

regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Office (see ADDRESSES section).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquires about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Regional Permit Coordinator, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/697-7110, facsimile 404/679-7081).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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

- Hall, S. 1993. A rangewide status survey of Saint Francis's satyr *Neonympha mitchellii francisci* (Lepidoptera: Nymphalidae). Report to U.S. Fish and Wildlife Service, Endangered Species Field Office, Asheville, NC. 44 pp.
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- Opler, P., and V. Malikul. 1992. A field guide to eastern butterflies. Houghton Mifflin Co., New York.
- Parshall, D. K., and T. W. Kral. 1989. A new subspecies of *Neonympha mitchellii* (French) (Satyrinae) from North Carolina. J. Lep. Soc. 43:114-119.
- Refsnider, R. 1991. Emergency rule to list the Mitchell's satyr as endangered. **Federal Register** 56(122):28825.
- Schweitzer, D. 1989. A review of category 2 insects in the U.S. Fish and Wildlife Service's Regions 3, 4, and 5. Report to the U.S. Fish and Wildlife Service, Newton Corner, MA. Pp. 132-133.
- Wilsman, L., and D. Schweitzer. 1991. A rangewide status survey of Mitchell's satyr, *Neonympha mitchellii mitchellii* (Lepidoptera: Nymphalidae). Report to the U.S. Fish and Wildlife Service, Region 3, Endangered Species Office, Twin Cities, MN.
- Woodward, D., and R. Hazel. 1991. Beavers in North Carolina; ecology, utilization, and management. Cooperative Extension Service Publication No. AG-434, North Carolina State University, Raleigh, NC.

Author

The primary author of this final rule is Ms. Nora Murdock (see ADDRESSES section) (704/665-1195, Ext. 231).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

(2) Section 17.11(h) is amended by adding the following, in alphabetical order under "Insects," to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* INSECTS	*	*	*	*		*	*
* Butterfly, Saint Francis' satyr.	<i>Neonympha mitchellii francisci</i> .	U.S.A. (NC)	NA	E	539E, 574	NA	NA
*	*	*	*	*		*	*

Dated: December 21, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95-1982 Filed 1-25-95; 8:45 am]

BILLING CODE 4310-55-P

50 CFR Part 17

RIN 1018-AC09

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Hine's Emerald Dragonfly (*Somatochlora hineana*)

AGENCY: Fish and Wildlife Service, Interior Department.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Hine's emerald dragonfly (*Somatochlora*

hineana) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Historically, this dragonfly was reported from sites in Indiana and Ohio. Recent reports indicate that it is currently present at only seven small sites within Cook, DuPage, and Will Counties in Illinois, and at six sites in Door County, Wisconsin. This species is threatened primarily by habitat loss and modification. This rule implements the Federal protection provisions afforded by the Act to the Hine's emerald dragonfly.

EFFECTIVE DATE: January 26, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, Division of Endangered Species, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Shumate (see **ADDRESSES** section) or by telephone (612/725-3276).

SUPPLEMENTARY INFORMATION:

Background

The Hine's emerald dragonfly, also known as the Ohio emerald dragonfly, was described in 1931 from seven adults collected June 7 and 14, 1929, and July 4, 1930, near Indian Lake, Logan County, Ohio (Williamson 1931). It is a dragonfly (class Insecta, order Odonata) with bright, emerald-green eyes, body size ranging 60-65 mm (ca. 2.5 inches) in length, and wing span of 80-85 mm (ca. 3.3 inches). The adult is distinguished from other adults in the genus *Somatochlora* by its metallic green color with two distinct creamy-yellow lateral stripes, the clasper-like appendages at the end of the abdomen in the male, and the shape of the vulvar lamina in the female.

Cashatt and Vogt (1990) indicated that the Illinois habitat of the Hine's emerald dragonfly consists of complex wetlands with small, calcareous or underlying limestone bedrock, and shallow, spring-fed streams that drain into wet meadows and cattail marshes. These marshes are found primarily along the Des Plaines River drainage in Illinois. Wisconsin habitat consists of small, calcareous, marshy streams and associated cattail marshes on dolomite bedrock.

