12. It is further ordered that, pursuant to sections 4, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, and sections 1.106 and 1.429 of the Commission's rules, 47 CFR 1.106, 1.429, that the petition for reconsideration filed January 26, 2001, by Sprint Corporation is denied.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–1567 Filed 1–22–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF68

Endangered and Threatened Wildlife and Plants; Endangered Status for *Carex lutea* (Golden Sedge)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine endangered status for *Carex lutea* (golden sedge) under the authority of the Endangered Species Act of 1973, as amended (Act). This rare plant is presently known from only eight populations (one population is made up of two subpopulations) in Pender and Onslow Counties, North Carolina. *Carex lutea* is endangered throughout its range because of habitat alteration; conversion of its limited habitat for residential, commercial, or industrial development; mining; drainage activities associated with silviculture and agriculture; and suppression of fire. In addition, herbicide use, particularly along utility or road rights-of-way, may also be a threat. This action extends the protection of the Act to *C.* lutea.

DATES: This rule is effective February 22, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Ratzlaff at the above address (828/258–3939, extension 229).

SUPPLEMENTARY INFORMATION:

Background

Carex lutea (LeBlond) is a perennial member of the sedge family (Cyperaceae) known only from North Carolina. Fertile culms (stems) may reach one meter (39 inches (in)) or more in height. The yellowish green leaves are grasslike, with those of the culm mostly basal and up to 28 centimeters (cm) (11 in) long, while those of the vegetative shoots reach a length of 65 cm (26 in). Fertile culms produce two to four flowering spikes (multiple flowering structure with flowers attached to the stem), with the terminal (end) spike being male and the one to three (usually two) lateral spikes being female. Lateral spikes are subtended by leaflike bracts (a much-reduced leaf). The male spike is about 2 to 4 cm (0.8 to 1.6 in) long, 1.5 to 2.5 millimeters (mm) (0.06 to 0.12 in) wide, with a peduncle (stalk) about 1 to 6 cm (0.4 to 2.4 in) long. Female spikes are round to elliptic, about 1 to 1.5 cm (0.4 to 0.6 in) long and 1 cm (0.4 in) wide. The upper female spike is sessile (not stalked; sitting), while lower female spikes, if present, have peduncles typically 0.5 to 4.5 cm (0.2 to 1.8 in) long. When two to three female spikes are present, each is separated from the next, along the culm, by 4.5 to 18 cm (1.8 to 7.1 in). The inflated perigynia (sac that encloses the ovary) are bright yellow at flowering and about 4 to 5 mm (0.16 to 0.20 in) long; the perigynia beaks (point) are out-curved and spreading, with the lowermost in a spike strongly reflexed (turned downward). *Carex lutea* is most readily identified from mid-April to mid-June during flowering and fruiting. It is distinguished from other *Carex* species that occur in the same habitat by its bright yellow color (particularly the pistillate (female) spikes), by its height and slenderness, and especially by the out-curved beaks of the crowded perigynia, the lowermost of which are reflexed (LeBlond *et al.* 1994).

LeBlond *et al.* described *Carex lutea* in 1994 from specimens collected in 1992 in Pender County, North Carolina. It is the only member of the *Carex* section *Ceratocystis* found in the southeastern United States.

Carex lutea grows in sandy soils overlying coquina limestone deposits, where the soil pH is unusually high for this region, typically between 5.5 and 7.2 (Glover 1994). Soils supporting the species are very wet to periodically shallowly inundated. The species prefers the ecotone (narrow transition zone between two diverse ecological communities) between the pine savanna and adjacent wet hardwood or hardwood/conifer forest (LeBlond 1996; Schafale and Weakley 1990). Most plants occur in the partially shaded savanna/swamp where occasional to frequent fires favor an herbaceous ground layer and suppress shrub dominance. Other species with which this sedge grows include tulip poplar (*Liriodendron tulipifera*), pond cypress (*Taxodium ascendens*), red maple (*Acer rubrum* var. *trilobum*), wax myrtle (*Myrica cerifera* var. *cerifera*), colic root (*Aletris farinosa*), and several species of beakrush (*Rhynchospora* spp.). At most sites, *C. lutea* shares its habitat with Cooley's meadowrue (*Thalictrum cooleyi*), federally listed as endangered, and with Thorne's beakrush (*Rhynchospora thornei*), a species of management concern. All known populations are in the northeast Cape Fear River watershed in Pender and Onslow Counties, North Carolina. As stated by LeBlond (1996):

