

## DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

## 50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine, *Eriogonum Humivagans* To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to determine *Eriogonum humivagans* (spreading wild-buckwheat) to be an endangered species. There is only one extended population of this species, with six occurrences over a distance of about 10 miles in San Juan County, Utah. Except for one occurrence on public land administered by the Bureau of Land Management, all the occurrences are on private land. The size of the occurrences varies from 100 to 3,000 plants, with a total of approximately 5,000 plants known. They occur on remnant heavy clay soils of the Mancos Shale in an area of pinyon-juniper woodlands and sagebrush parks. Because of the good soils and adequate precipitation at this relatively high elevation (nearly 7,000 feet), much of the area has been cleared for cultivation. The majority of the occurrences are along the edges of agricultural fields at roadsides or in remaining uncultivated areas. There are undeveloped oil and gas leases and mining claims (uranium) on half of the occurrences. This proposal, if made final, would provide possibilities for protection and management of the species under the Endangered Species Act of 1973, as amended. The Service is requesting comments on this action.

**DATES:** Comments from all interested parties must be received by June 6, 1986. Public hearing requests must be received by May 22, 1986.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Salt Lake City Field Office, Endangered Species, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address or at the Service's Grand Junction Field Office, Endangered Species, Independence Plaza, Suite B113, 529 25½ Road, Grand Junction, Colorado 81505.

**FOR FURTHER INFORMATION CONTACT:** John L. Anderson, Botanist, at the Grand Junction address above (303/241-0563 or FTS 322-0348), or John L. England at the

Salt Lake City address (801/524-4430 or FTS 588-4430).

**SUPPLEMENTARY INFORMATION:****Background**

*Eriogonum humivagans*, the spreading wild-buckwheat, was first described by James Reveal (1968) who made the type collection with Arthur Holmgren in 1966. Holmgren and Shultz (1976) found another occurrence ¼ mile (0.4 kilometers) from the type locality in 1976 while conducting a survey of rare and endangered plants for the Bureau of Land Management (BLM). Two earlier collections were made in the 1950's, but were not recognized as a new taxon. The spreading wild-buckwheat is a perennial species, 8 to 12 inches (20 to 30 centimeters) high and 12 to 16 inches (30 to 40 centimeters) across, with glabrous herbaceous stems and strictly basal leaves from a branched woody base, appearing scapose. The cymose inflorescence is trichotomously branched and spreading, with turbinate clusters of small ⅛ inch (3 millimeter) six-tepalled white flowers. The oblanceolate basal leaves are densely tomentose below and mostly green above. *Eriogonum humivagans* occurs at an elevation of about 6,800 feet, growing within pinyon-juniper woodlands and sagebrush parks on outcrops of heavy clay soils of the lowermost strata of the Mancos Shale. These soils are characterized by the presence of the marine bivalve fossil, *Gryphaea newberryi* (Hintze 1973). These heavy clay soils occur as uneroded remnants surrounded by coarser-textured alluvial soils derived from the underlying Dakota sandstone. Much of this high-elevation, relatively mesic area has been cleared and put under nonirrigated, dry land cultivation. *Eriogonum humivagans* now occurs as small remnants on the unplowed edges of fields, except for one small occurrence within a pinyon-juniper woodland on BLM land (Anderson 1982). All the other locations are on private land and in road rights-of-way. There are oil and gas leases and uranium mining claims in the area of several of the occurrences. Some exploration and surface disturbance have taken place on these leases, but no development has occurred. The population at the type locality is in a heavily impacted highway right-of-way.