Price (1958) reported collecting a total of 21 specimens in Williams County, Ohio from Mud Lake in 1949 (now Mud Lake State Nature Preserve) and Bridgewater Township in 1956; and from the Toledo Oak Openings Metropark in 1952, 1953, and 1956 (referred to as Oak Openings State Park by Price) Lucas County, Ohio. Until recently, the species was reported only from Ohio and Indiana (Montgomery 1953, Bick 1983). Recent investigations indicate that the species has apparently been extirpated from Ohio. The species' status in Indiana is currently uncertain. An adult male was documented to be the last collected specimen from Gary, Indiana, on June 22, 1945 (Montgomery 1953, Bick 1983, Cashatt and Sims 1993).

No additional information on the distribution of this species was available until 1990, when the Service supported

investigations in Wisconsin by Vogt and Cashatt (1990), in Illinois by Cashatt and Vogt (1990), and in Michigan by Vogt (1991). These investigations confirmed the presence of remnant populations in Wisconsin and Illinois. In Wisconsin, Vogt and Cashatt (1990) surveyed 27 potential sites in nine eastern counties. They found the species at six sites in Door County, and the sites are roughly on about one-third of private, State, and private (non-profit) conservation lands. Twenty-one sites were surveyed in Michigan with no new occurrences found. In Illinois, Cashatt and Vogt (1990) surveyed 28 potential sites in five counties and reported the dragonfly present at five sites in Cook, DuPage, and Will Counties. Within these three counties, two sites are on private lands and the remaining sites are on public lands. The Service also supported additional investigations in Illinois by Cashatt and Vogt (1991), Cashatt, Sims, and Wiker (1992), and in Wisconsin by Vogt and Cashatt (1991), and Smith (1993). Cashatt and Sims (1993) conducted further surveys and located two relatively small sites in Cook County, Illinois with one site each on private and public land, bringing the total number of Illinois sites to seven.

Hine's emerald dragonfly is listed as endangered by the International Union for the Conservation of Nature, is on the Illinois State endangered species list, will be proposed for listing as endangered in Wisconsin, and has been assigned Global Element Rank of G1G2 (critically imperiled globally) by The Nature Conservancy.

Previous Federal Action

On May 22, 1984, the Service published in the **Federal Register** Notice of Review (49 FR 21664) its first list of invertebrate animal species being considered for listing under the Act. Hine's emerald dragonfly (under the common name of Ohio emerald dragonfly) was designated a category 2* species with its range consisting of Ohio and Indiana. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. The asterisk indicated that authentic records had not been obtained since 1963 and that some of the taxa in this category were possibly extinct. The January 6, 1989, Notice of Review (54 FR 554) assigned Hine's emerald dragonfly to category 2, and on November 21, 1991, (56 FR 58804) the dragonfly was reassigned to category 1. Category 1 includes species for which the Service now possesses

sufficient information to support a listing as threatened or endangered.

On October 4, 1993, the Service published (58 FR 51604) a proposal to list Hine's emerald dragonfly as an endangered species. A notice (58 FR 64927) extending the public comment period and public hearing request deadline was published on December 10, 1993, to provide sufficient time for submission of comments and requests for public hearings. A notice of a public hearing and reopening of the comment period was published May 12, 1994 (59 FR 24678), and the public hearing was held May 25, 1994. Based on status surveys, documentation addressing the fragmented habitat, the small size and disjunct distribution of the remnant populations, and the immediacy of threats to the remnant populations, the Service determines that the species warrants protection under the Act.

Summary of Comments and Recommendations

In the October 4, 1993, proposed rule (58 FR 51604) and associated notifications, all interested parties were invited to submit factual reports or information that may contribute to the development of a final rule. The comment period was reopened and extended until January 3, 1994, (58 FR 64927) to accommodate submission of comments and requests for public hearings. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and invited to comment. Newspaper notices inviting general public comment were published in the Chicago Tribune (Chicago, Illinois) on November 10, 1993, and the Green Bay Press Gazette (Green Bay, Wisconsin) on November 10 and December 9, 1993.

A total of 50 comments, including four State agencies, one county representative, ten industrial and pest control companies, six scientific organizations and environmental group representatives, and 29 individuals, were received; 33 of those comments supported, none opposed, and 17 were neutral on the proposed action. One of the supporting comments had seven signatures, and three of the supporting comments had two signatures each.