> * * * localities where *Carex lutea* have been found are ecologically highly unusual * * * The combination of fairly open conditions underlain by a calcareous substrate is very rare on the Atlantic coastal plain. Many rare plant species are associated with these localities, and several have very restricted distributions, either being endemic to a small area or with a few highly scattered occurrences. The affinities of these taxa are variable, but include connections to the calcareous savannas of the Gulf Coast States; alkaline marshes of the Atlantic tidewater; calcareous glades, barrens, and prairies of the Appalachian region and the ridge and valley province of Georgia and Alabama; and pinelands of the Carolinas and southern New Jersey.

These rare savannas, underlain by calcareous deposits, support unusual assemblages of plants, including several species known from less than a dozen sites worldwide (Schafale 1994). LeBlond (1996) characterizes these habitats as ''a small archipelago of phytogeographic islands'' that form a refuge for these rare and unique species. Despite extensive searches of the Gulf Coast in northern Florida and southern Alabama, and Atlantic Coast sites in South Carolina, Georgia, and Florida, no other populations of *Carex lutea* were found outside the North Carolina coastal plain. The species appears to be a very rare endemic, narrowly restricted to an area within a 3.2 kilometer (2-mile) radius of the Onslow/Pender County line in southeastern North Carolina (LeBlond 1996). It is listed as endangered by the State of North Carolina (Amoroso and Weakley 1995; M. Boyer, North Carolina Department of Agriculture, personal communication, 1998).

Previous Federal Activities

Federal Government actions on this species have only recently begun because the species was unknown to science before 1991 and its official description was not published until 1994. In 1995, we funded a survey to determine the status of *Carex lutea* throughout its known and potential range; we accepted the final report on this survey in 1997. A 1998 status report confirmed the species' precarious status (LeBlond 1998). We elevated *C. lutea* to candidate status (species for which we have sufficient information on status and threats to propose the taxon for listing as endangered or threatened) on October 16, 1998. On August 16, 1999, we proposed the species for listing as endangered (64 FR 44470).

Our final rule would have been due on August 16, 2000. However, we were forced to cease our work on the rule because compliance with outstanding court orders, judicially approved settlement agreements, and litigation related activities required all remaining fiscal year 2000 funds and exhausted the entire fiscal year 2001 budget that Congress appropriated for completing listings and critical habitat designations pursuant to section 4 of the Act. The Director of the Service issued a memo on November 17, 2000, directing all Regions to immediately halt listing actions not under court order or settlement agreement.

The Service and several conservation organizations have reached an agreement that will enable us to complete work on evaluations of numerous species proposed for listing under the Act. This final rule is made in accordance with a judicially approved settlement agreement, which requires us to submit for publication in the **Federal Register** a final listing determination for the golden sedge on or before January 26, 2002.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we provided copies of the proposed rule to five independent specialists in order to solicit comments on the scientific or commercial data and assumptions relating to the supportive biological and ecological information for *Carex lutea.* The purpose of such review is to ensure that the listing decision is based on the best scientific and commercial information available, as well as to ensure that reviews by appropriate experts and specialists are included into the review process of rulemakings. Although solicited, none of the five reviewers provided comments on the proposed rule.

Summary of Comments and Recommendations

In the August 16, 1999, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties and requested them to comment. We published a newspaper notice inviting public comment in the *Wilmington Journal* (North Carolina) on August 26, 1999.

We received one comment, from the North Carolina Department of Environment and Natural Resources, that expressed support for listing, and concurred with our conclusion in the proposed rule that designation of critical habitat would not be beneficial for golden sedge because of the plant's extreme rarity.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Carex lutea* should be classified as an endangered species. We followed procedures found in section 4 of the Act and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *C. lutea* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Seven of the eight known populations of *Carex lutea* are on privately owned land and are threatened with the destruction or adverse modification of their habitat from residential, commercial, or industrial development; clay mining; drainage activities associated with silviculture and agriculture; and suppression of fire. The eighth population, on land now owned by the North Carolina Department of Transportation (NCDOT), was severely disturbed in the 1980s by clearcutting, ditching, and draining prior to NCDOT ownership. This site has been purchased by the NCDOT as a mitigation site and is currently under study for the restoration of natural communities and protection and enhancement of rare species populations. At least some of the original *C. lutea* plants survived the previous damage to the site, and the remaining population appears stable.

