

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 17, 2011.

Karl Brooks,

Regional Administrator, Region 7.

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2011-0084;
92220-1113-0000; ABC Code: C6]

RIN 1018-AH53

Endangered and Threatened Wildlife and Plants; Delisting of the Plant *Frankenia johnstonii* (Johnston's frankenia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reopening the comment period on the May 22, 2003, proposed rule to remove the plant *Frankenia johnstonii* (Johnston's frankenia) from the List of Endangered and Threatened Plants (List) under the Endangered Species Act of 1973, as amended (Act). Comments submitted during the 2003 comment period will be considered and do not need to be resubmitted now. However, we invite comments on the new information presented in this announcement relevant to our consideration of the status of *F. johnstonii*. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information. We are also making available for public review the Draft Post-Delisting Monitoring Plan for *F. johnstonii*.

DATES: To ensure that we are able to consider your comments and information, we request that we receive them no later than December 27, 2011. Please note that, if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date. We may not be able to address or

incorporate information that we receive after the above requested date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 9, 2011.

ADDRESSES: Electronic copies of the 2003 proposed delisting of the plant *Frankenia johnstonii* (Johnston's frankenia), comments received on that proposal, and the Draft Post-Delisting Monitoring Plan for *Frankenia johnstonii* can be obtained from the Web sites <http://www.regulations.gov> or <http://www.fws.gov/southwest/es/Library/>. Also, you may submit comments and information by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS-R2-ES-2011-0084. Choose the Action that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS-R2-ES-2011-0084; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all comments and information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

FOR FURTHER INFORMATION CONTACT: Michelle Shaughnessy, Assistant Regional Director, Ecological Services, Southwest Regional Office, P.O. Box 1306, Albuquerque, NM 87103, by telephone (505-248-6671), or by facsimile (505-248-6788). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Previous Federal Actions**

Frankenia johnstonii was listed August 7, 1984 (49 FR 31418), as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). At the time *F. johnstonii* was listed, we determined that designation of critical habitat was not prudent because if localities were published in the **Federal Register**, the species might be additionally threatened by taking and vandalism. A recovery plan was completed for *F. johnstonii* in 1988 (<http://ecos.fws.gov/docs/>

[recovery_plan/880524.pdf](http://ecos.fws.gov/docs/recovery_plan/880524.pdf)), but it did not quantify criteria for downlisting or delisting due to a lack of knowledge about the species (Service 1988, p. 14). Threats identified in the recovery plan were the small number of individuals, the restricted distribution, the low reproductive potential, and the impacts of heavy grazing and land management practices, such as road construction or maintenance and bulldozing of woody vegetation (Service 1988, p. 11).

Since the recovery plan was completed, our knowledge of *F. johnstonii* has greatly increased. Based on what we learned about the species' known range, the number of newly discovered populations, the life history requirements of this species, clarification of the degrees of threats, and the protection offered by several landowners who control those populations, we proposed delisting the *F. johnstonii* on May 22, 2003 (68 FR 27961), due to recovery. Please see the May 22, 2003 (68 FR 27961), proposed delisting rule (also posted on our Web sites) for a detailed analysis of factors affecting the species. Because of the amount of time that has lapsed since the 2003 delisting proposal, we are reopening the public comment period for that proposal, and inviting comment on new information presented in this announcement as well as on the draft post-delisting monitoring plan for Johnston's frankenia (*Frankenia johnstonii*).

Background

In this document, we will only discuss new information pertinent to the proposed delisting of *Frankenia johnstonii*. For a more detailed description of *F. johnstonii*, its current status and its threats, please refer to the May 23, 2003, proposed rule to delist the species (68 FR 27961 and posted on our Web sites with this docket; see **ADDRESSES** above) and the recovery plan (http://ecos.fws.gov/docs/recovery_plan/880524.pdf).

At the time of listing *F. johnstonii*, 5 populations were known, 4 in Texas and 1 in Mexico, and the total number of individual plants was estimated to be approximately 1,500. Threats to the species at the time of listing were considered to be small number of plants, their restricted distribution, the impacts of grazing on them, and low reproductive potential (49 FR 31418).

