

contributions to QED. On balancing the needs and abilities of QED, given its financial condition and the community from which it derives support, the Commission finds that the continued use of the second channel is no longer necessary to meet the educational, instructional and cultural needs of the Pittsburgh community, especially since upon dereservation and sale of WQEX(TV), and initiation of digital service, QED will be able to substantially increase the amount of free over-the-air educational service.

The *Report and Order* concludes that QED's circumstances are highly unique and that the public interest would be served by waiving the Commission's policy disfavoring dereservation. The *Report and Order* also concludes that the record supports waiver of the policy requiring that newly dereserved channels be made available for competing applications.

Procedural Matters

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceeds to amend the TV and DTV Table of Allotments, §§ 73.606 and 73.622(b). *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

Ordering Clauses

The Commission further finds that unique public interest considerations and benefits support a waiver of the policy set forth in the Sixth Report and Order requiring that newly dereserved channels be made available for competing applications.

It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of WQED Pittsburgh for station WQEX(TV) is modified to specify operation on Channel 16 in lieu of Channel *16.

List of Subjects 47 CFR Part 73

Digital television broadcasting, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606, the Table of TV Allotments under Pennsylvania is amended by removing Channel *16 at Pittsburgh and adding in its place Channel 16 at Pittsburgh.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania is amended by removing Channel *26 at Pittsburgh and adding in its place Channel 26 at Pittsburgh.

[FR Doc. 02-20071 Filed 8-6-02; 12:45 pm]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI18

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Carson Wandering Skipper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) to be endangered under the Endangered Species Act of 1973, as amended (Act). The Carson wandering skipper is currently known from only two populations, one in Washoe County, Nevada, and one in Lassen County, California. The subspecies is found in grassland habitats on alkaline substrates.

Extinction could occur from naturally occurring events or other threats due to the small, isolated nature of the known populations of the Carson wandering skipper. These threats include habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), gas and geothermal development, and nonnative plant invasion. Other threats include collecting, livestock trampling, water exportation projects, road construction,

recreation, pesticide drift, and inadequate regulatory mechanisms. We find these threats constitute immediate and significant threats to the Carson wandering skipper. This rule implements Federal protection provided by the Act for the subspecies.

DATES: This rule becomes effective on August 7, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section) (telephone 775/861-6300; facsimile 775/861-6301), or Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825-1846 (telephone 916/414-6000; facsimile 916/414-6712).

SUPPLEMENTARY INFORMATION:

Background

The genus *Pseudocopaeodes* in the family Hesperiidae and subfamily Hesperiinae (grass skippers) contains only one species, *Pseudocopaeodes eunus*. Members of Hesperiidae are called skippers because of their powerful flight. While their flight may be faster than butterflies, they seldom fly far and few species migrate (Scott 1986).

The species *Pseudocopaeodes eunus* is thought to consist of five subspecies. The Carson wandering skipper (*P. e. obscurus*) is locally distributed in grassland habitats on alkaline substrates in eastern California and western Nevada. *P. e. eunus* is located in western desert areas of southern California; *P. e. alinea* is found in eastern desert areas of southern California and in southern Nevada; and *P. e. flavus* is found in western and central Nevada (Brussard 2000). In 1998, what is believed to be an undescribed fifth subspecies of *P. eunus* was found in Mono County, California. George Austin of the Nevada State Museum and Historical Society in Las Vegas is working to formally describe this fifth subspecies (Brussard 2000). Except for the Carson wandering skipper, the subspecies of *P. eunus* do not have universally accepted common names.

The Carson wandering skipper was collected in 1965 by Peter Herlan, Nevada State Museum, at a location north of U.S. Highway 50, Carson City, Nevada. It was first described by George Austin and John Emmel (1998), based

on 51 adult specimens. The body is tawny orange above except for a narrow uniform border and black veins near the border at the outer edge of the wing. The upper forewing and hindwing are orange with darker smudging. The lower surface of the hindwings is pale creamy orange with two creamy rays extending from the base of the wing to its margin, and there may be dusky suffusions along the wing veins (MacNeill 1975). Males tend to average 13.1 millimeters (mm) (0.52 inches (in)) in size (ranging from 12.0 to 13.9 mm (0.47 to 0.55 in)) (size is forewing length from base to apex). Females average 14.7 mm (0.58 in) in size, and range from 13.4 to 15.6 mm (0.53 to 0.61 in) from forewing base to apex. The female's dorsal (upper) surface is similar to the male's but with heavier dusting on the discal (relating to a disk) area of the hindwing. The female's ventral surface (undersurface of the abdomen) is similar in appearance to the male's (Austin and Emmel 1998).

The Carson wandering skipper can be distinguished from the other subspecies of *Pseudocopaeodes eunus* by a combination of several characteristics. The Carson wandering skipper is browner and less intensely orange on its dorsal surface, with thicker black coloring along the veins, outer margin, and on both basal surfaces; and it is duller, overall, with an expanse of bright yellow and orange ground color, especially on the ventral surface, interrupted by broadly darkened veins (Austin and Emmel 1998).

Carson wandering skipper females lay their cream-colored eggs on salt grass (*Distichlis spicata* (L.) Greene) (Hickman 1993), the larval host plant for the subspecies (Garth and Tilden 1986; Scott 1986). This is a common plant species in the saltbush-greasewood community of the intermountain west. Salt grass usually occurs where the water table is high enough to keep its roots saturated for most of the year (West 1988, as cited in Brussard *et al.* 1998).

No other observations have been made of the early life stages of the Carson wandering skipper. However, the Carson wandering skipper's life cycle is likely similar to other species of Hesperiinae. Larvae (immature, wingless, often worm-like form) of the subfamily Hesperiinae live in silked-leaf nests, and some species make their nests partially underground. Larvae are usually green or tan and have a dark head and black collar. Pupae (intermediate stage between larvae and adult) generally rest in the nest, and larvae generally hibernate (Scott 1986). Minno (1994) described a last instar (stage between molts) larvae and a pupa

of *Pseudocopaeodes eunus*, based on one specimen of each collected in California. Some larvae may be able to extend their period of diapause (period of dormancy) for more than one season depending on the individual and environmental conditions (Dr. Peter Brussard, University of Nevada, Reno, pers. comm., 2001). Carson wandering skippers may differ from other *P. eunus* in producing only one brood per year during June to mid-July (Austin and Emmel 1998).

The other subspecies produce a second brood in late July to late September (Austin and Emmel 1998). Sites occupied by the Carson wandering skipper have been searched during August and September and a second brood has not been found (Austin and Emmel 1998; Brussard *et al.* 1999). However, additional research is needed to confirm that the Carson wandering skipper produces only one brood per year.

Little is known about the specific habitat requirements of the Carson wandering skipper, beyond the similarities recognized among known locations of this subspecies. As a result, the habitat requirements stated could apply to the species as a whole (Brussard *et al.* 1999). Habitat requirements for butterflies in general include: (1) Presence of a larval host plant; (2) appropriate thermal environment for larval development and diapause, and adult mate location and oviposition (to lay eggs); and (3) a nectar source (Brussard *et al.* 1999). Based on commonalities of known, occupied sites, suitable habitat for the Carson wandering skipper has the following characteristics: elevation of less than 1,524 meters (5,000 feet); located east of the Sierra Nevada; presence of salt grass; open areas near springs or water; and geothermal activity.

There are no data in the literature on the micro-habitat requirements of the Carson wandering skipper (Brussard *et al.* 1999). However, it is likely that suitable larval habitat is related to the water table. Many salt grass areas are inundated in the spring, and larvae do not develop under water. During wet years, larval survival depends on salt grass areas being above standing water. In dry years, survival is probably related to the timing of the host plant senescence (aging). Therefore, micro-topographic variation (slight irregularities of a land surface) is probably important for larval survival because it provides a greater variety of appropriate habitat over time (Brussard *et al.* 1999). Since the few historic collections of the Carson wandering skipper have been near hot springs, it is

possible this subspecies may require the higher water table or ground temperatures associated with these areas to provide the appropriate temperatures for successful larval development (Brussard *et al.* 1999).

