

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Section 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.453 is amended by revising the introductory text, paragraph (g) introductory text, paragraph (h) introductory text and adding new paragraph (o) to read as follows:

§ 0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC:

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(g) *The Common Carrier Bureau, Network Services Division Public Reference Room.* The following documents, files and records are available for inspection at this location.

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(h) *The Wireless Telecommunications Bureau, Commercial Mobile Services Reference Room.* The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

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(o) Electronically stored application and licensing data for commercial radio operator applications and all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Fixed Point-to-Point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications.

3. Section 0.455 is amended by revising paragraph (f) to read as follows:

§ 0.455 Other locations at which records may be inspected.

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(f) *Wireless Telecommunications Bureau.* See § 0.453(o) of this chapter.

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[FR Doc. 98-26642 Filed 10-5-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC13

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List the San Xavier Talussnail (*Sonorella eremita*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Fish and Wildlife Service (Service) withdraws a proposal to list the San Xavier talussnail (*Sonorella eremita*) as an endangered species under the Endangered Species Act of 1973, as amended. This species occurs on a hillside on private property in Pima County, Arizona. Following publication of the proposed rule, the Service gathered additional information on land ownership, and a conservation agreement was completed which reduces threats to the species to a level at which listing as threatened or endangered is not warranted.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Debra Bills at the above address or telephone 602/640-2720.

SUPPLEMENTARY INFORMATION:

Background

The San Xavier talussnail (*Sonorella eremita*) is a land snail and was first described in 1910 by H.A. Pilsbry and L.E. Daniels (Pilsbry and Ferriss 1915). The species has a globose (globular) shell with as many as 4.5 whorls, a white to pinkish tint and a chestnut-brown shoulder band. It is approximately 19 millimeters (0.7 inches) in diameter. Its shell is very typical of desert *Sonorella* (Pilsbry and Ferriss 1915).

The San Xavier talussnail lives in a deep, northwestward facing, limestone rockslide in Pima County, Arizona. Its habitat is protected from drying effects of the sun by outcrops of limestone and decomposed granite to the northeast and southwest, and by the hill itself to the southeast (Pilsbry and Ferriss 1915, Hoffman 1990). The vegetation, slope of the hillside, and depth of the slide provide necessary moisture conditions. The talussnail is similar to other *Sonorella* species in that it feeds on fungus or decaying plant material

(Hoffman 1990). The San Xavier talussnail is hermaphroditic (has both male and female reproductive organs) (Morton 1968, Hoffman 1990). After a rain, the snail will lay eggs, feed, and mate. Fertilization and production of eggs takes several days. If the rains are short-lived, the snails hold the eggs until the next rain. The species requires 3 or 4 years to mature, depending on rainfall frequency, and has a reproductive life of 4 to 6 years, depending on the number of days it remains active (Hoffman 1990).

Talussnails are sensitive to drying and sedimentation resulting from disturbance of the talus slope and associated vegetation. In general, desert snails are known to protect themselves from drying by crawling into deep, cool rockslides that are not filled with soil. The limestone rock or other talus that contains calcium carbonate is crucial to the species as it aids in shell deposition and neutralizes carbonic acid that is produced during estivation (period of inactivity) (Hoffman 1990). The San Xavier talussnail is known to estivate for up to three years and in most years is only active for three or four days (Hoffman 1990).

With the assistance of global positioning system units in February, 1998, the Service and the Arizona Game and Fish Department were able to obtain the exact location of the talus slope and identify the correct landowner. Discussions with this landowner led to a revised assessment of the threats faced by the San Xavier talussnail and the talus slope on which it resides.

Previous Federal Action

We included the San Xavier talussnail as a Category 2 candidate species in our May 22, 1984, notice of review of candidate invertebrates (49 FR 21664) and in our January 6, 1989, animal candidate Notice of Review (54 FR 554). Category 2 species were those taxa for which we had information indicating that listing may be warranted but for which the information was insufficient to support issuance of proposed listing rules. We included the San Xavier talussnail as a Category 1 candidate species in our November 21, 1991, animal candidate notice of review (56 FR 58804). Category 1 species were those taxa for which we had sufficient information to support issuance of listing proposals. We published a proposal to list this species in the **Federal Register** on March 23, 1994 (59 FR 21664). Publication of the proposal initiated a comment period which expired on May 23, 1994.

Processing of a final determination on the proposed rule to list the San Xavier

talussnail was delayed by the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6). Following lifting of the moratorium and restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Law on April 26, 1996, we developed listing priority guidance (May 16, 1996, 61 FR 24722) to clarify the order in which we would process rulemakings. We commenced work on resolving outstanding proposed listings in accordance with this listing priority guidance and following revised guidances (December 5, 1996, 61 FR 64475; October 23, 1997, 62 FR 55268; May 8, 1998, 63 FR 25502).