A public hearing was requested on December 20, 1993, by Mr. Jerome M. Viste, representing the Door County Environmental Council, Incorporated, and Mr. George M. Reynolds, representing Reynolds & Company. Notices announcing the hearing were published in the Green Bay Press Gazette (Wisconsin) on May 12, 1994, the Chicago Tribune (Illinois) and the

Door County Advocate (Sturgeon Bay, Wisconsin) on May 13, 1994. The hearing was held in the General Meeting Room (A150) of the Door County Courthouse, 421 Nebraska Street, Sturgeon Bay, Wisconsin on May 25, 1994, with 27 attendees. Fifteen comments were received during the hearing. Two comments were in opposition to the listing, ten were supportive, and three were neutral. The hearing consisted of brief overviews of the Act as it pertained to the listing process, prohibited activities, permit requirements, and the status, distribution and biology of Hine's emerald dragonfly; a statement session by 13 attendees; and a question and answer session that raised 12 issues regarding the proposed listing.

Thirteen written comments were received following the **Federal Register** notice that reopened the comment period to accommodate the public hearing. Ten comments supporting, three neutral, and none opposing the listing proposal were received.

Comments updating the data presented in **SUMMARY, BACKGROUND** and **SUMMARY OF FACTORS AFFECTING THE SPECIES** are incorporated in those sections of this final rule. Written comments presented at the public hearing and those received during the comment periods with the Service's response to each are discussed in the following summary. Comments of a similar nature or point are grouped into a number of general issues.

Issue 1—How is the range of the species determined? Since recent surveys extended the range, the listing may be premature until additional habitats and additional localities are surveyed to make certain there are no additional populations.

Service Response—The range of the Hine's emerald dragonfly was determined based on the best scientific and commercial data available. The Service, in cooperation with the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin, conducted several studies to determine the status of the dragonfly. The scientists who conducted these studies first examined historical records on the distribution of the dragonfly to identify sites that were known to support the dragonfly. These sites were re-visited to determine if they still supported Hine's emerald dragonflies. Status surveys were also conducted in other midwestern States, like Michigan, that were outside of the historic range of the dragonfly, but supported potentially suitable habitat. To date, status surveys have been conducted throughout the historical range of the Hine's emerald dragonfly and elsewhere

in the midwest that had similar habitat. The Service will continue searching for the dragonfly in new locations; however, based on the best scientific and commercial data available, any new populations are likely to be small and located in highly fragmented or degraded habitats and would not change the current recommendation to list this species as endangered.

Issue 2—If listed, collection is prohibited. Listing any insect is counterproductive for those trained in dragonfly identification; a specimen is needed when gathering information on the species.

Service Response—The Act prohibits "take" of an endangered species, which includes a prohibition against collecting endangered species. However, the Act allows the Service to issue permits that allow collection for scientific purposes or to enhance the propagation or survival of listed species. The Service will work with the scientific community to develop survey techniques that do not require voucher specimens, but can issue permits to authorize voucher specimens as part of studies that contribute to improving the status of the Hine's emerald dragonfly. Procedures for obtaining such permits are found in 50 CFR 17.22 (see "Available Conservation Measures").

Issue 3—How does the Service justify spending dollars to list and enforce the endangered species activity for the Hine's emerald dragonfly which has already survived many other adverse elements? Tax dollars should be used in creating more apartments, jobs and helping the homeless.

Service Response—Although the Hine's emerald dragonfly may have survived a lot of environmental change during its history, its continued existence is now threatened by human actions that are altering the environment much faster than the environmental change the dragonfly would have experienced in the past. The Hine's emerald dragonfly depends on wetlands and spring-fed streams that feed larger bodies of water in its range; it is endangered by the destruction of those habitats and water quality degradation. Efforts to recover this species will focus on protecting its habitat and improving the quality of the water that flows into its habitat. By following Congress' direction to conserve the ecosystems on which this species depends, the Service will try to protect and improve the quality of waters in habitats that support the dragonfly. The Service believes that any such improvements in water quality will benefit not only the dragonfly, but any human populations that live near or depend on those waters as a source of

drinking water, recreational opportunity, or esthetic pleasure.

Issue 4—Designate critical habitat throughout its range and especially in the Three Springs watershed.

Service Response—Designated critical habitat are areas of habitat, land, water and air space essential to listed species for survival and recovery. On the basis of the best scientific and commercial data available, the Service must prepare an analysis that considers the economic and other impacts of any proposed designated areas. Through review of this information, the Service will conclude whether critical habitat designation is prudent and determinable. The available data has not allowed the Service to identify proposed critical habitat at this time.

Issue 5—Immediately draft a recovery plan.

Service Response—Recovery plans, in accordance with section 4(f) of the Act, are developed subsequent to a species being listed.

Issue 6—Listing would impact a State mandated mission to control mosquitoes in Illinois.