Adult Carson wandering skippers require nectar for food. Adults of all the species in the grass skipper subfamily seem to visit flowers, and sap-feeding is absent or rare (Scott 1986). There are no known observations of the Carson wandering skipper utilizing mud or other substances to obtain nutrients (P. Brussard, pers. comm., 2002a). Few plants that can serve as nectar sources grow in the highly alkaline soils occupied by salt grass. For a salt grass area to be appropriate habitat for the Carson wandering skipper, an appropriate nectar source must be present and in bloom during the flight season. Plant species known to be used by the Carson wandering skipper for nectar include a mustard (*Thelypodium crispum*), racemose golden-weed (*Pyrrocoma racemosa*), and slender birds-foot trefoil (*Lotus tenuis*) (Brussard *et al.* 1999). If alkaline-tolerant plant species are not present, but there is a fresh-water source to support alkaline-intolerant nectar sources adjacent to the larval host plant, the area may provide suitable habitat (Brussard *et al.* 1999).

No information is available on historic population numbers of the Carson wandering skipper. It is possible that a fairly large population of the subspecies occurred from the Carson Hot Springs site to the Carson River. Outflow from the springs likely supported a water table high enough for salt grass and a variety of nectar sources to grow. Urban development, water diversions, and wetland manipulations have eliminated most of the habitat type in this area (Brussard 2000).

Likewise, it is possible that appropriate habitat once existed for the Carson wandering skipper between the existing populations in Lassen County, California, and Washoe County, Nevada (P. Brussard, pers. comm., 2001). The population locations are approximately 120 kilometers (km) (75 miles (mi)) apart, and while the dispersal capability of the Carson wandering skipper is unknown, it is unlikely that any current genetic exchange occurs between the two populations. Over time, the habitat between the two populations has become unsuitable and fragmented due to agriculture and development, and the two populations have become isolated from one another. The subspecies likely represents a remnant of a more widely distributed complex of populations in

the western Lahontan basin (Brussard *et al.* 1999).

In 1998, collections of four of the *Pseudocopaeodes eunus* subspecies were made for a genetic study by University of Nevada-Reno (UNR) researchers (Brussard *et al.* 1999). In addition to collections made of the Carson wandering skipper at the Washoe County site (24) and the Lassen County site (25), individuals of three other *P. eunus* subspecies (173) were also collected. *P. e. eunus* individuals were not collected due to their scarcity. Genetic analysis was based on an analysis of allozyme (*i.e.*, protein) variation (Brussard *et al.* 1999). Levels of heterozygosity (genetic variability) were low in all but two populations of *P. eunus*, and the average heterozygosity over the nine populations was also low. The low levels of heterozygosity in many of the populations is likely due to repeated extirpation events, recolonizations, and population and genetic bottlenecks throughout the Holocene geologic period (beginning 10,000 years ago) to the present time (Brussard *et al.* 1999).

Population Sites

Historically, population locations included the type locality found near the Carson Hot Springs in Carson City, Carson City County, NV, and one other site in Lassen County, CA. When described in Austin and Emmel (1998), specimens from two additional sites, Dechambeau Hot Springs at Mono Lake and Hot Springs, Mono County, CA, were assigned, with uncertainty due to their small numbers, to the Carson wandering skipper subspecies. Based on 1998 surveys by Brussard *et al.* (1999), these Mono County specimens would be more appropriately assigned to the currently undescribed subspecies (George Austin, Nevada State Museum and Historical Society, pers. comm., 2001).

Surveys conducted in 1997 in the vicinity of Carson City, and in 1998 throughout potential, suitable habitat in Nevada and California, found two new nectar sites occupied by the Carson wandering skipper. One site was located in Washoe County, NV, and the other site (two locations) was found in Lassen County, CA. The site in Lassen County could be a rediscovery of the area where Carson wandering skippers were collected in the 1970s; however, the collection record is too vague to be certain (P. Brussard, pers. comm., 2001). Despite additional, more limited attempts at finding other populations in 2000 and 2001, none have been found (P. Brussard, pers. comm., 2000; Rebecca Niell, UNR, pers. comm., 2001).

While results of the surveys conducted in 2001 for the other subspecies of *Pseudocopaeodes eunus* are still pending, no new Carson wandering skipper populations were found during these surveys (R. Niell, pers. comm., 2002).

Carson City Site

The Carson City site was surveyed for the Carson wandering skipper by the UNR from 1997 to 2001. Only five individuals (four males and one female) were observed during surveys in June 1997. One possible sighting of a Carson wandering skipper occurred at a project site in 1998 (Brussard *et al.* 1999). No individuals were observed at this site in 1999 or 2000 (P. Brussard, pers. comm., 2000). In 2001, searches were again conducted with no individuals observed (R. Niell, pers. comm., 2001). Habitat changes resulting from drainage manipulations for residential and commercial development are likely responsible for this possible extirpation (Brussard *et al.* 1999). Construction of a freeway bypass will eliminate and fragment the remaining habitat (5 ha (12 ac)) of the Carson wandering skipper at this site.

An area just south of the Carson City site was also surveyed in 1997 and 1998. Twelve hectares (ha) (30 acres (ac)) of potential habitat were present (Paul Frost, Nevada Department of Transportation (NDOT), *in litt.*, 1998), however, no Carson wandering skippers were found during the surveys (Brussard *et al.* 1999). Approximately 5 ha (12 ac) of this potential habitat will be impacted by the construction of the Carson Highway 395 bypass (Alan Jenne, NDOT, pers. comm., 1999). Brussard *et al.* (1997) found no other suitable habitat in the vicinity of Carson City in 1997.

Because of habitat destruction, degradation, and fragmentation, the Carson wandering skipper has probably been extirpated from the Carson City site.

Washoe County Site

The nectar site in Washoe County occurs on Bureau of Land Management (BLM) administered lands and adjacent private lands. This nectar site is estimated to be about 10 to 12 ha (25 to 30 ac), with approximately half of the site occurring on BLM lands and half on private lands (Brussard *et al.* 1999). The nectar source at this site (racemose golden-weed) is abundant, as is salt grass. A few Carson wandering skippers were seen approximately 1.6 km (1 mi) northeast of the nectar site. This suggests the Carson wandering skipper may occur in small numbers elsewhere

in adjacent areas (Brussard *et al.* 1999). Surveys were not conducted in 1999 or 2000 at this site. In 2001, searches of this area were made to confirm the Carson wandering skipper's presence. Five individuals were found at the nectar site on BLM lands; private lands were not searched (Virginia Rivers, Truckee Meadows Community College, pers. comm., 2001).

Lassen County Site

Two locations where the subspecies is found in Lassen County occur approximately 8 km (5 mi) apart. One location occurs on public lands managed by the California Department of Fish and Game (CDFG property). Another location is found on both private and public lands (private/public property). In 1998, two individuals were observed on the CDFG property, while several individuals were observed at a nectar site less than 2 ha (5 ac) in size on the private/public property. UNR did not conduct surveys at either of these locations in 1999. Surveys were conducted in 2000 and, while several individuals were seen on the private/public property nectar site location, none were seen on the CDFG property. Salt grass is abundant in the surrounding area of the private/public property but the attraction appears to be the nectar source, which is slender birds-foot trefoil. In 2001, searches were conducted to confirm the Carson wandering skipper's presence. A few sightings (three one day and four on another day) were observed on the private/public property nectar site, but again, none were observed on the CDFG property (V. Rivers, pers. comm., 2001).

Previous Federal Action

On May 22, 1984, we published an invertebrate wildlife Notice of Review in the **Federal Register** (49 FR 21664) designating *Pseudocopaeodes eunus eunus* as a category 2 candidate. Category 2 candidates were those species for which we had information indicating that listing may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. The entity now known as the Carson wandering skipper was included in *P. e. eunus*; however, in early 1995, we were informed by Mr. George Austin that the Carson wandering skipper was a distinct, undescribed subspecies (G. Austin, pers. comm., 1995). In the February 28, 1996, Notice of Review (61 FR 7596), we discontinued the use of multiple candidate categories and considered the former category 1 candidates as simply "candidates" for listing purposes. The Carson wandering

skipper was removed from the candidate list at that time.

Following an updated assessment of the status of the Carson wandering skipper and its vulnerability to threats in 1998, we included this taxon as a candidate species in the Notice of Review published in the **Federal Register** on October 25, 1999 (64 FR 57533), with a listing priority number of 12.