A possible additional population of *E. humivagans* occurs at Brumley Ridge, San Juan County, about 40 miles north of the type locality. The Brumley Ridge population grows in a disturbed habitat and is morphologically variable. This population, however, appears to be intermediate between *E. humivagans*

and *E. corymbosum*. On the basis of this apparent intermediacy, Welsh (1984) reduced *E. humivagans* to a variety of *E. corymbosum*. Regardless of the rank at which *E. humivagans* is recognized, its status as a distinct taxon has not been questioned. Further research may support inclusion of the disjunct Brumley Ridge population within an expanded concept of the taxon, but the Service now recognizes only the population at the type locality as representing *E. humivagans*. Endangered status is proposed on the basis of evident significant decline in this population.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the 1973 Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of those plants. *Eriogonum humivagans* was included in the July 1975, notice and was proposed by the Service for listing as endangered along with some 1,700 other vascular plants on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). Comments that are received during the comment period for this new proposal will be summarized in any final rule.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn; proposals already over 2 years old were subject to a 1-year grace period. On December 10, 1979, the Service published a notice of the withdrawal of the still applicable portions of the June, 1976, proposal, along with other proposals that had expired (44 FR 70796). The July, 1975, notice was superseded on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82480) of a new notice or review for plants, which included *Eriogonum humivagans* as a category-1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support a proposal to list as endangered or threatened species. No comments on this species have been received in response to the 1980 notice. On February 15, 1983, the Service

published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted in accordance with section 4(b)(3)(A) of the Act as amended in 1982.

On November 28, 1983, the Service published a supplement to the 1980 notice of review (48 FR 53640) in which *Eriogonum humivagans* was placed in category 2. Category 2 comprises taxa for which the Service has information indicating the possible appropriateness of a proposal to list as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats. Recent field checks by Service personnel, John L. England in 1983 and John Anderson in 1984 and 1985, verified the continued precarious existence of *Eriogonum humivagans*. This information was reflected in a revised notice of review published September 27, 1985 (50 FR 39526), which returned this species to Category 1.

The Endangered Species Act amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on such petitions, including that for *Eriogonum humivagans*, was October 13, 1983. On October 13, 1983, October 12, 1984, and again on October 11, 1985, the petition finding was made that listing *Eriogonum humivagans* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. This proposed rule constitutes the next required finding that the petitioned action is warranted, in accordance with section 4(b)(3)(B)(ii) of the Act.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eriogonum humivagans* (spreading wild-buckwheat) are as follows:

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.*

Much of the habitat of *Eriogonum humivagans* has been lost to cultivation. Only one of its occurrences is in an

undisturbed area. Most of the other occurrences only remain as small remnants along the edges of fields, sometimes on opposite sides of a field, implying the nearly total loss of larger continuous occurrences (Anderson 1982). The type locality, a remnant within a State highway right-of-way, is fenced off from further cultivation, but has been severely impacted by highway construction, which bisected this locality, and road maintenance, which includes seeding of crested wheatgrass (*Agropyron cristatum*), a nonnative range grass, for soil stabilization. The underlying geologic formations may contain uranium or oil and gas, and several of the occurrences are covered by mining claims and oil and gas leases (Anderson 1984a). Some leases have been allowed to expire by one company and then taken out later by another, indicating low commercial potential, and impact to the plants is more likely from surface disturbance associated with exploration and required annual assessment work. There is a drill pad near the one occurrence on BLM land (Anderson 1982).

*B. Overutilization for commercial, recreational, scientific, or educational purposes*

None.

*C. Diseases or predation*

*Eriogonum humivagans* does not appear to be heavily grazed, but is palatability has not been determined.

*D. The inadequacy of existing regulatory mechanisms.* Although BLM provides for special management of candidate and "sensitive" species of plants and wildlife, formal listing under the Act would invoke protections for this species that do not exist under current law or regulations. The Act offers possibilities for additional protection of this species through section 7 (interagency cooperation) requirements and through section 9, which prohibits removing and reducing to possession any endangered plant from an area under Federal jurisdiction. The one occurrence on public land near Monticello is within an isolated BLM tract of 160 acres surrounded by private land. The BLM-administrated parcel may be declared surplus and made available for disposal. Benefits of the Act to this portion of the species' population would then be lost. All other occurrences of the species are on private land and would not be protected by section 9(a)(2)(B) of the Act.

