

these intangibles to B for \$75,000. S recognizes a gain of \$50,000 on the sale and has no other items of income, deduction, gain, or loss for the year, except that S also has a net operating loss of \$20,000 from prior years that it would otherwise be entitled to use in 1997 pursuant to section 172(b). As part of the transaction with B, S agrees to make the gain recognition election pursuant to section 197(f)(9)(B).

(ii) If the gain recognition election had not been made, S would have taxable income of \$30,000 for 1997 and a tax liability of \$4,500. As the result of the election, S must pay a total tax liability for the year of \$17,500 (35 percent of \$50,000), consisting of the sum of its regular tax liability of \$4,500 and the additional amount of \$13,000 pursuant to section 197(f)(9)(B).

(iii) Pursuant to paragraph (h)(9)(v)(A) of this section, S determines the amount of its net operating loss deduction in subsequent years without regard to the gain recognized on the sale of the section 197 intangible to B. Accordingly, the entire \$20,000 net operating loss deduction that would have been available in 1997 but for the gain recognition election may be used in 1998, subject to the limitations of section 172.

(iv) B has a basis of \$75,000 in the section 197 intangibles acquired from S. As the result of the gain recognition election by S, B may amortize \$50,000 of its basis under section 197. The remaining basis may not be amortized by B.

*Example 21. Section 338 election.* (i) P corporation makes a qualified stock purchase of the stock of T corporation from two shareholders in July 1997, and a section 338 election is made by P. One of the selling shareholders is an individual who owns 25 percent of the total value of the stock of each of the T and P corporation. No other shareholder of either T or P owns stock in both of these corporations, and no other shareholder is related to any other shareholder of either corporation.

(ii) Old target and new target (as these terms are defined in § 1.338-1(c)(13)) are members of a controlled group of corporations under section 267(b)(3), as modified by section 197(f)(9)(C)(i), and any section 197 intangible held by old target at any time during the transition period is not an amortizable section 197 intangible in the hands of new target. However, a gain recognition election under paragraph (h)(9)(i) of this section may be made with respect to this transaction.

(l) *Effective dates.* This section is applicable on the date final regulations are published in the Federal Register, except that § 1.197-2(c)(13) (exception from section 197 for separately acquired rights of fixed duration or amount) is applicable August 11, 1993 (or July 26, 1991, if a valid retroactive election has been made under § 1.197-1T).

Margaret Milner Richardson,  
Commissioner of Internal Revenue.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 24

RIN 1018-AD97

#### Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, as designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service also proposes to amend these same regulations by adding the USDA port at Port Huron, Michigan, as a port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these ports to the list of designated ports would facilitate trade and the enforcement of the Act and CITES.

Additionally, the Service proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by removing Laredo, Texas, from the list of ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. The USDA no longer operates Laredo as a plant inspection station and has proposed to remove it from the list of plant inspection stations in its regulations. Because the Laredo plant inspection station has closed, it no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. However, the USDA has sufficient staff in place in

Laredo for the Service to add it instead as a designated port for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, as discussed in the above paragraph.

**DATES:** Comments must be submitted on or before March 17, 1997. Requests for a public hearing must be received by March 3, 1997.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the same address between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Kenneth B. Stansell, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358-2093.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants listed as endangered or threatened in 50 CFR 17.12 or in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the USDA ports listed in section 24.12(a) of the regulations. Certain other

USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(g) of the regulations contains a list of USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those ports.)

For the purposes of its enforcement of the Act and CITES, the Service requires that a port have personnel with expertise in identifying plants listed as endangered or threatened under the Act, or listed under CITES, to ensure that such plants are properly identified by their accompanying documentation. A port also must possess adequate facilities for holding live plants and plant material, since plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. The Service further requires that, whenever possible, ports be located to coincide with established patterns of plant trade in order to help reduce shipping costs.

Effective November 16, 1995, saw-logs, sawn wood, and veneers of bigleaf mahogany (*Swietenia macrophylla*) from populations in the Americas (North America, South America, and the Caribbean) were listed on CITES Appendix III at the request of the government of Costa Rica. As a consequence of this listing, an export of the material included in the listing, from any country except Costa Rica, must be accompanied by a CITES certificate of origin issued by the government of that country. An export from Costa Rica of the material included in the listing must be accompanied by a CITES export permit issued by the Costa Rican government. Saw-logs, sawn wood, and veneers from listed trees currently may be imported into the United States through one of the ports listed in section 24.12(a), designated for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES; or through one of the ports listed in section 24.12(e), designated for the importation of logs and lumber from trees listed as endangered or threatened under the Act, or listed under CITES. [As part of this proposed rulemaking, the Service is, for the purposes of correctness and consistency, proposing to amend section 24.12(e) by replacing the term "logs and lumber" with the term "saw-logs, sawn wood, and veneers," which is the term

used in the CITES listings and in 50 CFR part 23.]

The USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, are established ports of entry for bigleaf mahogany saw-logs, sawn wood, and veneers imported into the United States. Since bigleaf mahogany now is listed in the appendices to CITES, these four ports must, in order to avoid disrupting an established pattern of legitimate trade, be added to the list of ports designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES.