A petition dated November 9, 2000, from Mr. Scott Hoffman Black, Executive Director, The Xerces Society, and received by the Service on November 10, 2000, requested that we emergency list the Carson wandering skipper as an endangered species throughout its range, and designate critical habitat concurrent with the listing. We responded in a letter dated February 20, 2001, that we would not publish a petition finding for the Carson wandering skipper because it was already listed as a candidate species in the most recent Notice of Review (64 FR 57533). This meant that we had already determined that listing was warranted for the species. We indicated we would continue to monitor the status of the Carson wandering skipper, and if an emergency listing was warranted, we would act accordingly, or list the subspecies when the action was not precluded by higher priorities.

In addition, the petitioner had also requested emergency listing of the entire species. We responded in our February 20, 2001, letter to the petitioner that we did not believe that an emergency situation existed at the time for the remaining subspecies. Surveys for *Pseudocopaeodes eunus* spp. were conducted in 1998 throughout potential, suitable habitat in Nevada and California (Brussard *et al.* 1999). Of the 78 sites (48 new; 30 historic) visited, *P. eunus* spp. were found at 14 sites. Of the 30 historic sites, *P. eunus* spp. were found at 8 sites. Seven areas (2 in Nevada; 5 in California) which were historic sites for these subspecies were not visited. We contracted with UNR to have additional status surveys conducted in 2001 for these other subspecies of *P. eunus*, and results of these surveys are pending. These surveys will assist in determining their status, and if we find that a listing of the remaining subspecies is warranted, we will act accordingly.

On August 28, 2001, we reached an agreement with the Center for Biological Diversity, California Native Plant Society, Southern Appalachian Biodiversity Project, and Foundation for Global Sustainability to complete work on a number of species proposed for listing. Under this "miniglobal"

agreement, we agreed to issue several final listing decisions, propose a number of other species for listing, and review three species for emergency listing, including the Carson wandering skipper (*Center for Biological Diversity, et al. v. Norton*, Civ. No. 01-2063 (JR) (D.D.C.), entered by the court on October 2, 2001).

The Carson wandering skipper was included in the October 30, 2001, candidate Notice of Review (66 FR 54808), but with a listing priority number change from a 12 to a 3. We made this change because we have been unsuccessful implementing actions outlined in a draft conservation plan for the subspecies and two additional threats appear imminent. These threats include: (1) A proposed water exportation project in the vicinity of the Washoe County site that is a potential threat to the subspecies and its habitat; and (2) tall whitetop (*Lepidium latifolium*), a nonnative invasive plant, becoming established at the Lassen County site and is a threat to the subspecies' nectar source.

On November 29, 2001, we issued an emergency rule listing the Carson wandering skipper as an endangered species because we found that a number of threats constituted immediate and significant risk to the subspecies (66 FR 59537). A proposed rule to list the Carson wandering skipper was published in the **Federal Register** concurrently with the emergency rule (66 FR 59550). The proposed rule opened a 60-day comment period which closed on January 28, 2002.

On May 7, 2002, we reopened the public comment period to allow additional time for all interested parties to submit written comments on the proposal, and to give notice of a public informational meeting (67 FR 30645). The comment period was open for 30 days and closed June 6, 2002.

The Carson wandering skipper was included in the Candidate Notice of Review (67 FR 40657) published June 13, 2002.

Summary of Comments and Recommendations

In the November 29, 2001, proposed rule (66 FR 59550), we requested that all interested parties submit factual reports, information, and comments that might contribute to the development of the final listing decision. We contacted appropriate State and Federal agencies, county and city governments, scientific organizations and authorities, and other interested parties and requested them to comment. We published legal notices in the Nevada Appeal on December 16, the Lassen County Times on December 18,

and the Reno Gazette Journal on December 19, 2001. Following the publication of the proposed rule, we received a total of 183 comments from individuals or organizations. We opened a second comment period on May 7, 2002 for 30 days to give the public additional time to comment (67 FR 30645). We also held a public informational meeting in Susanville, CA on May 22, 2002. We received an additional 248 comments during the second comment period, for a total of 431 comments. Of the comments received, 263 were in support of the listing action, 165 were opposed to the listing, and 3 were neutral. Comments providing additional information were incorporated where appropriate. We have addressed each of the substantive issues raised by commenters and grouped them into several issues that are discussed below.

Issue 1: A number of commenters were opposed to the listing stating there was a lack of information to support a listing of the Carson wandering skipper as endangered.

Our Response: Since its discovery in 1965, data collections of the Carson wandering skipper have been limited to surveys, literature review, and collection records. The best scientific and commercial data available indicate the subspecies occurs at only two known sites and has been extirpated from a third site.

Geographic Information System modeling was incorporated into the Brussard *et al.* (1999) study to identify potential habitats for surveying. All records of *P. eunus* from various sources were compiled. Habitat characteristics, based on the records as well as areas of salt desert scrub and low elevation sagebrush vegetation and water sources along eastern California and western Nevada, were mapped. A total of 78 sites, 30 historic sites and 48 potential new sites were surveyed for the Carson wandering skipper and the other subspecies to assist in determining the Carson wandering skipper's range. Twenty-two of these historic and potential sites were located in the northern areas within the potential range of the Carson wandering skipper. As a result of surveys, two new populations of the Carson wandering skipper were found. The Carson City historic population of Carson wandering skipper is believed extirpated. At this time, only two known populations are extant. All of the surveys were conducted by qualified field biologists during the proper time of year and time of day when the Carson wandering skipper could reasonably be expected to be active, evident, and identifiable.

We have prepared a survey protocol to determine habitat suitability and presence or absence of the Carson wandering skipper, and to provide consistency among surveyors. This protocol is currently being used by consultants reviewing various current and proposed projects during the 2002 survey season. We will evaluate the appropriateness of the protocol for accuracy, usefulness of data, and implementation, and the protocol will be revised as needed. Additional monitoring of occupied sites will be needed to determine population sizes and trends in the future.

Surveys to estimate population size of the Carson wandering skipper have not been conducted. We recognize that population estimates refine our understanding of the status of the subspecies. However, the abundance of insect species can fluctuate greatly from year to year. Some insects may be abundant in localized populations yet susceptible to extirpation by a single event. Therefore, estimates of abundance are not necessarily adequate to determine whether a species is threatened or endangered. We based our determination to list the Carson wandering skipper on evaluation of the current and future threats from the five factors listed in section 4 (a) of the Act.

We acknowledge that undiscovered sites occupied by the Carson wandering skipper may exist and appreciate comments mentioning other areas where the Carson wandering skipper and suitable habitat may occur. However, until the existence of additional populations can be verified and threats, if any, can be determined in these areas, we consider the Carson wandering skipper an endangered species.

Issue 2: Some commenters were opposed to the listing of the Carson wandering skipper because they believed it would cause negative economic impact to the agricultural community.

Our Response: Under section 4 (b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial date available. The legislative history of this provision states the intent of Congress is to ensure that listing decisions are “based solely on biological criteria and to prevent non-biological considerations from affecting these decisions,” H.R. Rep. No. 97-835, 97th Cong., 2nd Sess. 19 (1982). The legislative history also provides that, “applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of

the word “solely” in the legislation,” H.R. Rep. No. 97-835, 97th Cong. 2nd Sess. 19 (1982). Therefore, we are precluded from considering economic impacts in a final decision to list a species.

Issue 3: Other commenters stated that grazing was not a threat to the Carson wandering skipper. Many held this position based on the fact that the extirpation of a population of Carson wandering skipper occurred because of urban and residential development rather than agricultural land use. Many stated that grazing was not a threat to the Carson wandering skipper because salt grass was resistant to grazing and trampling by livestock. Others stated grazing is beneficial to butterflies. In addition, the nectar source, slender birds-foot trefoil, was introduced by farmers and ranchers in the area for pasture production, and the Carson wandering skipper has been utilizing this plant as a nectar source and is successful because of it.

Our Response: While the recently extirpated Carson wandering skipper population in Carson City was in an urban setting, the rural landscape in Nevada and California has also been altered over time. Grazing occurs at both known sites. Livestock grazing can impact: (1) Species composition of communities by decreasing the density and biomass of species, reducing species richness, and changing community organization; (2) ecosystem function including the disruption of nutrient cycling and succession; and (3) ecosystem structure including altering vegetation stratification, contributing to soil erosion and reducing the availability of water to biotic communities (Fleischner 1994). Hutchinson and King (1980) found abundance and biomass of invertebrates (including butterflies (Lepidoptera)) were reduced (with the exception of ants (Hymenoptera)) with increases in sheep numbers. Excessive grazing that reduces the availability of salt grass for Carson wandering skipper larvae and availability of nectar sources for the adults is considered a threat.