As described in the ''Background'' section, the habitat upon which this species depends is extremely rare. Most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters (624 square feet). Three of the sites have populations composed of fewer than 50 individuals. Although little is known about natural population fluctuations in this species, severe population declines (exceeding 83 percent) were noted between 1992 and 1996 at three of the eight remaining sites. The exact causes for these losses are unknown. One population is on a roadside, and all of one population and part of another are on power line rights-of-way, where they are exceptionally vulnerable to destruction from highway expansion or improvement or herbicide application. All the known sites have been damaged to some degree in the past by ditching and drainage, mining, logging, bulldozing, right-of-way maintenance, or road building. Because the species was only recently discovered, knowing exactly what its historic distribution and population numbers might have been is not possible. However, LeBlond (1996) states: ''It is probable that drainage ditches (that lower the water table over a large area) have reduced, perhaps greatly, the amount of suitable habitat available for *Carex lutea* and other rare species at these sites.''

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial trade in *Carex lutea* at this time. However, because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity. Most populations are too small to support even the limited collection of plants for scientific or other purposes.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Carex lutea* is listed by the State of North Carolina as endangered. As such, it is afforded legal protection within the State by North Carolina General Statutes, §§ 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provide for protection from intrastate trade (without a permit) and for the monitoring and management of State-listed species and prohibit the taking of plants without a permit and written permission from the landowner. However, State prohibitions against

taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Two of the sites are somewhat protected by registry agreements between the landowner and the North Carolina Natural Heritage Program. These agreements are strictly voluntary, however, and may be canceled by the landowner at any time. Although part of another population is owned by The Nature Conservancy (TNC), this population is adjacent to a quarry. Activities in the quarry may alter the hydrology of the area occupied by *C. lutea* and thus pose a threat to this population. Portions of the population not owned by TNC are also vulnerable to destruction by timber harvesting and fire suppression.

Section 404 of the Clean Water Act represents the primary Federal law that may provide some regulation of the species' wetland habitats. However, the Clean Water Act by itself does not provide adequate protection for the species. Although the objective of the Clean Water Act is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (33 U.S.C. 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, the Corps may issue nationwide permits for certain activities that are considered to have minimal impacts. However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. The Corps may also authorize activities by an individual or regional general permit when the project does not qualify for authorization under a nationwide permit. These projects include those that would result in more than minimal adverse environmental effects, either individually or cumulatively, and are typically subject to more extensive review. Whatever the type of permit deemed necessary under section 404, rare species such as *Carex lutea* may receive no special consideration regarding conservation or protection unless they are listed under the Act.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the ''Background'' section of this final rule, most of the remaining populations are small in numbers of individuals and in area covered by the plants. This may suggest low genetic variability within populations, making it more important to maintain as much habitat and as many remaining colonies as possible.

Little is known about the life history of this species or about its specific environmental requirements. However, its apparent restriction to wet pine savannas is a strong indication that it is adapted to the pyric (associated with burning) and hydrological conditions associated with this community type. Such habitats were historically exposed to wildfires approximately every 3 to 5 years, usually during the growing season, which maintained the open habitats favored by *Carex lutea* and dozens of other fire-adapted species. During winter and spring, the soils where *C. lutea* grows are often shallowly flooded. At other times of the year these sites are very wet to saturated. Such high water tables also serve to control woody growth in undisturbed savanna habitats. However, without regular fire, which has been intensively suppressed on the Atlantic coastal plain for half a century, and with the lowering of water tables due to ditching, the open savannas are rapidly changing to dense thickets dominated by the trees and shrubs of the adjacent uplands. As a result, the extraordinary plant diversity characteristic of the savannas is being eliminated, and species such as *C. lutea* are disappearing from the landscape. Even where such habitat is owned by an organization that is able to manage the land with prescribed fire, like TNC, increasingly restrictive smoke management regulations make burning very difficult.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this determination. Based on this evaluation, we find it appropriate to list *Carex lutea* as an endangered species. Endangered status is more appropriate than threatened status because of the following factors—this species occurs in only 2 counties; only 8 populations survive, all of which have already been damaged to some degree; most of the remaining populations are very small, with five of the eight occupying a combined total area of less than 58 square meters (624 square feet); three of the remaining populations are composed of fewer than 50 individuals; there are documented severe population declines (exceeding 83 percent) between 1992 and 1996 at three of the eight remaining sites; and all of the remaining populations are currently threatened by fire suppression, highway expansion, right-of-way management with herbicides, drainage ditching, or a combination thereof.