*E. Other natural or manmade factors affecting its continued existence.*

Potential habitat for *Eriogonum humivagans* may be limited by its local endemism and apparent restriction to a remnant habitat. Because it is a

restricted endemic, the possibility is increased that one catastrophic disturbance, either natural or human-caused, could destroy a significant portion of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Eriogonum humivagans* as an endangered species. Because it occurs in low numbers on a restricted habitat that has been severely impacted or eliminated in places, endangered status seems an accurate assessment of the species' status. It is not prudent to propose critical habitat for the reasons discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time because no additional benefit would be provided by the critical habitat designation that would not already be provided by listing and that would outweigh possible negative effects of designation. Any impacts to its habitat would also affect the plant itself as a rooted organism and, consequently, would be addressed under section 7 of the Act as a result of its listing. The BLM is already aware of the occurrence on its land, so that formal designation of critical habitat would not serve to notify the agency of its obligations under section 7. Listing highlights the rarity of a plant and can attract negative as well as positive attention. Publication of critical habitat descriptions and maps could be detrimental to the species by singling out the location of each occurrence, and exposing it to the risk of vandalism. Therefore, it would not be prudent to designate critical habitat for *Eriogonum humivagans* at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species

Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against trade and collecting 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, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species 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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible effects of this rule on the BLM might include restricting realty actions involving disposition of tracts with *Eriogonum humivagans*, as well as exercising care in administering leases and claims so that the species is accommodated in exploration or development activity.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Eriogonum humivagans*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain

circumstances. No such trade in *Eriogonum humivagans* is known. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This protection would apply to *Eriogonum humivagans*. Permits for exceptions to this prohibition are available through regulations promulgated September 30, 1985 (50 FR 39681, to be codified at 50 CFR 17.62). *Eriogonum humivagans* occurs primarily on private lands, with one occurrence on public lands managed by the BLM. It is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington DC. 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

- (1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Eriogonum humivagans*;
- (2) the location of any additional populations of *Eriogonum humivagans* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) additional information concerning the range and distribution of this species; and
- (4) current or planned activities in the subject area and their possible impacts on *Eriogonum humivagans*.

Final promulgation of the regulation on *Eriogonum humivagans* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and

addressed to the Field Supervisor, Salt Lake City Field Office (see ADDRESSES section above).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Anderson, J.L. 1982. Unpublished field trip report for *Eriogonum humivagans*. November 1982. U.S. Fish and Wildlife Service, Denver, Colorado. 12 pp.
- Anderson, J.L. 1984a. Unpublished trip report (on land status for *Eriogonum humivagans*). U.S. Fish and Wildlife Service, Grand Junction, Colorado. 2 pp.
- Anderson, J.L. 1984b. Unpublished trip report of status reviews in Emery, Grand, and San Juan Counties, Utah. U.S. Fish and Wildlife Service, Grand Junction, Colorado.
- Hintze, L.H. 1973. Geologic history of Utah. Brigham Young University Geology Studies 20(3):1-181.
- Holmgren, A. and L. Shultz. 1976. Threatened, Endangered, or Rare Species of the Moab District, Bureau of Land Management, Utah State University, Logan, Utah.
- Reveal, J.L. 1986. New species of *Eriogonum* from Utah. *Madrono* 19:289-300.
- Welsh, S.L. 1984. Utah Flora: Polygonaceae. *Great Basin Naturalist* 44:519-557.

#### Authors

The primary author of this proposed rule is John Anderson, Botanist, Endangered Species Office, U.S. Fish and Wildlife Service, Grand Junction, Colorado. John L. England, Botanist, Endangered Species Office, U.S. Fish and Wildlife Service, Salt Lake City, Utah, served as editor (see ADDRESSES section above).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 804; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

order under the family Polygonaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Polygonaceae—Buckwheat family:						
<i>Eriogonum humivagans</i> .....	Spreading wild-buckwheat .....	U.S.A. (UT) .....	E		NA	NA

Dated: March 3, 1986.

**P. Daniel Smith,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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