We recognize that different grazing intensities and management practices can impact areas differently, and impacts at each site must be evaluated independently. However, we have identified grazing as a threat to several butterfly species that have been listed under the Act (e.g., Uncompahgre fritillary butterfly (*Boloria acrocnema*) (56 FR 28712); Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) (57 FR 27858); Quino checkerspot butterfly (*Euphydryas editha quino*) (62 FR 2322); Callippe silverspot butterfly (*Speyeria*

callippe callippe) and Behren's silverspot butterfly (*Speyeria zerene behrensi*) (62 FR 64320)). Grazing occurs at both of the known nectar sites. While we do not know the level or intensity of grazing at these sites, and acknowledge that specific impacts at these sites must be evaluated, we identified a concern that excessive grazing can threaten the species when it reduces the availability of salt grass for the larvae or nectar sources for the adults, or results in the trampling of the larvae. We recognize that grazing, at an appropriate level and season, may be compatible with the conservation of the skipper at these sites. However, such appropriate levels are not known at this time and must be assessed during the recovery process.

As noted by several commenters, salt grass is known to be resistant to grazing and trampling (Crampton 1974; Nebraska Cooperative Extension Service 1985). However, this does not mean that livestock will not graze or trample the salt grass. The term “resistant” means that salt grass is not killed by grazing or trampling and recovers well. Our concerns with impacts from grazing and trampling of salt grass to the Carson wandering skipper relate to the availability of food for the larvae, and the direct trampling of the larvae which are feeding on the salt grass, not impacts to salt grass itself.

As stated by commenters, slender birds-foot trefoil, a nonnative, has been planted in agricultural lands as a forage for cattle and has been utilized by the Carson wandering skipper. The presence of a nectar source is not the only factor influencing the occurrence of Carson wandering skippers. The nectar source location in relation to salt grass is also important and it may be too far from emerging adults to be utilized. Butterflies, in general, are less selective with regard to their nectar sources than they are about their larval host plants (Brussard *et al.* 1999). Flowers that are the proper size for the butterfly's proboscis (mouthparts) and that produce a sugar concentration of 15 to 25 percent are likely to be utilized (Kingsolver and Daniel 1979). As a result, nectar sources for a particular species can vary by locality and by season (Brussard *et al.* 1999). While the Carson wandering skipper has been observed nectaring on slender birds-foot trefoil, other plants in the area may offer additional nectar sources as well. If cattle are foraging on slender birds-foot trefoil during the adult flight period, the availability of slender birds-foot trefoil as a nectar source may be reduced. Given these considerations and the Carson wandering skipper's rarity,

grazing and trampling by livestock can significantly impact the subspecies and should be assessed in the recovery process.

Issue 4: Four commenters preferred that a collaborative conservation approach occur between the Service and local entities and individuals rather than a listing of the Carson wandering skipper under the Act. They suggested that listing the Carson wandering skipper would inhibit efforts to maintain and restore Carson wandering skipper habitat and likely prevent access to private lands. They proposed development of a process which would be "more informal, less restrictive" than what could occur under the Act.

Our Response: We strongly support the concept of utilizing a collaborative conservation effort to address the threats to species such that the need to list them is precluded. However, given the time needed to complete such an effort and the lack of protective measures afforded by the Act during the process, this type of approach is not well suited for species which are imminently threatened with extinction. We worked with agencies in Nevada and California, and a landowner in Nevada, and a draft conservation plan for the subspecies was developed in 2000. However, we were unable to obtain the information and commitment necessary to reduce or eliminate the threats to the Nevada and California populations. Given the immediate and significant threats to the Carson wandering skipper, we believe listing is necessary to put into effect the various conservation provisions in the Act including, but not limited to, interagency consultation, recovery planning, and take prohibitions as well as cooperative efforts with each State. We look forward to working with Federal, State, county, and private entities in development of a recovery plan to address the conservation needs of the Carson wandering skipper.

Issue 5: Three commenters stated that they believed that the emergency and proposed listing of the Carson wandering skipper was solely the result of the "miniglobal" lawsuit agreement and not science.

Our Response: As stated earlier, our "miniglobal" agreement provided we would review the status of the Carson wandering skipper to determine if emergency listing was appropriate. Based on our review of the available information, we believed emergency listing of the Carson wandering skipper was appropriate and adding it to the list of threatened and endangered species as endangered is also appropriate at this time.

Issue 6: Two commenters suggested that the Service list the Carson wandering skipper as threatened rather than endangered because this would enable the Service to protect the subspecies from urban pressures.

Our Response: We make a determination as to whether a species is threatened or endangered based on the magnitude of threats and the imminency of extinction. The term "endangered" is defined according to section 3(6) of the Act as " * * * any species which is in danger of extinction throughout all or a significant portion of its range * * *". A "threatened species" is defined as " * * * any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

Threats to this subspecies include habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), gas and geothermal development, nonnative plant invasion, collecting, livestock trampling, water exportation/importation projects, road construction, recreation, pesticide drift, and inadequate regulatory mechanisms. Given that only two populations are known to exist, we find these threats constitute immediate and significant threats to the Carson wandering skipper. Based on the available information, we believe that endangered status is appropriate for the Carson wandering skipper.

Issue 7: Two commenters thought that groundwater exportation was not a threat to the Lassen County Carson wandering skipper population because Lassen County restricts transfer of groundwater out of the County under the 1999 Lassen County General Plan.

Our Response: The potential water development project that could impact the Lassen County population involves exportation of water from the Honey Lake Valley which is located in both Lassen County, California and Washoe County, Nevada. It is our understanding that the extraction would occur in the Washoe County portion of the Honey Lake Valley. While Lassen County may not support exportation of surface or ground waters from aquifers located in Lassen County, it is unclear, after review of the Lassen County General Plan Ordinance No. 539 (Andy Whiteman, Lassen County Board of Supervisors, in litt., 2002), how it could prevent actions taken by Washoe County, Nevada.

Issue 8: Two commenters stated that the Service has potentially extended its jurisdiction unlawfully by listing habitat

modification under the heading of activities that we believe could potentially result in a violation of section 9, "without identifying an actual Carson wandering skipper specimen that has been taken." The commenters expressed the opinion that a direct impact is necessary before take has occurred.

Our Response: We have not extended our jurisdiction under section 9 of the Act. As stated in the listing, it is our policy (59 FR 34272) to identify, to the maximum extent practicable, those activities that we believe may or may not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the species' range.

With regard to take, under the Act Federal agencies must address both indirect and direct impacts of activities they authorize, fund, or carry out, that may impact listed species and consult with us under section 7 of the Act. Also, under the Act, private entities must address indirect and direct impacts of activities that result in take of a listed species in order to be issued a permit exception from us for activities that incidentally take listed species but are otherwise lawful. This process occurs under section 10 of the Act and is separate from a listing action which is addressed in section 4 of the Act.

Issue 9: One commenter questioned whether urban development was a threat to the Lassen County Carson wandering skipper population because the area was zoned for agriculture and limited development pressure was occurring.

Our Response: Limited urban or residential development is occurring at both known sites. One example of development is the construction of the Federal Correctional Institution (Institution) in the vicinity of the Lassen County site. Not only can the construction of buildings and infrastructure impact Carson wandering skipper habitat directly, the withdrawal of water for home and business needs could impact groundwater resources. If the water table is lowered, and changes the salt grass community, the Carson wandering skipper may be impacted.

The Lassen County General Plan policies related to zoning (Policies AG-4, AG-8) (A. Whiteman, in litt., 2002), do not prohibit development in the area. Policy AG-4 supports agricultural uses and does not allow isolated subdivision in non-designated areas, but does allow for exceptions. Policy AG-8 recognizes that agricultural areas may be evaluated for alternative uses. Agricultural lands can be converted with adequate

justification and consideration of related policies. Again, exceptions may occur. It is unclear whether the Carson wandering skipper site located partially on private land would be considered a "significant wild habitat" by Lassen County. Therefore, it is unclear whether or not it would be taken into consideration prior to possible conversion from agricultural lands to an alternate land use. The Lassen County General Plan also does not address the potential indirect effects of development (A. Whiteman, in litt., 2002).