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 geographic area occupied by a species at the time it is listed, upon a determination that such areas are 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 any critical habitat at the time the species is listed as endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The designation of critical habitat does not, in itself, restrict State or private activities within the area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and describing the features within those areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the Act, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., activities authorized, funded, or conducted by a Federal agency) and does not affect exclusively State or private activities.

Under the Act's section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that ''appreciably diminish the value of critical habitat for

both the survival and recovery'' of the species (50 CFR 402.02). Whether or not there is a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that ''reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery'' of the species (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' currently occupied range have been designated. In these cases, Federal agencies are required to consult with us (50 CFR 402.14(a)) when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

Theoretically, a designation of critical habitat provides Federal agencies with a clearer indication as to when consultation under section 7 is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when or where golden sedge is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 consultation requirements (i.e., activities that may affect essential features of the designated area). For example, a project some distance away that depleted the groundwater in the aquifers that feed the wetland habitat of golden sedge, or otherwise affected an essential feature of the designated habitat, would be subject to the provisions of section 7 of the Act.

In the proposed rule, we found that designation of critical habitat for *Carex lutea* was not prudent because of the increased risks to the species associated with disclosing specific locations, and because such a designation would not be beneficial to the species. As to increased risks, we determined that because most populations of this species were small, the loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Although taking without a permit is prohibited by the Act from locations under Federal jurisdiction, none of the known populations are located on Federal land. Therefore, we believed that publication of critical habitat descriptions and maps would increase the vulnerability of the species to collection, but would not increase its protection under the Act. In fact, the contractor we hired to conduct the rangewide status survey declined to include directions to the occupied sites in his report, stating: ''Due to the extreme rarity of *Carex lutea* and its vulnerability to extinction, a description of site boundaries or precise directions to population micro sites cannot be provided here'' (LeBlond 1996).

In determining in the proposed rule that designation of critical habitat would not benefit the golden sedge, we first noted that all but one of the remaining populations of golden sedge occur on land that is in private ownership, with the other site owned by the NCDOT. In other words, none of the populations occur on Federal land. We realized that Federal involvement with this species may occur through Federal funding for power line construction, maintenance, and improvement; highway construction, maintenance and improvement; drainage alterations; and permits for mineral exploration and mining on non-Federal lands, and that the use of such funding for projects affecting occupied habitat for this species would be subject to review under section 7(a)(2) of the Act. However, this would be true whether or not critical habitat was designated. Furthermore, the precarious status of *Carex lutea* is such that any adverse modification or destruction of its occupied habitat would also jeopardize its continued existence. Thus, the only potential benefit that would result from critical habitat designation would be notification to Federal, State and local government agencies and private landowners. However, during the listing process, and after a species is listed, we conduct public outreach in affected local communities and with government agencies, so that the owners and managers of all the known populations of *C. lutea* were made aware of the plant's location and how important it is to protect the plant and its habitat. For these reasons, we concluded that designation of currently occupied habitat as critical habitat would not result in any additional benefit to the species.

Finally, because this species occupies an extremely rare habitat type, little of which remains in an unaltered, functional state, we did not expect that reintroduction to currently unoccupied habitat would be essential for recovery efforts. Therefore, we also concluded that designation of currently unoccupied habitat as critical habitat would not result in any additional benefit to the species.

We received only one comment on our prudency determination. The North Carolina Department of Environment and Natural Resources, in its comments on the proposed rule, concurred that designation of critical habitat for this species would not be beneficial.