Processing of this withdrawal conforms with our current listing priority guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this withdrawal is a Tier 2 action.

Because of the new information on landowner status, and in consideration of the length of time that had elapsed since issuance of the proposal on March 23, 1994, and expiration of the initial comment period on May 23, 1994, we opened a second public comment period from May 22, 1998, to July 21, 1998 (63 FR 28343). We sought comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, and other interested parties. We requested new information that may have developed in the intervening period since the proposal was first published and that would expand the current knowledge concerning the status, distribution, or security of the San Xavier talussnail or any factor affecting the species or its habitat. During this public comment period, discussions with the landowner led to the development of a draft conservation agreement for the species and its habitat. We then published another notice in the **Federal Register** on June 23, 1998 (63 FR 34142), announcing the availability of this draft conservation

agreement for review and comment. We accepted comments on the draft conservation agreement until the July 21, 1998, closing of the second public comment period.

The parties to the conservation agreement, the Service, the Arizona Game and Fish Department, El Paso Natural Gas Company (EPNG), and the Arizona Electric Power Cooperative, Inc. (AEPSCO), finalized and signed the conservation agreement on September 23 and 24, 1998. The conservation agreement provides the following protective measures:

1. An Advisory Committee will be established, consisting of a representative of each party to the conservation agreement, to evaluate the results of implementation of the conservation agreement and make recommendations for revisions.
2. The area encompassing and adjacent to the habitat of the snail (the "Area of Concern") will not be modified.
3. The Advisory Committee will agree upon and mark the corners of the Area of Concern and will include the area that drains into the talus slope.
4. Rock, soil, or construction material will not be placed in the Area of Concern.
5. The dirt road above the Area of Concern will not be widened.
6. Routine road maintenance will be conducted so as not to change the hydrology of the Area of Concern.
7. Herbicides will not be applied near the Area of Concern.
8. EPNG or AEPSCO will notify the other parties to the agreement and take precautions when working on microwave facilities on the hilltop.
9. The Advisory Committee will review all plans for change in management and ensure sufficient mitigation measures are provided to maintain protection for the species.

Public Comments

In the March 23, 1994, proposed rule (59 FR 21664) and the associated notifications, we asked all interested parties to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate State agencies and representatives, scientific organizations, and other interested parties and requested comments. We published newspaper notices for the proposed listing and comment period, and the reopening of the public comment period in the Tucson Citizen and the Arizona Daily Star.

The proposed rule to list this species pre-dated our policy to seek independent peer review of listing

actions (59 FR 34270, published July 1, 1994). However, during the open comment periods, we solicited the expert opinions of appropriate independent specialists regarding pertinent scientific or commercial data relating to the taxonomy and ecology of the San Xavier talussnail. However, we did not receive any responses from the reviewers.

In the following summary, we address the comments received during the two comment periods that indicate opposition to withdrawing the proposed rule. We grouped comments of a similar nature into one of nine general issues.

Issue 1: One commenter questioned what type of land use restrictions and enforcement actions might result from enactment of the conservation agreement.

Service Response: Because the current landowners have no plans to develop the habitat of the San Xavier talussnail, agreeing to protect the site by entering into the conservation agreement did not restrict any current or planned land use of the site. If the conservation agreement is not implemented, and if threats to the species are not addressed through other means, we will consider reinitiating the listing process for the species.

Issue 2: Certain threats to the San Xavier talussnail identified in the proposed rule, including new mining, expansion of a nearby large copper mine, use of herbicides, vandalism, excessive collection, and predation, continue to threaten the species.

Service Response: As described in detail in the "Summary of Factors Affecting the Species" section of this notice, we believe that new information, including protection offered by the conservation agreement, indicates that the threats to the San Xavier talussnail described in the proposed rule are substantially reduced.

During the past public comment period, we discovered that EPNG, which owns the talus slope and is a signatory to the conservation agreement, also owns all mining claims on the talus slope. The large mine nearby currently has no plan to expand in the area of the talus slope.

AEPSCO, which owns a microwave facility at the top of the hill and maintains the road, has never applied herbicides to the road or anywhere near the talus slope. Although herbicides may be used upslope at the microwave facility, the application is confined to the microwave facility fenced area and consists of annual pre-emergent application between November and March. We have not documented any instances of adverse effects to the San Xavier talussnail from herbicide

application, and we do not anticipate any effects in the future.

The parties to the conservation agreement recognize the potential threat to the San Xavier talussnail from vandalism and excessive collection. Because both AEPCO and EPNG are also concerned about vandalism of the microwave facility, access to the site is restricted. The parties to the conservation agreement are evaluating the need for fencing, and replacing or adding "No Trespassing" signs at the site, particularly in areas used by dirt bikes.