Service Response—The Service will work with State and other Federal agencies to establish guidelines and measures to avoid and minimize adverse affects to allow mosquito control programs to proceed.

Issue 7—The Service should implement an emergency rule to list the Hine's emerald dragonfly as endangered since the one metapopulation in Illinois will be compromised if listing would take a year to complete.

Service Response—Emergency listing is considered only if significant take or habitat destruction will occur prior to completing the normal listing process. A review of the existing threats to the dragonfly does not indicate that significant take or habitat destruction will occur before the effective date of this listing.

Issue 8—Will qualified, expert taxonomists be used to confirm the presence and extent of the dragonfly, so that decisions regarding the listing and protection of the dragonfly will be based on good data?

Service Response—Yes. The Service has supported investigations in Wisconsin and Illinois conducted by Dr. Everett Cashatt (Illinois State Museum) and Mr. Tim Vogt (The Nature Conservancy), who are both recognized as qualified entomologists with expertise in Odonata. They have conducted several extensive surveys and provided the Service with data that support this final rule. Additional information has also been obtained from Mr. Bill Smith of the Wisconsin

Department of Natural Resources' Bureau of Endangered Resources, as well as other qualified biologists.

Issue 9—What determines the extent of the area that will be covered by the listing? It would seem that the area should be defined as narrowly as reasonable to protect the dragonfly but not overly broad so that mosquito and other insect control work could continue as usual. This would be especially important in a large urban area like Chicago and its suburbs with its wide diversity.

Service Response—This listing will protect the Hine's emerald dragonfly in those areas it currently occurs. Within that distribution, the specific areas that need to be protected will be determined on a case-by-case basis. The Service will work with State and local insect control agencies to determine how the listing will affect their activities.

Issue 10—It is unclear what mosquito control strategies could be used within the protected habitat areas. It would be important that restrictions on the use of various pesticides and other control methods be specific and narrow, enough to protect the dragonfly but not so broad as to prevent control of mosquitoes. In particular, *Bacillus thuringiensis* ssp. *israelensis* (Bti) and methoprene have been shown to control mosquitoes with little effect on non-target organisms. It is our hope that materials like Bti, methoprene, and others with little non-target effects could continue to be used in protected habitats, and that materials be restricted only if they have a proven detrimental effect on the dragonfly nymph.

Service Response—Mosquito control measures that are known to affect only target organisms are not likely to be affected by this listing. Control measures that are not known to affect dragonflies in the Order Odonata are also not likely to be affected by this listing. Other measures will have to be evaluated on a case-by-case basis. The Service will work with State and local insect control agencies to determine how the listing will affect their activities.

Issue 11—In the event of a public health emergency, like a St. Louis encephalitis (SLE) outbreak, it would be important for escalated mosquito control measures to be instituted. These would likely include restricted measures such as mosquito adulticiding. Could some restrictions be temporarily lifted to maintain the public's health? If so, who would make those decisions and how would they be made?

Service Response—The Act includes provisions for handling emergencies. The Service will work with the

Environmental Protection Agency and appropriate States and local government agencies to outline those provisions and to establish procedures for handling emergencies that might arise.

Issue 12—What effect will the regulations have on agricultural practices?

Service Response—One practice that may be affected is pesticide use in apple and cherry orchards near the Hine's emerald dragonfly habitat. The Service, in consultation with the Environmental Protection Agency, will need to evaluate the effects of pesticide use on the Hine's emerald dragonfly.

Issue 13—This is the largest land grab in Door County, Wisconsin. Not opposed with preservation measures for the dragonfly, but it amounts to extraterritorial zoning, i.e., control of the use of another person's land without compensation.

Service Response—The Hine's emerald dragonfly is known to occur on six sites in Door County, Wisconsin. Two of those sites are currently managed by the State of Wisconsin, two of those sites are private lands managed for conservation purposes by non-profit agencies, and the remaining two sites are under private ownership. All of the sites represent aquatic habitats that are currently under the jurisdiction of the Federal Clean Water Act and State water quality law, which are intended to protect these aquatic habitats from water quality degradation and activities like dredging or filling. This listing does not change current land ownership patterns and is not likely to create additional constraints on the activities of private land owners. Instead the listing focuses attention on improvements that might be made to existing regulations. The listing will allow the Service to work with other Federal agencies to ensure that their activities do not further jeopardize the continued existence of the Hine's emerald dragonfly.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species determined to be an endangered or threatened species may 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 Hine's emerald dragonfly are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Populations of Hine's emerald dragonfly

are apparently extirpated from its historic range in Ohio and Indiana (see "Background"). No new populations were found during a 1991 status survey in Michigan. Although populations have been found in Illinois and Wisconsin, the habitats are restricted and very fragmented.