Therefore, the Service has been asked by the USDA to add the USDA ports at Laredo, Fort Lauderdale, Jacksonville, and Panama City to the list of ports in section 24.12(e), designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES. [Although the USDA port at Laredo is currently listed in section 24.12(a), the USDA no longer operates that port as a plant inspection station and has proposed (in 60 FR 13382; March 13, 1995) to remove it from the list of plant inspection stations in its regulations in 7 CFR 319.37-14. Because its plant inspection station has closed, Laredo no longer is used as a designated port for the importation, exportation, or reexportation of plants listed as endangered or threatened under the Act, or listed under CITES. Therefore, in this proposed rule the Service is proposing to remove Laredo from the list of ports in section 24.12(a), adding it instead to the list of ports in section 24.12(e).]

The Service also has been asked by the USDA to allow the importation of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada through the USDA port of Port Huron, Michigan. In order to allow such importations, the Service must add Port Huron to the list of ports in section 24.12(d), designated for the importation from Canada and the exportation and reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated for those purposes. Adding Port Huron would facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada.

After consultations with the USDA, the Service has determined that the USDA ports at Laredo, Fort Lauderdale, Jacksonville, Panama City, and Port Huron possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, these locations appear to coincide with established patterns of trade. Therefore, the Service proposes to add the ports at Laredo, Fort Lauderdale, Jacksonville, and Panama City to the list of designated ports for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, and to add the port at Port Huron to the list of designated ports for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES.

#### Requests for Public Hearing

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. Send requests to the Service's Office of Management Authority at the address listed in the **ADDRESSES** section of this document.

#### Economic Effects

The USDA ports at Laredo, Texas; and Fort Lauderdale, Jacksonville, and Panama City, Florida, are established primary ports of entry for bigleaf mahogany saw-logs, sawn wood, and veneers imported into the United States. Since bigleaf mahogany now is listed in the appendices to CITES, the addition of these four ports to the list of ports designated for the importation of saw-logs, sawn wood, and veneers from trees listed as endangered or threatened under the Act, or listed under CITES, would avoid disrupting an established pattern of legitimate trade by allowing operations at those ports related to the importation of bigleaf mahogany saw-logs, sawn wood, and veneers to continue with only minor procedural changes. Adding these ports would not have a significant economic impact on any private entities, nor on local or State governments. Also, adding these ports would not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at these ports to qualify them as designated ports.

However, without these ports being designated, the established legitimate

trade in bigleaf mahogany saw-logs, sawn wood, and veneers through these ports would cease. This would increase shipping costs on importers in the United States who have been using Laredo, Fort Lauderdale, Jacksonville, and Panama City as ports of import for bigleaf mahogany saw-logs, sawn wood, and veneers, by forcing these importers to travel out of their way to one of the current designated ports in order to legally import their bigleaf mahogany. The closest designated Mexican border port to the port of Laredo is Brownsville, Texas, about 150 miles away; the closest designated port to the port of Fort Lauderdale is Miami, Florida, about 30 miles away; the closest designated port to the port of Jacksonville is Orlando, Florida, about 125 miles away; and the closest designated port to the port of Panama City is Mobile, Alabama, about 150 miles away.

Adding the USDA port at Port Huron, Michigan, as a designated port for the importation from Canada and exportation or reexportation to Canada of plants listed as endangered or threatened under the Act, or listed under CITES, likewise would not have a significant economic impact on any private entities, nor on local or State governments. Also, adding this port would not have a significant economic impact on the Federal Government, since the USDA already has adequate facilities and personnel at the port to qualify it as a designated port. Adding Port Huron as a designated port would facilitate trade by making an additional port of entry available to importers of artificially propagated plants listed as endangered or threatened under the Act, or listed under CITES, from Canada. Currently, the USDA ports at Detroit, Michigan; Buffalo and Rouses Point, New York; and Blaine, Washington, are the only ports specifically designated

for those purposes. However, Port Huron's designation is not expected to result in a significant increase in the importation of such plants from Canada.

Therefore, the Service has determined under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

This rulemaking would not have any direct effects on the States, in their relationship with the Federal Government, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rulemaking would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*) that this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

The Department of the Interior has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Paperwork Reduction Act

The Service has examined this proposed rule under the Paperwork Reduction Act of 1995, and found it to contain no information collection requirements.

#### List of Subjects in 50 CFR Part 24

Endangered and threatened species, Exports, Harbors, Imports, and Plants.

Accordingly, the Service proposes to amend title 50, part 24 as follows:

#### **PART 24—[AMENDED]**

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 9(f)(1), 11(f), Pub. L. 93-205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. Section 24.12 would be amended by: Removing "Laredo, Texas" from paragraph (a),

b. Adding the words "and Port Huron" immediately following "Detroit" in paragraph (d), and

c. Revising paragraph (e) to read as follows:

#### **§ 24.12 Designated parts.**

\* \* \* \* \*

(e) The U.S. Department of Agriculture ports at Mobile, Alabama; Fort Lauderdale, Jacksonville, and Panama City, Florida; Savannah, Georgia; Baltimore, Maryland; Gulfport, Mississippi; Wilmington and Morehead City, North Carolina; Portland, Oregon; Philadelphia, Pennsylvania; Charleston, South Carolina; Laredo, Texas; Norfolk, Virginia; and Vancouver, Washington, are designated ports for the importation of saw-logs, sawn wood, and veneers from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

\* \* \* \* \*

Dated: December 5, 1996.

George T. Frampton,  
Assistant Secretary, Fish and Wildlife and Parks.

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