However, recent court decisions (e.g., Natural Resources Defense Council v. U.S. Department of the Interior 113 F. 3d 1121 (9th Cir. 1997); Conservation Council for Hawaii v. Babbitt, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) have forced us to reevaluate our ''not prudent'' finding. The *Conservation Council* ruling is particularly relevant to our determination. In that case, the court held that in order to conclude that designation would increase the risk to the species, the Service must have evidence of specific threats (such as instances of collection and vandalism) that would be increased by designation of critical habitat. The court said that without species-specific evidence, the fact that there are few plants and that even a single taking could cause the species to become extinct was not sufficient justification for a ''not prudent'' finding based on increased threat.

We remain concerned that publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers could increase the vulnerability of this plant to incidents of collection, general vandalism, and trampling by curiosity-seekers. Due to the low numbers of individuals, the small area covered by the eight remaining populations, and the inherent transportability of plants, golden sedge is vulnerable to collection and other disturbance. However, at this time we have no specific evidence of taking, vandalism, illegal collection, or trade of this species. This may be due to its recent description as a new species to science and to the locations of the populations being known by only a few individuals. Also, it is very difficult to monitor such losses on scattered private lands. Nonetheless, in the absence of specific evidence, we cannot conclude that designation would not be prudent based on increased threat.

Without a finding that critical habitat would increase threats to a species, then designation would be prudent if it would provide any benefits to the species. As to benefits of designation, the *Conservation Council* court held that the mere absence of a species from

nonfederal land did not mean that there were no benefits to designating that land as critical habitat, as there could be Federal activity on that land in the future. As to Federal land, the court held that if even as a general rule an action that would adversely modify critical habitat was likely to jeopardize the continued existence of the species, the Service must consider the adverse modification/jeopardy relationship for each species individually. Finally, the court ruled that designation of critical habitat on any type of land serves to educate the public and government officials that this habitat is essential to the protection of the species.

With this taxon, designation of critical habitat may provide some minor benefits to the species. Although the remaining populations of golden sedge are located exclusively on non-Federal lands, there may be Federal actions affecting these lands in the future. Furthermore, the primary regulatory effect of critical habitat designation is to require Federal agencies to consult before taking any action that could destroy or adversely modify critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. No such habitat is known at this time, but some may be found in the future. Finally, there will be educational or informational benefits from designating critical habitat.

Reevaluating our prudency determination under the standards mandated by court decisions, we must find that designation of critical habitat for the golden sedge is prudent. However, we are deferring our critical habitat determination due to budgetary constraints associated with the listing program. Our entire FY 2002 budget for listing actions has been consumed due to required compliance with outstanding court orders, settlement agreements, meeting statutory deadlines, and litigation related activities. This final rule is made in accordance with a judicially approved settlement agreement that requires us to submit for publication in the **Federal Register** a final listing determination for the golden sedge on or before January 26, 2002. Funds are insufficient to also allow us to propose critical habitat with this final determination. Critical habitat designations are costly, requiring mapping, economic analysis, and often public hearings and meetings that are costs above those incurred for listing the species. We will develop a proposal to designate critical habitat for this species as soon as feasible, considering our budget and workload priorities.

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 encourages and results in 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 certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its designated 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 us.

Federal activities that could impact *Carex lutea* and its habitat in the future include, but are not limited to, the following—power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. We will work with the involved agencies to secure protection and proper management of *C. lutea* while accommodating agency activities to the extent possible.

Now that the species has been added to the Federal List of Endangered and Threatened Wildlife and Plants, additional protection from taking is provided when the taking is in violation of any State law, including State trespass laws. The listing also provides protection from inappropriate commercial trade and encourages active management for *Carex lutea.* Specifically, the Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, 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. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued, because the species is not common in cultivation or in the wild. You may request copies of the regulations on plants from and direct inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia (telephone 404/679–4176).