The greatest threat to the species in Illinois and Wisconsin is habitat destruction and degradation. In Wisconsin's Door County, land development by agricultural, tourist, and recreational interests pose various threats to Hine's emerald dragonfly sites. Pesticide drift and run-off from Door County's apple and cherry orchards is a potential threat. Contaminated groundwater-to-surface recharge and contaminated surface runoff may carry pesticides and other contaminants to the species' sites. Gypsy moth control has been instituted in Door County and the control measures include mass trapping and spraying of *Bacillus thuringiensis*. Although detrimental effects of these measures are not presently known, they could affect Hine's emerald dragonfly populations. There is an open highway salt storage area within 100 feet that could affect one Hine's emerald dragonfly stream site in Door County. A solid waste transfer station is being considered for development near another site. Beaver are common in both Door County and Illinois, and their impoundments may possibly alter the microhabitat of the aquatic dragonfly nymphs. Studies will need to be conducted to determine the impacts.

In Illinois, the remaining sites for the Hine's emerald dragonfly are located in Cook, DuPage, and Will Counties. These three counties are in the Chicago metropolitan area and represent the fastest-growing counties in that area. The sites in these counties are already highly fragmented and are further threatened by urban and industrial development. Industrial development in the immediate vicinity of the sites includes a petroleum refinery, a sewage treatment plant, rock quarries, an electrical power plant, and an asphalt plant. These types of facilities have the potential to degrade surface water, ground water, and air quality in the vicinity of Hine's emerald dragonfly sites. Degraded ground water quality is a particular concern because the sites that support the dragonfly receive water from seeps and springs. A proposed quarrying operation that would eliminate an entire population, the proposed highway FAP-340 (an extension of Interstate 355), and other roadway expansion activities in the Hine's emerald dragonfly foraging sites

in Illinois also threaten the species' habitat. A variety of other developments in this rapidly-growing area are in various stages of planning and execution that threaten the dragonfly's habitat.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Overutilization is not believed to be a factor in the species' continued existence, but the Federal protection under the Act will prohibit unauthorized collection of individuals of the species. Protection from collection may become important because collectors may seek the species.

C. Disease or predation. The importance of these factors is presently unknown.

D. The inadequacy of existing regulatory mechanisms. The stream and aquatic habitat of the Hine's emerald dragonfly is within the jurisdiction of the Clean Water Act that established various regulatory mechanisms to protect surface and ground water from the effects of point and non-point discharges. Section 404 of the Clean Water Act, which is administered by the U.S. Army Corps of Engineers in conjunction with the U.S. Environmental Protection Agency, established a regulatory program to protect waters of the United States from the adverse effects of filling. The States of Illinois, Indiana, Ohio, and Wisconsin administer similar programs to protect surface and ground water quality. Despite these Federal and State regulatory mechanisms, the aquatic habitat of the Hine's emerald dragonfly was apparently extirpated in Ohio and Indiana, although the dragonfly may have been extirpated prior to the creation of these programs. Nevertheless, Federal and State regulations appear to be only partially effective in preventing the loss and degradation of the aquatic habitats of the Hine's emerald dragonfly. This listing will enhance the level of protection those aquatic habitats and the dragonfly receive through those programs.

E. Other natural or manmade factors affecting its continued existence. Automobile impact is a threat where sites occur near roadways due to adult dragonflies hovering, and in some areas the dragonflies are known to fly across roadways to reach foraging habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining this final rule. Based on this evaluation, the preferred action is to list Hine's emerald dragonfly as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is endangered or threatened. Service regulations (50 CFR 424.12 (a)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

The Service finds that designation of critical habitat for the Hine's emerald dragonfly is not determinable at this time. When a "not determinable" finding is made, the Service must, within two years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent (50 CFR 424.17(b)(2)).

The Service will initiate a concerted effort to obtain the information needed to determine critical habitat for the Hine's emerald dragonfly. Wisconsin Department of Natural Resources is willing to work closely with the Service to conduct studies to evaluate if designation of critical habitat is determinable. A proposed rule for critical habitat designation must be published in the **Federal Register**, and the notification process and public

comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under Section 4(b)(2) of the Act.

