that inbreeding depression could be a cause for the lower fruit set observed in smaller populations. The peer reviewer commented that low census numbers of flowering individuals and highly fragmented or degraded pollinator networks also could influence the low rates observed in smaller populations.

Our Response: We agree with the peer reviewer that other factors besides inbreeding depression, caused by increased rates of self-pollination, could contribute to low rates of fruit set in small populations of the white fringeless orchid. However, we are not aware of specific data that indicate what those other factors might be.

Federal Agency Comments

(5) Comment: The Tennessee Valley Authority (TVA) commented that nearly 20 percent of extant white fringeless orchid occurrences are located in transportation or utility rights-of-way, illustrating that the species occurs in these settings at a disproportionately high rate when compared to their overall prevalence on the landscape. The TVA also commented that the proposed rule highlights the beneficial role that vegetation maintenance, if properly conducted, can play in maintaining suitable habitat for the white fringeless orchid and that herbicide resistance in the species could, in part, explain the positive response seen in one population following herbicide application in a TVA right-of-way.

Our Response: We acknowledge that current distribution data indicate that the white fringeless orchid occurs in transportation or utility rights-of-way at a disproportionately high rate compared to the overall prevalence of these features on the landscape. One possible cause for the disproportionally high numbers of populations known from rights-of-way is that these areas are surveyed by TVA and other utility or transportation departments more frequently or intensively than the forested habitats where most populations are located. It might also be true that white fringeless orchid populations respond positively to the well-lit conditions found in rights-of-way, assuming that other threats related to maintenance or unauthorized use of rights-of-way (*e.g.,* off-road vehicle use) do not adversely affect the plants or their habitat. We commend TVA on its efforts to prevent adverse effects to rare species while conducting vegetation management or infrastructure maintenance in rights-of-way.

Regarding the comment that herbicide resistance could explain the species' positive response to selective herbicide application, we are not aware of any data to support the assertion that the species is resistant to any registered herbicide products. It is possible that the selective nature of herbicide application to woody species by TVA or its contractors, rather than herbicide resistance generally, is responsible for the positive response seen following one known instance of potential exposure in a TVA right-of-way. This warrants further research.

Comments From States

(6) Comment: The Georgia Department of Transportation (GDOT) commented that an occurrence located in a transportation right-of-way in Chattooga County, Georgia, is on lands owned by GDOT. GDOT also commented on its collaborative efforts with Georgia Power and ABG to manage the habitat and white fringeless orchid population at this site.

Our Response: We include this information in this rule by adding GDOT to Table 2, above, which reports the number of occurrences on publicly owned or managed lands, and by discussing conservation efforts to restore this population under the heading Summary of Biological Status and Threats, below.

Public Comments

(7) Comment: We received one comment recommending against listing the white fringeless orchid as threatened or endangered. The commenter stated that this opinion was based on the following: (1) The funds and human hours that would be spent on the white fringeless orchid could be spent elsewhere, such as on priority species; and (2) the species has already declined in great numbers since it became a candidate for listing in 1999, and it seems like more information is needed to allow for preparation of a recovery plan for the species.

Our Response: The Act (16 U.S.C. 1531 *et seq.*) requires the Service to identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial data. As discussed in the proposed rule (80 FR 55304; September 15, 2015) and as summarized here, we have determined the threats to the white fringeless orchid warrant its listing as threatened under the Act.

Regarding the commenter's assertion that the species has already declined in great numbers since 1999, the Service acknowledges that some populations have been lost or have declined since the species became a candidate for listing, but notes that several new populations have been discovered since that time. The Service's determination to list the species as threatened, rather than endangered, reflects our conclusion that the species is not at imminent risk of extinction. Further, contrary to the commenter's assertion that more information is needed to prepare a recovery plan, there are considerable biological data available, as summarized in the proposed rule (80 FR 55304; September 15, 2015), upon which a recovery plan can be based, as well as ongoing conservation efforts that the Service and its partners can build upon and learn from as we develop a recovery plan for the white fringeless orchid.

(8) Comment: We received comments from four individuals or organizations recommending that we designate critical habitat for white fringeless orchid. Two of the commenters provided no information or data to support their recommendations. One commenter suggested that critical habitat would benefit conservation efforts for the white fringeless orchid for the following reasons: Most of the threats described in the proposed listing rule are related to habitat disturbance or loss; many populations are small and, in the commenter's opinion, would likely no longer exist absent critical habitat designation; and the threat of unauthorized collection is, in the commenter's opinion, neither imminent nor present. This commenter also suggested that a threatened species would experience protective benefits from critical habitat designation because of the requirement for Federal agencies to consult with the Service about projects that could potentially adversely affect critical habitat. Another commenter who recommended designating critical habitat cited the habitat specificity of the species and threats from human activity, such as logging and construction, as the reasons for this recommendation.