Issue 10: One commenter questioned whether tall whitetop was a threat to Carson wandering skipper habitat because there was no scientific evidence to support it. However, the commenter did also state that tall whitetop " * * * infestations most likely have a negative impact on salt grass and bird's-foot trefoil density."

Our Response: While it is correct that a study specific to the impacts of tall whitetop invasion at a Carson wandering skipper nectar site has not been conducted, tall whitetop is a threat to other native species. Tall whitetop is an aggressive invader that displaces other vegetation and can form monotypic stands (an area comprised of one species), decreasing biodiversity, and degrading wildlife habitat as well as reducing the value of agricultural lands (Young *et al.* 1995; Donaldson and Johnson 1999; Krueger and Sheley 1999; Howard 2000). The species is known to grow in alkaline soils (Hickman 1993; Young *et al.* 1995; Howard 2000) but is not restricted to them. Tall whitetop can invade disturbed and undisturbed sites including roadsides, agricultural fields, pastures, riparian areas, alkaline wetlands, natural areas, and irrigation canals (Donaldson and Johnson 1999; Howard 2000). It has become widely established in Lassen County and is found in Honey Lake Valley, California (Howard 2000). We are concerned that tall whitetop will displace the Carson wandering skipper's nectar source at the Lassen County site. We are also concerned that tall whitetop may displace salt grass, the Carson wandering skipper's larval host plant. According to Young *et al.* (1998), infestation areas, once well established, rarely contain other plant species. Tall whitetop appears to have increased at this nectar site compared to 2001 (V. Rivers, pers. comm., 2002).

We support efforts to control tall whitetop in Lassen County and elsewhere in Nevada and California. However, where the Carson wandering skipper is found, consideration must be given to any impacts of control methods. Appropriate methods must be

selected, so that the Carson wandering skipper (or other sensitive wildlife, plants, or habitats) can be protected at the same time tall whitetop is controlled.

Issue 11: One commenter stated that pesticide use was not a threat because Carson wandering skippers still occur adjacent to an alfalfa field, and farmers have to pass a safety test prior to applying pesticides.

Our Response: We have indicated that the use of pesticides adjacent to the Carson wandering skipper population in question could be a potential threat if pesticide drift occurred because of the proximity of the agricultural fields to the species' habitat. We do not know what precautions, if any, are being taken at this time to prevent any impact.

Issue 12: One reviewer thought the Service should consider listing the entire species as endangered.

Our Response: As indicated earlier in this rule, a petitioner requested emergency listing of the entire species on November 9, 2000. In our February 20, 2001, response, we indicated we did not believe that an emergency situation existed at that time. Additional status surveys were conducted in 2001 for the remaining subspecies. The results of these surveys are pending, but they should assist us in determining the status of the additional subspecies and determining any threats to them. If our ongoing status review indicates a listing is warranted, we will act accordingly.

Issue 13: One commenter did not think critical habitat should be designated because the Carson wandering skipper has occurred in very small numbers within a few kilometers/miles of the known nectar sites and may exist at low numbers over large areas. Its ecology suggests that areas of relatively high population density may shift among sites within the salt grass community based on changes in climatic, hydrographic, and geothermal conditions. Accurately designating critical habitat will be difficult because either large areas of unoccupied habitat would need to be designated, or if small patches of habitat were designated, changing environmental conditions could result in these areas being uninhabited at a later date.

Our Response: Because information about the specific biological needs of the Carson wandering skipper is currently limited, we are not able to adequately perform critical habitat designation analysis at this time, and find that critical habitat for the species is not determinable. In the proposed rule, we specifically solicited information on potential critical habitat, biological information, and information

that would aid our prudency analysis. We received no comments regarding specific physical or biological features essential for the Carson wandering skipper which provided information that added to our ability to determine critical habitat. When we find that critical habitat is not determinable, we have two years from the publication date of the original proposed rule to designate critical habitat, unless the designation is found to be not prudent.

Issue 14: One commenter noted that the description of the Carson wandering skipper by Austin and Emmel (1998) suggests that, infrequently, other subspecies of *Pseudocopaeodes eunus* approach the coloration of *P. e. obscurus*. Therefore, the commenter questioned the appropriateness of this subspecies. The commenter was also concerned that the designation "ssp." had not been included in the scientific name for the Carson wandering skipper indicating that a subspecies was being discussed.

Our Response: It is correct that Austin and Emmel (1998) indicated, as mentioned above, that infrequently, specimens from other populations approach the less heavily marked extremes of the Carson wandering skipper. These specimens do not, however, give the impression of an insect with a dark ventral hindwing, and they lack the dark apex on the ventral forewing. The Carson wandering skipper has been described by recognized authorities in a peer reviewed publication.

We do not use "ssp." to denote an animal subspecies, only plant subspecies. The absence of its use in animal scientific names does not indicate uncertainty in its taxonomic definition.

Issue 15: One commenter was concerned with the lack of information provided regarding habitat requirements for the Carson wandering skipper. It was suggested that, because soils are effective in discriminating environmental units, soil survey maps be utilized to delineate habitat for the Carson wandering skipper.

Our Response: We agree that additional information regarding Carson wandering skipper's habitat requirements would be useful. However, under the Act, the absence of more details regarding habitat requirements for a species or subspecies does not prevent the listing of the taxon. Habitat requirements for butterflies are primarily defined by its larval host plant, in this case, salt grass. While soils can be an effective means of indicating vegetation communities, salt grass has been observed in many soil types.

Researchers did review soil survey maps during the Carson wandering skipper surveys of 1998; however, salt grass did not appear to follow soil survey boundaries and as a result, they were not particularly helpful (P. Brussard, pers. comm., 2002b).

Issue 16: One commenter stated that when the Endangered Species Act was originally passed it “* * * did not contemplate the extinction of creatures of the phylum Insecta; it was aimed at the protection of vertebrate species.”

Our Response: When the Endangered Species Act was passed in 1973, it provided for protection of insects and other invertebrate species. At the time of its passage, definitions for the purposes of the Act were found in section 3(5) which stated: “The term ‘fish or wildlife’ means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.” Several amendments to the Act have since occurred, and this definition can be found today in section 3(8) of the Act.

Issue 17: One commenter asked what information would be necessary for delisting of the Carson wandering skipper.

Our Response: The listing of a species is based on the best scientific and commercial data available at the time of listing as it relates to addressing the five listing factors defined under section 4 (a)(1) of the Act. Section 4 regulations (50 CFR 424.11(c–f)) provide guidance regarding the applicable criteria for delisting and reclassifying species. Delisting of a species can occur if: (1) The species is extinct or has been extirpated from its previous range; (2) the species has recovered and is no longer endangered or threatened; or (3) investigations show that the best scientific or commercial data available when the species was listed or the interpretations of such data were in error. The requirements for listing and delisting are different in that the information necessary to resolve the threats and recover the species need not be known at the time of listing. Specific recovery criteria, which define when a species may be downlisted or delisted, are developed for each species during the recovery planning process and are published in the recovery plan for the species.

Issue 18: One commenter repeated a comment the Service made that the Carson wandering skipper is rare in and of itself. The commenter states that “rare does not mean endangered”.

Our Response: The commenter is correct. Just because a species is rare does not mean it should automatically be listed under the Act. However, if a rare species is determined to be threatened or endangered based on the listing factors in section 4 (a)(1) of the Act using the best scientific and commercial data available, it should be considered for listing.

Issue 19: One commenter stated that there had been insufficient time to gather information, research it, and comment on it by the public.

Our Response: A 60-day comment period was opened when the proposed rule was published. An additional 30-day comment was opened to provide opportunity for further public input. In addition, a public informational meeting was held to answer questions regarding the species and the proposed rule. We believe that the 60-day and 30-day comment periods and the informational meeting provided adequate opportunity for the public to gather available information and comment on the proposed listing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we have sought the expert opinions of four appropriate and independent specialists regarding our proposal to list the Carson wandering skipper. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We sent the peer reviewers copies of the emergency and proposed rules immediately following their publication in the

Federal Register. Three of the four reviewers returned comments during the comment period. Two of the three reviewers supported our assumptions and conclusions as well as our decision to list the Carson wandering skipper as endangered, while a third reviewer was neutral in his opinion of our proposed action. We have incorporated their comments into this final determination.