Rodent predation is random and sporadic on the San Xavier talussnail (Hoffman 1990). We have no information indicating that rodent predation is above natural levels or that it poses a significant threat to the species.

Issue 3: Infiltration of sediment from the dirt road passing near the talus slope may continue to threaten the San Xavier talussnail.

Service Response: Access to the road is restricted by a locked gate. AEPCO's use of the road is primarily by microwave technicians who visit the microwave facility once every other month. An equipment problem may require daily visits until remedied, but this is rare. Information provided by AEPCO shows that since the construction of the road in 1978, maintenance has been conducted on the road on six occasions. The last time a grader worked the entire road was December 1990. We have not documented any adverse effects to the San Xavier talussnail resulting from past road maintenance.

As specified in the conservation agreement, AEPCO will coordinate future road maintenance with the Advisory Committee and will not conduct maintenance during the talussnail's active period except in emergencies. We believe these precautions adequately protect the species from road maintenance.

Issue 4: The 5-year time frame mentioned in the draft conservation agreement is insufficient to protect the talussnail.

Service Response: Although the draft conservation agreement specified a duration of five years with the possibility to be extended another five years, the final conservation agreement specifies a duration of ten years. In addition, the parties to the conservation agreement have committed to an annual review to ensure protection is sufficient. If, after the conservation agreement expires, threats to the species are not addressed by renewal of the conservation agreement or other means,

we will evaluate the status of the species and consider reinitiating the listing process.

Issue 5: Because the San Xavier talussnail occurs only at a single, small site, a single catastrophic event could be devastating for the species.

Service Response: As far as we know, the talussnail has always been limited to this single, small site. Because the species has persisted under these natural conditions, we do not believe that natural catastrophic events pose a significant threat to the species. The potential human-caused catastrophic events include significant disturbance to the talus slope or upslope areas. We believe that the measures specified in the conservation agreement sufficiently reduce the likelihood that such human-caused catastrophic events will occur.

Issue 6: Vandalism and excessive collection remain a threat because the talus slope can be accessed easily from the bottom.

Service Response: Although no physical barriers exist to absolutely prevent access to the site, we believe that the conservation agreement adequately addresses the threats of vandalism and overcollection. The species is located on private land, and trespassing is prohibited. The parties to the agreement are evaluating the need for fencing or additional "No Trespassing" signs to further discourage trespassing. In addition, anyone collecting San Xavier talussnails or otherwise taking them would be guilty of violating State of Arizona wildlife regulations (see factor D of the "Summary of Factors Affecting the Species" section).

Issue 7: Emergency road work or other emergencies, which the conservation agreement exempts from review and approval by the Advisory Committee, poses a threat to the San Xavier talussnail.

Service Response: Major damage to the microwave tower, tower equipment, or control building resulting from fire, vandalism, or extreme weather conditions are considered emergencies requiring immediate repairs. Also, damage to the road causing it to be impassable would also be considered an emergency requiring immediate repairs. Routine maintenance to these facilities is not considered an emergency. AEPCO and EPNG have agreed to notify the other parties to the conservation agreement as soon as practicable after discovery of an emergency situation.

Issue 8: One commenter questioned the reference to "reasonable precautions" in the conservation agreement to prevent rock, soil, or

construction material from being transported to the talus slope.

Service Response: Possible changes at the microwave site include construction of an additional tower, a larger control building, and additional fences. All of these activities have the potential to result in material being transported to the talus slope. In accordance with the conservation agreement, the Advisory Committee will review all plans for change and recommend mitigation measures. Mitigation measures could include removing excess materials and establishing temporary barriers, silt fences, or hay bales downhill from the construction area.

Issue 9: The "No Surprises" clause in the draft conservation agreement shows the inadequacy of existing regulatory mechanisms to protect the San Xavier talussnail.

Service Response: All references to "No Surprises" assurances have been omitted in the final conservation agreement.

Summary of Factors Affecting the Species

Section 4 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. We may determine a species to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to our decision to withdraw the proposal to list the San Xavier talussnail are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The San Xavier talussnail is a very restricted endemic species and is vulnerable to any disturbance that would remove talus, increase interstitial (the spaces between the talus) sedimentation, or otherwise alter moisture conditions (e.g., road or trail expansion or alteration, mining exploration) (Hoffman 1990). We believe that new information received since the publication of the proposed rule, and the protections provided by the recently finalized conservation agreement, indicate that threats to the species' habitat are not as great as supposed or have been substantially reduced through adoption of the conservation agreement.