Our Response: In the proposed rule (80 FR 55304; September 15, 2015), we weighed the expected increase in threats associated with a critical habitat designation against the benefits that might be gained by a critical habitat designation. We acknowledge that, as two commenters observed, most of the threats described in the proposed rule are related to disturbance or destruction of habitat. However, many of the threats to habitat would not be alleviated by designation of critical habitat, as they are not caused by actions or undertakings of Federal agencies. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of that species' critical habitat. Critical habitat only provides protections where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus, including logging and construction on privately owned lands. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of its proposed action on any designated critical habitat. Similar to the Act's requirement that a Federal agency action not jeopardize the continued existence of listed species, Federal agencies have the responsibility not to implement actions that would destroy or adversely modify designated critical habitat. Critical habitat designation alone, however, does not require that a Federal action agency implement specific steps toward species recovery.

Some of the populations on Federal lands are the largest known, and any future activity involving a Federal action that would destroy or adversely modify critical habitat at these sites would also likely jeopardize the species' continued existence. Consultation with respect to critical habitat would provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of a critical habitat designation, areas that support white fringeless orchid will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as appropriate.

We disagree with one commenter's assertion that because most populations are small they likely would no longer exist absent a critical habitat designation. On the contrary, the fact that most of the populations are small, combined with the fact that they are located in remote sites that are infrequently monitored by conservation organizations or law enforcement, led the Service to conclude that publishing locations of those populations in maps that would be required for a critical habitat designation would heighten the threat of collection. In small populations, the collection of even a few individuals would diminish reproductive output and likely reduce genetic diversity, reducing the resilience of those populations to recover from other threats to habitat or individual plants.

Despite one commenter's assertion that the threat of collection is neither imminent nor present, the proposed rule documented that this threat is both present and imminent, as observed by Service and Tennessee Department of Environment and Conservation (TDEC) biologists during 2014. Identification of critical habitat would increase the magnitude and severity of this threat by spatially depicting exactly where the

species may be found and widely publicizing this information, exposing these fragile populations and their habitat to greater risks. We have reviewed management plans and other documents produced by Federal and State conservation agencies and scientific literature, and detailed information on the specific locations of white fringeless orchid sites is not currently available.

(9) Comment: We received comments from Georgia Power informing us of conservation efforts directed towards a roadside population in Chattooga County, Georgia, which also lies within a power transmission right-of-way. Georgia Power also commented on its collaborative efforts with GDNR to monitor, protect, and manage the occurrence located on GDNR lands in Rabun County, Georgia.

Our Response: We have included this information under the heading Summary of Biological Status and Threats.

Summary of Changes From the Proposed Rule

Based on these comments, in this final rule, we include two minor changes from the proposed listing rule (80 FR 55304; September 15, 2015). Those changes are discussed above under the heading *Distribution.* Additionally, under the heading Summary of Biological Status and Threats, we include a discussion of conservation efforts based on comments we received from GDOT and Georgia Power.

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In the proposed listing rule (80 FR 55304; September 15, 2015), we carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the white fringeless orchid and provided a detailed account of those threats and the biological status of white fringeless orchid.

We have determined that the threats to white fringeless orchid consist primarily of destruction and modification of habitat (Factor A) resulting in excessive shading, soil disturbance, altered hydrology, and proliferation of invasive plant species; collecting for recreational or commercial purposes (Factor B); herbivory (Factor C); and small population sizes and dependence on specific pollinators and fungi to complete its life cycle (Factor E). Existing regulatory mechanisms have not led to a reduction or removal of threats posed to the species from these factors (Factor D). We summarize each of those threats here. Please refer to the proposed listing rule (80 FR 55304; September 15, 2015) for the full discussion.