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 (16 U.S.C. 1531 *et seq.*) set forth the procedures for adding species to the Federal lists. We may determine a species to be endangered or threatened due to one or more of the five factors

described in section 4(a)(1). These factors and their application to the Carson wandering skipper are as follows:

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

The primary cause of the decline of the Carson wandering skipper is loss of salt grass, nectar sources, and wetland habitats from human activities. Threats include habitat fragmentation, degradation, and loss due to urban and residential development, wetland habitat modification, agricultural practices (such as excessive livestock grazing), nonnative plant invasion, gas and geothermal development, road construction, water exportation projects with their subsequent change in water table levels and plant composition, and recreation. Threats at each known or historic site are discussed below.

Carson City Site

Habitat at the original Carson City site has been greatly modified over time, and most of it was destroyed by construction of a shopping center (Brussard *et al.* 1999). Several years later, an extension of this population was discovered north of the original location (Brussard *et al.* 1999). The current site includes about 10 ha (24.7 ac) of known and potential Carson wandering skipper habitat (P. Frost, *in litt.*, 1998). Collections were made at this site from the late 1960s through the early 1990s, although population numbers were small (Austin and Emmel 1998; Brussard *et al.* 1999). In the 1990s, additional urban development further reduced the remaining habitat, and the site is now completely surrounded by development. Adult Carson wandering skippers have not been observed at this location since 1997.

The Carson wandering skipper has likely been extirpated from the Carson City site due to development and habitat changes resulting from drainage manipulations for residential and commercial development (Brussard *et al.* 1999). Adjacent lands surrounding this site will continue to be developed for commercial and residential use.

The remaining habitat at the type locality will also be fragmented or destroyed by construction of a freeway bypass and associated flood control facilities being planned by the Nevada Department of Transportation (NDOT). The bypass was approved and the right-of-way corridor was purchased several years ago. At the time, this was the only known site occupied by the Carson wandering skipper. The only suitable nectar source available during the

Carson wandering skipper's flight season at this site was the native mustard, *Thelypodium crispum* (Brussard *et al.* 1999). Construction of the bypass began in 2000 and impacts to Carson wandering skipper habitat will likely occur in 2002 (Julie Ervin-Holoubek, NDOT, pers. comm., 2001). The alignment will impact approximately 2.4 ha (6 ac) of previously occupied habitat, and about 8 ha (20 ac) of the potential habitat remaining at both areas north and south of U.S. 50 (P. Frost, *in litt.*, 1998). According to Brussard (2000), this will leave inadequate habitat to support a restored population.

Habitat loss and modifications of the Carson City site have also occurred due to the construction of a wetland mitigation area in the early 1990s to mitigate for wetlands lost approximately 0.8 km (0.5 mi) southwest of this site. The U.S. Army Corps of Engineers (Corps) issued a section 404 permit on March 10, 1993, for a residential housing and golf course project, impacting about 2 ha (5 ac) of wetlands. Mitigation for these impacts involved the creation of 9 ha (22 ac) of intermittent, seasonal, and semi-permanent wetlands adjacent to the existing wetlands (Robert W. Junell, Corps, *in litt.*, to Charles L. Macquarie, Lumos and Associates, Inc. 1993; Lumos and Associates, Inc. 1993). To date, this mitigation site has not met its objectives to provide high-value urban wetlands and enhance wetland function (Nancy Kang, Corps, *in litt.*, to Dwight Millard, J.F. Bawden and Stanton Park Development 2001).

In addition, this site is used for recreation by walkers and mountain and dirt bikers in the remaining open area.

Washoe County Site

Threats at the Washoe County site include excessive livestock grazing and trampling, residential development, increased potential recreational use, such as off-road vehicles (ORV), a proposed water exportation project, and potential impacts associated with pesticide drift.

Recent grazing practices on BLM-administered lands at the Washoe County site allowed for a November to March grazing season. Although this season of use avoided impacts to adult Carson wandering skipper nectar sources and impacts to eggs, larvae, and pupae during the spring and summer, high livestock densities can cause larval mortality by trampling larvae that hibernate during the winter in salt grass. On adjacent private lands, cattle densities and season of use are not regulated, and cattle have access to

areas occupied by nectar sources during the Carson wandering skipper flight season. Livestock can trample the salt grass and nectar sources and also cause direct mortality of eggs, pupae, or feeding larvae. While the level of grazing on salt grass has not been measured at this site, cattle readily utilize this dominant forage species (Walt Devaurs, BLM, pers. comm., 2001), possibly competing with larval needs.

An assessment of the springs located on the BLM portion of this site occurred in 2001 (Daniel Jacquet, BLM, *in litt.*, 2002). Cattle use of this area resulted in the springs being determined "Functional at Risk" and "Non-functional," indicating that the springs were not in good condition. As a result of this determination, livestock grazing will be excluded from this area for 3 years or through the 2005 growing season to rehabilitate the area. This exclusion should improve the abundance and quality of nectar sources and salt grass habitat for the Carson wandering skipper. Grazing may be allowed after this 3-year period if it is determined that improvement to the springs has occurred. While long-term monitoring data of salt grass are lacking, transects established in March 2002, indicate overall utilization was in the "heavy to severe range." BLM will monitor the site annually for the 3-year period for improvement in growth of vegetation.

Residential development is occurring in the area surrounding the Washoe County site. Increases in domestic wells could impact the water table in the area, resulting in changes to the salt grass community. As this area becomes more populated, fragmentation and degradation of the Carson wandering skipper's habitat is expected to increase through development and recreational activities such as ORV use. Also, use of public lands for recreation will likely increase as the area becomes more developed.

The Nevada State Engineer's Office approved change-in-use applications (agricultural to municipal and industrial use) (Hugh Ricci, Nevada Department of Conservation and Natural Resources, Division of Water Resources, *in litt.*, 2001) for a private landowner plan to export water from this valley and import it to a neighboring valley. This project will involve the collection of up to 358 hectare-meters (ha-m) (2,900 acre-feet (ac-ft)) per year of surface and ground water through a system of ditches, natural channels, diversion structures, collection facilities, and recovery wells. The recovered water will be treated and exported via pipeline to the neighboring

valley (Stantec Consulting, Inc. 2000). Implementation of this project, or a similar one, could result in the lowering of the water table in the valley and result in adverse changes to the salt grass community upon which the Carson wandering skipper at this site depends. In addition, the construction of facilities could result in direct impacts to Carson wandering skipper habitat.

Another potential threat is pesticide drift from alfalfa fields located near to the occupied nectar site. Pesticides are used to control pests such as aphids, cutworms, grasshoppers, and mites (Carpenter *et al.* 1998.). Pesticide drift from these fields to the nectar site could eliminate a large part of the Carson wandering skipper population (Brussard 2000).

Lassen County Site

Threats at the Lassen County site include the invasion of the nonnative plant species tall whitetop, proposed gas and geothermal development, urban development, and the potential for excessive livestock grazing and trampling. A water development project, which could affect the ground water table, is also of concern.

Tall whitetop, which was first noted in 2000, has encroached onto the nectar site on the public/private property and has become established in patches of slender birds-foot trefoil, this site's nectar source. Tall whitetop is a perennial native to Europe and Asia which grows in disturbed sites, wet areas, ditches, roadsides, and cropland. Spreading roots and numerous seeds make this plant difficult to control (Stoddard *et al.* 1996). No further advancement of tall whitetop into the nectar site was observed during visits in 2001 (V. Rivers, pers. comm., 2001), but it appears to have spread in 2002 (V. Rivers, pers. comm., 2002). The surrounding countryside, including both public and private lands, is infested (Howard 2000). Failure to control this invasive species could quickly result in the loss of this small nectar source and the immediate salt grass area (Young *et al.* 1998). Depending on the control methods used (herbicide treatments or mechanical means) and timing, efforts to control this plant species could also impact the Carson wandering skipper population and its habitat at this site. To date, the Carson wandering skipper has not been observed nectaring on tall whitetop.

A permit for proposed gas and geothermal development has been recently extended by the Lassen County Planning Commission (Albaugh 2002). The permit allows exploratory drilling

for 14 hydrocarbon wells and one geothermal water test well near the occupied site. The Carson wandering skipper has been associated with geothermal areas and the resulting ground and hydrologic disturbances caused by the exploratory drilling may impact the subspecies and its habitat.