The May 22, 2003 (68 FR 27961), proposal to remove *Frankenia johnstonii* from the List of Endangered and Threatened Plants was based on results of field work conducted between 1993 and 1999 that included extensive population surveys, landowner

outreach, and biological and ecological research. The culmination of these efforts showed *F. johnstonii* to be much more widespread and abundant than was known at the time of listing (Janssen 1999, pp. 5–160). Research results also helped to alleviate concerns about threats associated with the species' low reproductive potential and competition from nonnative, invasive grasses (Janssen 1999, pp. 161–166, 208–212). In addition, the Texas Parks and Wildlife Department had already negotiated signed, voluntary conservation agreements with private landowners that helped to ensure habitat integrity for a number of the populations into the future. Since 2003 several other landowners have signed agreements as well.

Frankenia johnstonii is endemic to Webb, Zapata, and Starr Counties in southern Texas and an adjacent area in northeastern Mexico. The range of *F. johnstonii* in Texas is currently estimated at approximately 2,031 square miles (5,260 square kilometers), extending from northwestern Webb County on the north, to central Starr County at the species' most southern distribution point (Janssen 1999, p. 4; Price *et al.* 2006, pp. 2–3). The results of status surveys have dramatically increased the known numbers of individual plants, from approximately 1,500 at the time of listing in 1984 to greater than 4 million in 1999 (Janssen 1999, pp. 5–160). Based on earlier reviews of Janssen's 1999 data, we initially estimated the number of individuals around 9 million and stated this in the 2003 proposed rule (68 FR 27961). However, after more thorough review of Janssen's 1999 data, we estimate the number of individual plants to have been greater than 4 million at that time (Janssen 1999, pp. 5–160). In addition, 58 U.S. populations were reported in 1999 (Janssen 1999, p. 8). Additional populations have been discovered subsequently.

For a summary of factors affecting the species, please refer to the May 23, 2003, proposed rule to delist the species (68 FR 27961). We conclude that new data have clarified the significance of threats to the species, and several large populations are now covered under signed voluntary conservation agreements with Texas Parks and Wildlife Department or under conservation management agreements between the landowner and the Nature Conservancy of Texas. Taken together this information leads to the conclusion that the potential impacts due to destruction or modification of habitat are significantly reduced. After reviewing the status of the species, we

determine that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

During the comment period following the May 23, 2003, proposed rule to delist the species (68 FR 27961), we received comments from four independent biologists with expertise in the ecology of *Frankenia johnstonii*. The comments from those peer reviewers will be considered and incorporated as appropriate into our final determination on the status of the species. In addition, we will also request peer review of the draft post-delisting monitoring plan.

New Information

The majority of relevant information that has become available since our 2003 proposal to delist *Frankenia johnstonii* has resulted from additional surveys that documented new populations (Price *et al.* 2006, pp. 1–3; Janssen 2007, pers. comm.). From 2003 to 2006, Price *et al.* (2006, pp. 1–3) surveyed for several rare south Texas plants, including *F. johnstonii*. Additional *F. johnstonii* populations were located in Webb, Zapata, and Starr Counties, Texas, although measurements of these populations, including areal extent and numbers of plants, were not collected (Price *et al.* 2006, p. 10 in Attachment B and pp. 2–5 in Attachment C). Subsequently, G. Janssen conducted a 2007 survey on a ranch in southern Starr County, north of Escobares, where new populations of *F. johnstonii* were documented (Janssen 2007, pers. comm.). Also, The Nature Conservancy (TNC) conducted surveys on a Webb County ranch (adjacent to the most northern known population) in 2007, where new populations of *F. johnstonii* were also found (Janssen 2010, pp. 5–6). Adding these newly documented populations to those described in Janssen's 1999 report brings the total number of known populations in Texas to approximately 84, depending on whether some occurrences constitute separate populations or are instead scattered subpopulations of one or more metapopulations.