The presently known populations of this species are located on fragmented and degraded wetland habitats. The size, location, area, spatial configuration, and composition of specific areas essential to the conservation of the Hine's emerald dragonfly or which may require special management considerations or protection cannot be determined without further study.

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 actions by Federal, State, and local agencies, private organizations, 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. 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)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

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 capture, harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The July 1, 1994, policy of the Service (59 FR 34272) requires identification of those activities that would or would not constitute a violation of section 9 of the Act, to the maximum extent practicable at the time a species is listed. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

The Service believes that, based on the best available information, the following are actions that will not result in a violation of section 9:

(1) Possession of legally acquired Hine's emerald dragonflies; and

(2) Federally approved projects that include, but are not limited to, activities, such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of wetlands (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.)—when such activity is conducted in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the Hine's emerald dragonfly and result in "take", include, but are not limited to:

(1) Unauthorized collecting or handling of the species;

(2) Unauthorized destruction/alteration of the species' habitat (i.e., discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration or contamination of surface or ground water flow into or out of wetlands (i.e., due to roads, impoundments, discharge pipes, stormwater retention basins, etc.);

(3) Burning, cutting or mowing of wetland vegetation, if conducted in an untimely or inappropriate manner (e.g., when dragonflies would be killed or injured or their occupied habitat would be degraded or rendered unsuitable);

(4) Pesticide application in or near occupied wetland that results in the destruction, alteration or contamination of the species' aquatic habitat;

(5) Herbicide or fertilizer application in or near occupied wetlands that results in the destruction or alteration of existing wetland vegetation—that is, which kills vegetation upon which the Hine's emerald dragonfly depends, or causes nutrient enrichment which encourages the growth of invasive exotic plants;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil and gasoline) into waters used by the species; and

(7) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit.

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, and/or for incidental take in connection with otherwise lawful activities.

Questions regarding whether specific activities, such as collecting, burning, mowing or pesticide application, will constitute a violation of section 9 should be directed to the Field supervisor of the appropriate Service, Ecological Services Field office as follows: in Illinois, the Chicago Field Office, 1000 Hart Road, Suite 180, Barrington, IL 60010 (708/381-2253); and, in Wisconsin, the Green Bay Field Office, 1015 Challenger Court, Green Bay, WI 54311 (414/433-3803). Requests for copies of the regulations regarding listed wildlife, and inquiries about prohibitions and permits may be addressed to Chief, Division of Endangered Species (see Addresses section).

The known Hine's emerald dragonfly populations are threatened by a highway project and a proposed quarrying operation in Illinois, and potentially threatened by commercial development and orchard pesticide spraying in Wisconsin. Due to the need to make Federal funding, protection, and other measures immediately available to protect this species and its habitat, the Service finds good cause in accordance with 5 U.S.C. 553 (d)(3), to make this final rule effective upon publication.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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 Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Vogt, T.E., and E.D. Cashatt. 1991. The Wisconsin 1991 Status Survey for the Hine's Emerald Dragonfly (*Somatochlora hineana* Williamson). Report prepared for the U.S. Fish and Wildlife Service by the Wisconsin Department of Natural Resources, Madison, WI and the Illinois State Museum, Springfield, IL. 11pp.

Williamson, E.B. 1931. A new North American *Somatochlora* (Odonata: Corduliidae). Occasional Papers of the Museum of Zoology. University of Michigan. 225: 1-8.

Author

The primary author of this final rule is Carlita Shumate (see ADDRESSES

section). This final rule was edited by Amelia Orton-Palmer, U.S. Fish and Wildlife Service, Ecological Services Field Office, 1000 Hart Road, Suite 180, Barrington, Illinois 60010, (708) 381-2253 and Catherine Carnes, U.S. Fish and Wildlife Service, Ecological Services Field Office, 1015 Challenger Court, Green Bay, Wisconsin 54311, (414) 433-3803. Everett D. Cashatt, Zoology Section, Illinois State Museum, Springfield, Illinois 62706, (217) 782-6689 and Timothy E. Vogt, The Nature Conservancy, Rte.1, Box 53E, Ullin, Illinois 62992 (618) 634-9445, provided substantial information.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Insects to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	
INSECTS							
*	*	*	*	*		*	
Hine's emerald (Ohio emerald dragonfly).	<i>Somatochlora hineana</i> .	U.S.A. (IL, IN, OH, & WI).	NA	E	573	NA	NA
*	*	*	*	*		*	

Dated: January 6, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95-1983 Filed 1-25-95; 8:45 am]

BILLING CODE 4310-55-P