Construction of the Federal Correctional Institution, and its associated water supply and wastewater treatment facilities for the Institution and adjacent community, could impact Carson wandering skipper habitat. The increased water needs (approximately 757 million liters (200 million gallons) per year) (The Louis Berger Group, Inc. 2002) for the project could impact Carson wandering skipper habitat if the ground water table is lowered and salt grass habitat is negatively affected. The Federal Bureau of Prisons is currently consulting with us on the potential impacts of this project to the Carson wandering skipper.

Cattle have access to the Lassen County site at the private/public lands location, however, it is unknown at this time what type of management is being implemented. Like the Washoe County site, season of use and densities of livestock can affect the availability of nectar sources for adults and salt grass for larvae. Trampling of larvae is also possible. In addition, the small size of this site makes it more susceptible to adverse impacts.

Additional potential threats include attempts to export water from the area to other locations. In 1991, the Nevada State Engineer approved exportation of 1,604 ha-m (13,000 ac-ft) of groundwater per year from Honey Lake Valley, located in Lassen and Washoe counties to Lemmon and Spanish Springs Valleys, Washoe County. In 1993, a draft Bedell Flat Pipelines Rights-of-Way, Washoe County, Nevada Environmental Impact Statement was prepared (BLM 1993). Further work on the Bedell Flats Project by BLM was suspended by the Secretary of the Interior (Secretary) in 1994 due to concerns with groundwater modeling, groundwater contamination, and potential impacts to Pyramid Lake (Bruce Babbitt, U.S. Department of the Interior, *in litt.*, 1994). The project has since been modified by new water rights holders, and there are future plans, not yet approved, to potentially export 987 ha-m (8,000 ac-ft) of groundwater annually from Honey Lake Valley to the North Valleys (Donald Patalock, Vidler Water Company, pers. comm., 2002). If this project, or a similar project, is implemented, lowering of the water table could occur and result in adverse changes to the salt grass community

upon which the Carson wandering skipper depends.

B. Over-Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Rare butterflies and moths are highly prized by collectors, and an international trade exists for insect specimens for both live and decorative markets, as well as the specialist trade that supplies hobbyists, collectors, and researchers (Morris *et al.* 1991; Williams 1996). The specialist trade differs from both the live and decorative market in that it concentrates on rare and threatened species (U.S. Department of Justice 1993). In general, the rarer the species, the more valuable it is, and prices may exceed US \$2,000 for rare specimens (Morris *et al.* 1991).

Simply identifying a species as rare can result in an increase in commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection for scientific and/or commercial purposes. Even limited collection from small populations can have adverse impacts on their viability.

While there have been no studies on the impact of the removal of individuals from natural populations of this subspecies, it is possible that the Carson wandering skipper has been adversely affected. At the Carson City site, individuals of the Carson wandering skipper are known to have been collected for personal butterfly collections during the late 1960s until the early 1990s, though populations were small (Austin and Emmel 1998; Brussard *et al.* 1999). From 1965 to 1989, at least 86 males and 90 females were collected during 7 different years by various collectors (Austin and Emmel 1998). During this time, this was the only known site at which Carson wandering skipper occurred. The Carson wandering skipper is now believed to have been extirpated from the site. While habitat degradation and loss have occurred at this site, collecting may have also contributed to this extirpation.

In 1998, the Carson wandering skipper was collected at the Washoe County and Lassen County sites by UNR researchers for genetic analysis. Only males were collected, and these were taken late in the flight season to minimize impacts to the population (Brussard *et al.* 1999).

The two known populations of Carson wandering skipper could face strong pressure from collectors. Since the nectar sites occur along public roadsides, the subspecies is easily accessible, and the limited number and

distribution of these populations make this subspecies vulnerable to collectors. Even limited collection from the small populations of Carson wandering skipper could have deleterious effects on its viability and lead to the eventual extinction of this subspecies.

C. Disease or Predation

Disease is not known to be a factor affecting this subspecies at this time.

Predation by species, such as birds or insects, on eggs, larvae, pupae, or adult Carson wandering skippers is likely, but it is unknown how this may affect the population's viability.

D. The Inadequacy of Existing Regulatory Mechanisms

The Carson wandering skipper occurs on Federal, State, and private lands. Existing regulatory mechanisms do not fully protect this subspecies or its habitat on these lands. Existing regulatory mechanisms that may provide some protection for the Carson wandering skipper include: (1) Federal laws and regulations including the Clean Water Act (CWA); and (2) State laws including the California Environmental Quality Act (CEQA).

Federal Laws and Regulations

The Carson wandering skipper appears to be closely associated with wetland habitats. Current regulatory mechanisms, such as section 404 of the CWA, have not precluded development and alteration of these habitats. Section 404 regulations require that applicants obtain a permit from the Corps for projects that place fill material into waters of the United States. Whether an individual or nationwide permit may be required depends upon the activity and the amount of fill proposed. Regulatory mechanisms addressing alterations to stream channels, riparian areas, springs and seeps from various activities such as agricultural activities, development, and road construction have been inadequate to protect the Carson wandering skipper habitat in Nevada and California.

Some protection is afforded to the Carson wandering skipper on lands administered by the BLM at the Washoe County site due to their commitment to assist in the conservation of this subspecies through a Cooperative Agreement (CA) signed in 1999. This CA was signed by the Service, NDOT, the Federal Highway Administration (FHA), and BLM in October 1999. It was developed to outline the actions necessary for the conservation and management of the Carson wandering skipper. Development of a conservation plan was one activity outlined by the

CA. UNR was contracted by NDOT, and a draft plan was completed in 2000. Additional biological information and agency commitment are needed before this plan can be finalized. Since signing the CA in 1999, BLM has designated 98 ha (243 ac) of their lands at the Washoe County site as an Area of Critical Environmental Concern. This designation allows BLM discretion in determining actions which can occur within the area (BLM 2001). However, these protections only cover a portion of Carson wandering skipper habitat in the area and are insufficient to protect the subspecies throughout the site.

Publication of the emergency rule on November 29, 2001, provides protection for the Carson wandering skipper until July 29, 2002. Until publication of the emergency rule, we considered the Carson wandering skipper a candidate species; a candidate species designation carries no formal Federal protection under the Act.

State Laws and Regulations

Although California State laws may provide a measure of protection to the subspecies, these laws are not adequate to protect the Carson wandering skipper and ensure its long-term survival. CEQA pertains to projects on non-Federal lands and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. Section 15065 of the CEQA Guidelines requires a "finding of significance" if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal" including those that are eligible for listing under the California Endangered Species Act. However, under CEQA, where overriding social and economic considerations can be demonstrated, a project may proceed despite significant adverse impacts to a species.

The California Natural Diversity Data Base (CNDDB) classifies the Carson wandering skipper as a S1S3 species, which identifies this subspecies as one that is extremely endangered with a restricted range within California (CNDDB 2001). This designation provides no legal protection in California. The CDFG is unable to protect insects under its current regulations (Pete Bontadelli, CDFG, *in litt.*, 1990), since the California Endangered Species Act does not allow for the listing of insect species.

In Nevada, there are no local or State regulations protecting the Carson wandering skipper on State or non-Federal lands. The Nevada Natural Heritage Program ranks the Carson wandering skipper as S1, meaning it is

considered critically imperiled in the State of Nevada due to extreme rarity, imminent threats, or biological factors (Nevada Natural Heritage Program 2000). This designation provides no legal protection in Nevada. The Nevada Division of Wildlife is unable to protect insects under its current regulations (Nevada Revised Statutes 1999).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The apparent low numbers of the Carson wandering skipper make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) Random demographic effects (e.g., skewed sex ratios, high death rates or low birth rates); (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); and (3) deterioration in environmental quality (Gilpin and Soulé 1986). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (*i.e.*, reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to adapt to future environmental changes. Also, having only two locations and restricted habitat makes the Carson wandering skipper susceptible to extinction or extirpation from all or a portion of its range due to random events such as fire, flood, or drought (Shaffer 1981, 1987; Primack 1998).

In addition, the loss of habitat compromises the ability of the Carson wandering skipper to disperse. Populations are isolated with no opportunity to migrate or recolonize if conditions become unfavorable.