Beyond documenting new populations, climate change was not analyzed in the 2003 proposal to delist. Although climate change may be a concern for many sensitive species, we do not believe it will have much of an impact on *Frankenia johnstonii* either now or into the foreseeable future. According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 5), "Warming of the climate system is

unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level." The average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 5). It is very likely that over the past 50 years, cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 8). Data suggest that heat waves are occurring more often over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, pp. 8, 15). The IPCC (2007, pp. 12, 13) predicts that changes in the global climate system during the 21st century will very likely be larger than those observed during the 20th century. For the next 2 decades a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 12).

In addition, Seager *et al.* (2007, p. 1181) showed that there is a broad consensus among climate models that southwestern North America will get drier in the 21st century and that the transition to a more arid climate is already under way. Only 1 of 19 models has a trend toward a wetter climate in the Southwest (Seager *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models, and all but 3 predicted a shift to increasing aridity (dryness) in the Southwest as early as 2021 to 2040 (Seager *et al.* 2007, p. 1181). These research results indicate that southwestern North America can be expected to be hotter and drier in the future.

Nevertheless, we believe that increasing global temperatures and drought conditions will likely have little impact on *Frankenia johnstonii* because this species is well adapted to the warm, arid landscape of south Texas. In fact, it may be reasonable to assume that climate change may actually benefit *F. johnstonii* by making the landscape more arid, thus reducing competition with other less physiologically adapted plants. However, we lack sufficient certainty to know specifically how climate change will affect the species. We have not identified, nor are we aware of, any data on an appropriate scale to evaluate habitat or population trends for the *F. johnstonii* within its range, or to make predictions on future trends and whether the species will actually be impacted. We lack predictive local or regional models on how climate change will specifically

affect the *F. johnstonii* or its habitat, and we have no certainty regarding the timing, magnitude, or effects of impacts. Therefore, based on the best available information, we do not consider climate change to be a threat to the *F. johnstonii* now or in the foreseeable future.

In summary, based on our analysis of the new information that has become available since our original 2003 proposal to delist *Frankenia johnstonii*, we continue to believe that the data supporting the original classification were incomplete and that new data have clarified the significance of threats to the species. Moreover, the signing of voluntary conservation agreements or conservation management agreements for a number of populations indicates landowner interest in conservation of the species and their intent to protect the species and its habitat has significantly reduced potential impacts due to destruction or modification of habitat. After reviewing the status of the species, we determine that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that the species remains secure from risk of extinction after it has been removed from the protections of the Act. The PDM is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

The Service has developed a draft PDM plan for *Frankenia johnstonii* in cooperation with the TPWD, U.S. International Boundary and Water Commission, TNC, and the Texas

Department of Transportation. The PDM plan is designed to verify that *F. johnstonii* remains secure from risk of extinction after removal from the list of endangered species. With this notice, we are soliciting public comments and peer review on the draft PDM plan. All comments on the draft PDM plan from the public and peer reviewers will be considered and incorporated into the final PDM plan as appropriate.

The following is a brief summary of the draft PDM plan. Please see the plan, available at <http://www.fws.gov/southwest/es/Library/or http://www.regulations.gov>, for more details. In essence, the PDM plan for the *Frankenia johnstonii* will be implemented for 9 years, and will include habitat evaluation using remote sensing of 20 populations and on-site monitoring of 10 populations. Habitat assessments with remote sensing will occur about every 2 or 3 years, depending on when updated aerial photography is available. Onsite assessments will be conducted in the fall every 3 years for a total of three visits during the 9-year PDM period. Potential impacts to the species are habitat loss from vegetation clearing associated with construction of roads and buildings for residential and commercial development, and clearing and construction associated with oil and gas development (seismic exploration and road, pipeline, and well pad construction). A site visit will be triggered from remote sensing analysis when a 30 percent loss of habitat is detected within any monitored polygon when compared to 2008 baseline data. A second way to trigger site visits is if the overall area being assessed shows a habitat loss of 30 percent or more compared to the 2008 baseline.

If onsite monitoring reveals any cause for concern, such as reduced numbers of plants or decreased extent of a population, a more comprehensive ground assessment of the monitored populations, or addition of extra monitoring sites, may be necessary. If monitoring concerns become sufficiently high, we will conduct a full status review of the species to determine if relisting is warranted.