Habitat destruction and modification (Factor A) from development, silvicultural practices, excessive shading, and altered hydrology (*i.e.,* pond construction, beaver dam removal) have resulted in extirpation of the species from 10 sites (Shea 1992, pp. 15, 25; TDEC 2014). These threats, in addition to invasive plant species (U.S. Forest Service (USFS) 2008, p. 53; Richards 2013, pers. comm.; KSNPC 2014; TDEC 2014), feral hogs (Zettler 1994, p. 687; USFS 2008, p. 54; Richards 2013, pers. comm.; Richards 2014, pers. comm.; Tackett 2015, pers. comm.), and right-of-way maintenance (Taylor 2014, pers. comm.), are associated with habitat modifications affecting dozens of other occurrences that are extant or of uncertain status. The best available information indicates that habitat for many existing populations is adversely affected by factors that either directly harm individual white fringeless orchids or alter the plant communities, soils, and water flow in the sites where they occur. These factors include residential development, utility and road right-of-way maintenance, timber harvesting, invasive species encroachment, and vegetation succession in the absence of disturbance. Impacts to habitat from activities such as development and silvicultural practices include direct impacts such as habitat conversion and ground disturbance, and indirect impacts such as altered hydrology, increased shading, and introduction of invasive, nonnative plants. The threats to the white fringeless orchid from habitat destruction and modification are occurring throughout much of the species' range and these population-level impacts are expected to continue into the foreseeable future.

During the comment period, GDOT and Georgia Power provided information on conservation efforts that have been directed to a roadside occurrence in Chattooga County, Georgia, which is located in a power transmission right-of-way. As noted in the proposed listing rule (80 FR 55304; September 15, 2015), this site was adversely affected by unauthorized collection in 2004, and remains vulnerable to this threat due to its location alongside a State highway. Georgia Power and GDOT have designated this site an ''Environmentally Sensitive Area,'' restricting mowing and herbicide use. They are also working with ABG to augment the population at this occurrence with plants propagated from seed collected at this site. Georgia Power is also collaborating with GDNR to protect, monitor, and manage another occurrence, located in Rabun County, Georgia, and reported that a prescribed burn was recently conducted in the area where this occurrence is located. ABG staff have collected seeds from this population to produce propagated plants that will be used to augment the population at this occurrence.

Collecting for scientific, recreational, or commercial purposes (Factor B) has been determined to be the cause for extirpation of the white fringeless orchid at its type locality (Ettman and McAdoo 1979 cited in Zettler and Fairey 1990, p. 212), and recent evidence demonstrates that collection remains a threat to this species. Fungal pathogens have been identified as a threat to white fringeless orchid, but a threat with potentially greater impact associated with Factor C is inflorescence herbivory, presumably by deer (Zettler and Fairey 1990, p. 212–214). Flower herbivory has been reported at over one-third of extant occurrences and likely is a factor threatening most white fringeless orchid occurrences (Shea 1992, pp. 27, 61, 71–77, 95–97; TDEC 2012, p. 3; KSNPC 2014; TDEC 2014), especially where low numbers of plants are present. Tuber herbivory or soil disturbance by feral hogs has been reported at multiple occurrences, including the site harboring the largest known white fringeless orchid population (Zettler 1994, p. 687; USFS 2008, p. 54).

The effects of all of the above-described threats are intensified by the small population sizes that characterize a majority of occurrences throughout the species' geographic range (Factor E), due to their diminished capacity to recover from loss of individuals or low

reproductive output resulting from other threats (Zettler *et al.* 1996, p. 22). Further, the species' dependence on a limited number of Lepidoptera (Zettler *et al.* 1996, p. 16) and a single species of fungi (Currah *et al.* 1997, p. 30) to complete its life cycle make it vulnerable to disturbances that diminish habitat suitability for these taxa as well (Factor E). Climate has changed in recent decades in the southeastern United States, and the rate of change likely will continue to increase into the future (Karl *et al.* 2009, pp. 111–112) (Factor E). Although we do not have data to determine specifically how the habitats where the white fringeless orchid occurs will be affected by, or how the species will respond to, these changes, the potential for adverse effects to the white fringeless orchid, either through changes in habitat suitability or effects on populations of pollinators or mycorrhizal fungi, is likely to increase as climate continues to change at an accelerating rate.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that white fringeless orchid is likely to become endangered throughout all or a significant portion of its range within the foreseeable future based on the low to moderate threats currently impacting the species. The species is known to be extant at 57 locations (see Table 1, above), but low numbers of individuals have been observed at more than half of these (see Figure 1 in the proposed listing rule: 80 FR 55304, September 15, 2015, p. 55309), distributed across the species' range, and their persistence into the future is uncertain. Furthermore, the threats of habitat destruction or modification and herbivory are present throughout the species' geographic range. Left unmanaged, these threats will likely lead to further reductions in the species' geographic range and abundance at individual sites, increasing the risk of extinction to the point of endangerment. The combination of small population sizes combined with the white fringeless orchid's dependence on specific pollinators and fungi to complete its life cycle diminishes the resilience of populations to recover from adverse effects of threats due to habitat destruction or modification and herbivory.