A wetlands mitigation bank is being established near the Lassen County site. It is located adjacent to existing CDFG lands. This parcel of land has been recently grazed and farmed. The bank is intended to create a minimum of 37 ha (92 ac) of emergent wetlands at this site to mitigate for wetland losses in sagebrush scrub and juniper woodland habitats due to road construction in Lassen and Modoc counties and the eastern portion of Plumas County. This bank will be managed by CDFG (California Department of Transportation (CalTrans) and CDFG 1998). Depending upon the location of constructed wetlands, loss of potential Carson wandering skipper habitat could occur. CalTrans, representing the FHA, is currently consulting with us regarding potential impacts to the

subspecies with regard to this wetland mitigation bank project.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Carson wandering skipper in determining to make this rule final. We are concerned about the Carson wandering skipper because of the extremely small number of populations, habitat fragmentation, and significant decrease in its historical range in Nevada and California. This subspecies is threatened by the following factors: habitat destruction, degradation, and fragmentation due to urban and residential development, wetland habitat modification, agricultural uses (such as excessive livestock grazing), nonnative plant invasion, gas and geothermal development, road construction and recreation. Other threats include impacts from collecting, livestock trampling, pesticide drift, and inadequate regulatory mechanisms. Proposed water exportation projects pose an additional threat. These projects could severely impact Carson wandering skipper habitat by lowering the water table, and degrading or eliminating the salt grass community upon which the Carson wandering skipper depends.

This subspecies is also vulnerable to chance demographic, genetic, and environmental events, to which small populations are particularly vulnerable. The combination of only two populations, small range, and restricted habitat makes the subspecies highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994).

Because the Carson wandering skipper occurs at only two known locations, and because both locations are subject to various immediate, ongoing, and future threats as outlined above, we find that the Carson wandering skipper is in imminent danger of extinction throughout all or a significant portion of its range and, therefore, meets the Act's definition of endangered and warrants protection under the Act. Threatened status would not accurately reflect the diminished status and the threats to this subspecies.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological

features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary 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, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific data available after considering economic and other relevant impacts of designating a particular area as critical habitat. We may exclude any area from critical habitat if we determine that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

We find that critical habitat is not determinable for the Carson wandering skipper. In the proposed rule, we specifically solicited information on potential critical habitat, biological information, and information that would aid our prudence analysis. We received no comments regarding specific physical or biological features essential for the Carson wandering skipper which provided information that added to our ability to determine critical habitat. In addition, the extent of habitat required for recovery of the Carson wandering skipper has not been identified. This information is considered essential for determining critical habitat. We are also concerned that the designation of critical habitat could increase the degree of threat to the subspecies through collecting or from intentional habitat degradation. Because information relevant to the specific biological needs of the Carson wandering skipper is not currently available, we are unable to adequately perform the analysis required to

designate critical habitat and therefore, we find that critical habitat for the Carson wandering skipper is not determinable at this time. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

We will protect the Carson wandering skipper and its habitat through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the subspecies, through the recovery process, through enforcement of take prohibitions under section 9 of the Act, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, development of recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and encourages 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 the Service carry out recovery actions for all listed species. The protection required of Federal agencies, and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. 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 agencies whose actions may require consultation include, but are not limited to, the BLM, Corps, FHA, Natural Resources Conservation Service, U.S. Department of the Army, and the Federal Bureau of Prisons. Federal agencies with management responsibility for the Carson wandering skipper also include the Service, in relation to Partners for Fish and Wildlife projects and issuance of section 10(a)(1)(B) permits for habitat conservation plans, and other programs. Activities on BLM lands could include livestock grazing and associated management activities, sale, exchange, or lease of Federal land containing suitable habitat, recreational activities, or issuance of right-of-way permits for various projects across lands they administer. Occurrences of this subspecies could potentially be affected by projects requiring a permit from the Corps under section 404 of the CWA. The Corps is required to consult on permit applications they receive for projects that may affect listed species. Highway construction and maintenance projects that receive funding from the FHA would be subject to review under section 7 of the Act. Activities authorized under the Natural Resources Conservation Service's Emergency Watershed Protection program, such as fire rehabilitation projects, and activities authorized by the U.S. Department of the Army and the Federal Bureau of Prisons would also be subject to section 7 review. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

We believe that protection and recovery of the Carson wandering skipper will require reduction of the threats from habitat destruction, degradation, and loss of salt grass and wetland habitats due to urban and residential development, agricultural practices (such as excessive livestock grazing), nonnative plant invasion, gas and geothermal development, and road construction. Threats from collection, livestock trampling, water exportation projects, pesticide drift, and recreation must also be reduced. These threats should be considered when management actions are taken in habitats currently and potentially occupied by the Carson wandering skipper, and areas deemed important for dispersal, and connectivity or corridors between known locations of this subspecies. Monitoring should also be undertaken for any management actions or scientific investigations designed to address these threats or their impacts.

Listing the Carson wandering skipper as endangered will provide for the

development of a recovery plan for the subspecies. Such a plan will bring together Federal, State, and regional agency efforts for conservation of the subspecies. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities, assign responsibilities, and estimate the costs of various tasks necessary to achieve conservation and survival of the subspecies. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the States of Nevada and California for management actions promoting the protection and recovery of this subspecies.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. All prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the subspecies' range. With respect to the Carson wandering skipper, based upon the best available information, we believe the following actions would not be likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, including interstate transport and import or export from the United States, involving no

commercial activity, of dead Carson wandering skippers that were collected prior to the November 29, 2001 date of publication of the emergency listing rule in the **Federal Register**;

(2) Any actions that may result in take of the Carson wandering skipper that are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action taken for scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act; and

(4) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement.

Activities that we believe would potentially result in a violation of section 9 include, but are not limited to:

(1) Unauthorized possession, handling, or collecting of the Carson wandering skipper. Research efforts involving these activities will require a permit under section 10(a)(1)(A) of the Act;

(2) Possession, sale, delivery, carriage, transportation, or shipment of illegally taken Carson wandering skipper specimens;

(3) Activities authorized, funded, or carried out by Federal agencies that may result in take of the Carson wandering skipper when such activities are not conducted in accordance with the consultation requirements for listed species under section 7 of the Act; and

(4) Activities (e.g., habitat conversion, urban and residential development, gas and geothermal exploration and development, excessive livestock grazing, farming, road and trail construction, water development, recreation, and unauthorized application of herbicides and pesticides in violation of label restrictions) that directly or indirectly result in the death or injury of adult Carson wandering skippers, or their pupae, larvae or eggs, or that modify Carson wandering skipper habitat and significantly affect their essential behavioral patterns including breeding, foraging, sheltering, or other life functions that result in death or physical injuries to skippers. Otherwise lawful activities that incidentally take Carson wandering skipper specimens, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities risk violating section 9 should be directed to the Field Supervisor of the Nevada Fish and Wildlife Office or the Field Supervisor of the Sacramento

Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife, and general inquiries regarding prohibitions and issuance of permits under the Act, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Ave., Portland, OR 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Reasons for Effective Date

We published the emergency rule for this subspecies on November 29, 2001. The 240-day period expires on July 29, 2002. This final rule must be published on or before this date to prevent Federal protection for the Carson wandering skipper from expiring. Because of this, we find that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. 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 that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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 OMB control number. Information collections associated with endangered species permits are covered by an existing OMB approval and are assigned control number 1018-0093 expires March 31, 2004.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein is available upon request from the Nevada Fish and Wildlife Office (see ADDRESSES section).

Author

The primary author of this final rule is Marcy Haworth, U.S. Fish and

Wildlife Service, Nevada Fish and Wildlife Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

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. In § 17.11(h), add the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species	Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	*	*
INSECTS								
*	*	*	*	*	*	*	*	*
Skipper, Carson wandering.		<i>Pseudocopaeodes eunus obscurus.</i>	U.S.A. (CA, NV) ...	U.S.A., (Lassen County, CA; Washoe County, NV).	E	730	NA	NA
*	*	*	*	*	*	*	*	*

Dated: July 26, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–20007 Filed 8–6–02; 8:45 am]

BILLING CODE 4310–55–P

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 2, 2002, until 1200 hrs, A.l.t., September 1, 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 the Groundfish Fishery 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 Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was 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) for the third season, the period June 30, 2002, through September 1, 2002, as 400 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl deep-water

species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastodes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

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, because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached, the need to immediately implement this action 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)(B). These procedures are unnecessary and contrary to the public interest because of the need to implement these measures in a timely fashion because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 080202A]

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in 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 species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.