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and will be as accurate and effective as possible. To ensure our determination is based on the best available scientific and commercial information, we request information on the *Frankenia johnstonii* from governmental agencies, Native

American Tribes, the scientific community, industry, and any other interested parties. We request comments or suggestions on our May 22, 2003 (68 FR 27961), proposal to delist the *F. johnstonii*, on the new information presented in this **Federal Register** notice, on the draft post-delisting monitoring plan for *F. johnstonii*, and on any other information. Specifically, we seek information on:

(1) The species' biology, range, and population trends, including:

(a) Life history, ecology, and habitat use of the *F. johnstonii*;

(b) Range, distribution, population size, and population trends;

(c) Positive and negative effects of current and foreseeable land management practices on *F. johnstonii*, including conservation efforts.

(2) The factors, as detailed in the May 22, 2003 (68 FR 27961), that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(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; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The draft post-delisting monitoring plan.

You may submit your information concerning this status review by one of the methods listed in **ADDRESSES**. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and supporting documentation that we received and used in preparing this proposal and other listing determinations for the species, will be available for you to review at <http://www.regulations.gov>, or you may make an appointment during normal business hours at the Service's Southwest Regional Office, Ecological Services Division (see **FOR FURTHER INFORMATION CONTACT**).

If you submitted comments or information previously on the May 22, 2003, proposed rule (68 FR 27961), please do not resubmit them. These comments have been incorporated into the public record and will be fully considered in the preparation of our final determination.

The Service will finalize a new listing determination after we have completed our review of the best available scientific and commercial information, including information and comments submitted during this comment period.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Service's Southwest Regional Office, Ecological Services (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is staff of the Service's Southwest Regional Office, Ecological Services (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 12, 2011.

Gregory E. Siekaniec,

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

[FR Doc. 2011-27372 Filed 10-24-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217097-0101-01]

RIN 0648-AY22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) to the Reef Fish Resources, Red Drum,

Shrimp, and Coral and Coral Reefs Fishery Management Plans for the Gulf of Mexico (FMPs) as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would allow management of selected species by other Federal and/or state agencies; remove species not currently in need of Federal management from the FMPs; develop species groups; modify framework procedures; establish annual catch limits (ACLs); and establish accountability measures (AMs). The intent of this rule is to specify ACLs for species not undergoing overfishing while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: Written comments must be received on or before November 18, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2011-0143" by any of the following methods:

- **Electronic submissions:** Submit electronic comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, click on "submit a comment," then enter "NOAA-NMFS-2011-0143" in the keyword search and click on "search." To view posted comments during the comment period, enter "NOAA-NMFS-2011-0143" in the keyword search and click on "search." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of the Generic ACL Amendment, which includes a final environmental impact statement (FEIS), an initial regulatory flexibility analysis

(IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727-824-5305; e-mail: Rich.Malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for reef fish, red drum, shrimp, and coral and coral reefs of the Gulf of Mexico (Gulf) are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The 2006 revisions to the Magnuson-Stevens Act require that by 2011, for fisheries determined by the Secretary of Commerce (Secretary) to not be subject to overfishing, NMFS establish ACLs and AMs at a level that prevents overfishing and helps to achieve OY. This mandate is intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Management Measures Contained in This Proposed Rule

By removing selected stocks from certain FMPs, this rule would defer to other entities management of those stocks. The rule would also remove 10 species that do not require conservation and management from the Reef Fish FMP; create and revise the species groupings for reef fish; modify the framework procedures; and establish ACLs and AMs for the required species within the Generic ACL Amendment.

Defer to Other Entities Management of Selected Stocks

Some stocks currently managed by FMPs are uncommon in Gulf Federal waters. These stocks are also primarily harvested within areas under the jurisdiction of the South Atlantic Fishery Management Council (South Atlantic Council). National Standard 7 of the Magnuson-Stevens Act states that, to the extent practicable, conservation and management measures shall avoid unnecessary duplication. The proposed rule would remove Nassau grouper from the Reef Fish FMP, and the Council will request that the Secretary designate the South Atlantic Council as the responsible council for Nassau grouper.