A large, active copper mine, as well as inactive mining prospects and mines, are located in the vicinity of the talus slope. During the past public comment period, we discovered that EPNG, which owns the talus slope and is a signatory to the conservation agreement, also

owns all mining claims on the talus slope. The large copper mine currently has no plan to expand in the area of the talus slope.

There are housing developments of small acreages to the north and to the southwest of the hill. However, the talus slope is too steep (30 to 40 percent slope) to permit housing construction.

A road leading to a microwave site on the hilltop passes near the talus slope. This road receives very little traffic; microwave technicians may visit the site once every other month, unless there is a problem on the ground which may require more frequent visits. Access to the road by the public is restricted by a locked gate. Information provided by AEPCO shows that since the construction of the road in 1978, maintenance has been conducted on the road on six occasions. The last time a grader worked the entire road was December 1990. We have not documented any adverse effects to the San Xavier talussnail resulting from past road maintenance. The conservation agreement specifies that future road maintenance will be coordinated with the Advisory Committee and will not occur during the talussnail's active period except in emergencies. We believe these precautions adequately protect the species from road maintenance.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although we do not have any information indicating that any significant collection of the San Xavier talussnail is occurring, the extremely restricted distribution of the species makes it vulnerable to overcollection during periods when the snails are active. Trespassing on the talus slope is prohibited, vehicle access to the site is restricted by a locked gate, and collection of the species is prohibited by Arizona State law (see factor D). Also, additional measures are being evaluated to further discourage trespassing and collection. For these reasons, we believe that the potential threat of overcollection of the species is small and not significant enough to warrant listing the species at this time.

C. Disease or Predation

We do not know of any diseases affecting the San Xavier talussnail. Rodent predation is random and sporadic on the species (Hoffman 1990). However, we do not have any evidence indicating that rodent predation is or may be a limiting factor for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Arizona has placed the San Xavier talussnail on the 1998 Crustaceans and Mollusks Commission Order 42 and the list of sensitive elements that qualify for Heritage funding. This designation makes it illegal to collect or possess the species. The species occurs on private land, and trespassing is prohibited. In addition, the conservation agreement provides a framework for continued protection and management of the San Xavier talussnail and its habitat. We believe these provisions are adequate for the conservation of the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The very restricted range of the San Xavier talussnail makes it vulnerable to catastrophic events. As far as we know, the talussnail has always been limited to the single, small site where it currently exists. Because the species has persisted under these natural conditions, we do not believe that natural catastrophic events pose a significant threat to the species. Potential human-caused catastrophic events include significant disturbance, including vandalism, to the talus slope or upslope areas. We believe that the measures specified in the conservation agreement addressing construction activities, road maintenance, and trespassing sufficiently reduce the likelihood that such human-caused catastrophic events will occur.

Finding and Withdrawal

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the San Xavier talussnail. Population trend information is unavailable, but the species' habitat is secure. We no longer believe that the San Xavier talussnail is in danger of extinction throughout all or a significant portion of its range or is likely to become so in the foreseeable future. We therefore withdraw the proposed rule to list the San Xavier talussnail under the Endangered Species Act.

We will work to gather additional information on the status and ecology of the San Xavier talussnail. Also, we will participate with parties to the conservation agreement to ensure the long-term survival of this species. If new information becomes available indicating the presence of a new threat to the San Xavier talussnail or an increase in the severity of a threat, and if the threats are not adequately addressed through revision of the

conservation agreement or other means, we will consider reinitiating the listing process for the species.

References Cited

- Hoffman, J.E. 1990. Status survey of seven land snails in the Mineral Hills and the Pinaleno Mountains, Arizona. Prepared for U.S. Fish and Wildlife Service, Phoenix, Arizona. Contract Number: 20181-88-00973.
- Morton, J.E. 1968. Molluscs. Hutchinson University Library. London. 244 pp.
- Pilsbry, H.A. and J.A. Ferriss. 1915. Mollusca of the southwestern states. VII. The Dragoon, Mule, Santa Rita, Baboquivari and Tucson Ranges, Arizona. Proc. Acad. Nat. Sci. Phila. 67:363-418; Pls. 8-15.

Author: The primary author of this document is Debra Bills, Arizona Ecological Services Field Office (see ADDRESSES section).

Authority: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE51

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Oahu Elepaio from the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Oahu elepaio (*Chasiempis sandwichensis ibidis*). This bird is endemic to the island of Oahu, Hawaiian Islands, where it was formerly found in all forested areas on the island. It is currently found in greatly reduced numbers and range in six isolated populations occurring in mid-elevation forests in the southern Koolau Mountain Range and parts of the Waianae Mountain Range. The Oahu elepaio is now thought to occupy less than 80 square kilometers (sq km) (30 square miles (sq mi)) or 8 percent of its original, historic range. Sightings of Oahu elepaio during Christmas Bird