Therefore, on the basis of the best available scientific and commercial information, we are listing the white fringeless orchid as threatened in accordance with sections 3(20) and 4(a)(1) of the Act. The species does not currently meet the definition of endangered species, because a sufficient number of robust populations are present on publicly owned or managed lands, which despite numerous threats, are actively managed such that the risk of extinction is not imminent. Furthermore, conservation efforts have been initiated that could be effective in reducing threats by increasing population sizes and improving habitat conditions across much of the species' geographic range.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the white fringeless orchid is threatened throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014).

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 practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*) or from our Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental

organizations. In addition, pursuant to section 6 of the Act, the States of Georgia, South Carolina, Alabama, Mississippi, and Tennessee and the Commonwealth of Kentucky will be eligible for Federal funds to implement management actions that promote the protection or recovery of the white fringeless orchid. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the white fringeless orchid. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat, if any is 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 any endangered or threatened species or 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 consultation with the Service.

Federal agency actions within the species' habitat that may require consultation, as described in the preceding paragraph, include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service (USFS), and National Park Service (NPS); issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; powerline right-of-way construction and maintenance by the TVA; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened plants. With regard to threatened plants, 50 CFR 17.71 provides that all of the prohibitions in 50 CFR 17.61 applicable to endangered plants apply to threatened plants, with one exception. Thus, the regulations at 50 CFR 17.71(a) 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 in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction any threatened plant. There is an exception for the seeds of cultivated specimens, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container. The Act itself, at 16 U.S.C. 1538(a)(2)(B), prohibits malicious damage or destruction of any such species on any area under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law.

Under 50 CFR 17.72, we may issue permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. A permit issued under this section must be for one of the following: Scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following activities may potentially result in a violation of section 9 the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of white fringeless orchid, including interstate transportation across State lines and import or export across international boundaries, except for properly documented antique specimens of this species at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Unauthorized removal, damage, or destruction of white fringeless orchid plants from populations located on Federal land (USFS, NPS, and Service lands); and

(3) Unauthorized removal, damage, or destruction of white fringeless orchid plants on private land in violation of any State regulation, including criminal trespass.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the white fringeless orchid occurs in a variety of habitat conditions across its range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the species. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for ''*Platanthera integrilabia''* to the List of Endangered and Threatened

Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Platanthera integrilabia ...	White fringeless orchid ...	Wherever found	T	81 FR [*Insert* ***Federal Register*** *page where the document begins*]; September 13, 2016.
*	*	*	*	*

Dated: August 23, 2016.

James W. Kurth,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–21954 Filed 9–12–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE867

Fisheries of the Exclusive Economic Zone Off Alaska; Exchange of Flatfish in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is exchanging unused rock sole Community Development Quota (CDQ) for yellowfin sole CDQ acceptable biological catch (ABC) reserves in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2016 total allowable catch of yellowfin sole in the Bering Sea and Aleutian Islands management area to be harvested.

DATES: Effective September 13, 2016 through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 rock sole and yellowfin sole CDQ reserves specified in the BSAI are 6,160 metric tons (mt), and 15,773 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and following revision (81 FR 48722, July 26, 2016). The 2016 rock sole and yellowfin sole CDQ ABC reserves are 11,078 mt and 6,879 mt as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) and following revision (81 FR 48722, July 26, 2016).

The Aleutian Pribilof Island Community Development Association has requested that NMFS exchange 700 mt of rock sole CDQ reserves for 700 mt of yellowfin sole CDQ ABC reserves under § 679.31(d). Therefore, in accordance with § 679.31(d), NMFS exchanges 700 mt of rock sole CDQ reserves for 700 mt of yellowfin sole CDQ ABC reserves in the BSAI. This action also decreases and increases the TACs and CDQ ABC reserves by the corresponding amounts. Tables 11 and 13 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016), and following revision (81 FR 48722, July 26, 2016), are revised as follows:

TABLE 11—FINAL 2016 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	7,900	7,000	9,000	20,585	56,450	145,065
CDQ	845	749	963	1,832	5,460	16,473
ICA	200	75	10	5,000	6,000	3,500
BSAI trawl limited access	685	618	161	0	0	14,979
Amendment 80	6,169	5,558	7,866	13,753	44,990	110,113
Alaska Groundfish Cooperative	3,271	2,947	4,171	1,411	11,129	43,748
Alaska Seafood Cooperative	2,898	2,611	3,695	12,342	33,861	66,365

Note: Sector apportionments may not total precisely due to rounding.