It is our policy, published on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. 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 eight remaining populations of *Carex lutea* occur on non-Federal land. We believe that, based upon the best available information, you can take the following actions without resulting in a violation of section 9 of the Act, only if these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.,* wetland modification; power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; and permits for mineral exploration and mining) when such activity is conducted in accordance with any biological opinion issued by us under section 7 of the Act;

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(3) Normal landscape activities around personal residences.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Removal, cutting, digging up, damaging, or destroying endangered plants on non-Federal land if conducted in knowing violation of State law or regulation or in violation of State criminal trespass law. North Carolina prohibits the intrastate trade and take of *C. lutea* without a State permit and written permission from the landowner; and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

References Cited

Amoroso, J., and A. Weakley. 1995. Natural Heritage Program list of the rare plant species of North Carolina. Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Glover, L. 1994. *Carex lutea*: alive and well in Pender County, North Carolina. Report prepared by the North Carolina Chapter of The Nature Conservancy, Durham.

LeBlond, R. 1998. Supplement to the status survey for *Carex lutea.* Unpublished report submitted to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC.

—1996. Status survey for *Carex lutea* LeBlond. Unpublished report submitted to the Asheville Field Office, U.S. Fish and Wildlife Service, Asheville, NC.

LeBlond, R., A. Weakley, A. Reznicek, and W. Crins. 1994. *Carex lutea* (Cyperaceae), a rare new coastal plain endemic from North Carolina. *SIDA* 16:153–161.

Schafale, M. 1994. Inventory of longleaf pine natural communities in North Carolina. Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Schafale, M., and A. Weakley. 1990. Classification of the natural communities of North Carolina (third approximation). Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Environment, Health, and Natural Resources, Raleigh.

Author

The primary author of this document is Mr. Allen Ratzlaff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Carex lutea	Golden sedge	U.S.A. (NC)	Cyperaceae	E	721	NA	NA
*	*	*	*	*	*	*	

Dated: January 15, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–1630 Filed 1–22–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274-1301-02; I.D. 102501B]

RIN 0648-AP06

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications; Correction

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

ACTION: Final rule, final 2002 specifications, and preliminary commercial quota adjustment; correction.

SUMMARY: On December 26, 2001, NMFS published final specifications for the 2002 summer flounder, scup, and black sea bass fisheries and made preliminary adjustments to the 2002 commercial quotas for these fisheries. The preamble to the final rule clearly indicated that the minimum mesh threshold catch level for black sea bass is established at 500 lb (226.8 kg) from January through March, and to 100 lb (45.3 kg) from April through December. However, the regulation to implement this change was written incorrectly. The intent of this action is to correct the portion of the regulations that implements the minimum mesh threshold catch limit for black sea bass.

DATES: Effective February 25, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, (978)281–9279, fax (978)281–9135, e-mail rick.a.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2001 (66 FR 58097) NMFS published proposed specifications for the summer flounder, scup, and black sea bass fisheries for the 2002 fishing year. The final specifications were published on December 26, 2001 (66 FR 66348). Both the proposed and final specifications addressed reduction of the threshold black sea bass catch level that triggers the minimum mesh-size requirement from 1,000 lb (453.6 kg) to 500 lb (226.8 kg) for Quarter 1 (Jan. through March), and to 100 lb (45.3 kg) for Quarters 2 through 4 (April through December). However, in both the proposed and final rules, the regulation at § 648.14(a)(92) was incorrectly written. It inadvertently referenced the recreational possession limit of 25 black sea bass at § 648.145(a), rather than the minimum mesh threshold catch level of 500 lb (226.8 kg) or 100 lb (45.3 kg) described at § 648.144(a). Section 648.14(a)(2) should have referenced the threshold black sea bass catch level approved by the Mid-Atlantic Fishery Management Council at § 648.144(a), rather than the recreational possession limit at § 648.145(a). This document corrects this error.

§ 648.14 [Corrected]

On page 66357, in § 648.14(a)(92), sixth line down, remove ''§ 648.145(a)'' and add, in its place, ''648.144(a)(1)(i) (i.e., 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the gear restrictions of § 648.144(a).''

Dated: January 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–1528 Filed 1–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 011602C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the pollock total allowable catch (TAC) for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2002, until 1200 hrs, A.l.t., March 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 A season allowance of the pollock TAC in Statistical Area 630 is 1,122 metric tons (mt) as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the pollock TAC in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 522 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630. Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2002 A season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2002 A season pollock TAC specified for Statistical Area 630 of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under