

DEPARTMENT OF THE INTERIOR  
50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Determine *Eriogonum gypsophilum* (Gypsum Wild Buckwheat) To Be a Threatened Species and To Determine Its Critical Habitat**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes *Eriogonum gypsophilum* (gypsum wild buckwheat), a native plant of New Mexico, to be a Threatened species, and to determine its Critical Habitat under the authority contained in the Endangered Species Act of 1973, as amended. *Eriogonum gypsophilum* is threatened by off-road vehicle use, the possibility of increased grazing, and by the Brantley Reservoir project if proper planning for the project does not include protection planning for this plant. This proposal, if finalized, would implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Eriogonum gypsophilum*. The Service seeks data and comments from the public on its proposal.

**DATES:** Comments from the public must be received by September 23, 1980. Comments from the Governor of New Mexico must be received by October 23, 1980. A public meeting will be held on August 27, 1980 at 7:00 p.m.

**ADDRESSES:** Comments and materials concerning this proposal, preferably in triplicate should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Virginia. The meeting will be held at the Carlsbad Public Library, Halaqueno Park, Carlsbad, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

**SUPPLEMENTARY INFORMATION:** *Eriogonum gypsophilum* (gypsum wild buckwheat) was first collected by Wooten and Standley in 1909 on a hill southwest of Lakewood, New Mexico (Wooten and Standley, 1913). This member of the knotweed family is a small, erect, herbaceous perennial, which measures about 1.2-2 dm (8

inches) high, is restricted to gypsum soils. This plant's entire range is limited to a 0.2 square (130 acres) mile area in the Seven Rivers Hills of Eddy County at elevations from 3,290 to 3,450 feet. The area occupied by *Eriogonum gypsophilum* is public land managed by the Bureau of Land Management and the Water and Power Resources Service. The Critical Habitat is located on land administered entirely by the Bureau of Land Management. This area is semi-arid with an average annual precipitation of 14 inches. The continued existence of this plant and the fragile habitat in which it occurs are being threatened by off-road vehicles, grazing, and by the Brantley dam project, particularly if proper protection planning for the plant does not continue to occur. This rule proposes to determine *Eriogonum gypsophilum* to be a Threatened species, which would implement the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

#### Background

Section 12 of the Endangered Species Act of 1973 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 Director of the Fish and Wildlife Service published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Eriogonum gypsophilum* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals which had expired. At this time, the Service has sufficient new information to warrant repropounding *Eriogonum gypsophilum*. Critical Habitat is being proposed for this plant for the first time.

In the June 24, 1977, **Federal Register** (42 FR 32373-32381), the Service published a final rulemaking under 50 CFR 17 detailing the regulations to protect Endangered and Threatened plant species. The rulemaking established prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

#### Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Eriogonum gypsophilum* Wooten and Standley (gypsum wild buckwheat), are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.*—Historically, *Eriogonum gypsophilum* has been known for nearly 70 years from only one locality in Eddy County, New Mexico. The eastern portion of this plant's range has been reduced in size due to the construction of a major highway (US 285). Present stocking rates of cattle seem to have little effect on the species, but long term records are not available. Increased grazing pressure could possibly prove detrimental to this species. Off-road vehicles such as motorcycles account for some mortality of the *Eriogonum* and this type of use should be restricted from the small area occupied by this species.

The proposed Brantley Dam Project which was authorized on October 20, 1972 (Pub. L. 92-514) located in the same area as the *Eriogonum gypsophilum* population. The dam itself should have only a minor impact on the *Eriogonum*.

The lowest elevation at which the plants occur is estimated to be at 3,290 feet. The 3,280 foot elevation level is the hypothetical project flood level of the impoundment. Thus, the raising water level probably will not affect the plants. If a flood should occur above this level, it should be of a very short duration and is predicted to be harmless unless plants are in flower, then reduced seed set would be expected (Spellenberg, 1977).

The stability of the gypsum may be affected very near the reservoir, as it has on the east side of Lake McMillan where slumping of gypsum bluffs has occurred. If this occurs, up to several hundred plants out of a total estimated population of 2,800 might be affected by new patterns of erosion and changes in microhabitat. Water and Power Resources Service personnel do not expect this to be a problem at the Brantley Dam project. A salt cedar fringe can be expected to develop around the new margin of the conservation pool. At Lake McMillan this salt cedar fringe extends up to as much as 10 vertical feet above the base of the levee. The development of a similar fringe around the Brantley Dam proposed pool might affect *Eriogonum gypsophilum* nearest the 3,290 foot level (Spellenberg, 1977). Water and Power Resources personnel believe *Eriogonum gypsophilum* can probably exist with the Brantley Dam project and they have noted that the plant's well has been included in the project's planning process. They believe that the problems of slumping and the salt cedar fringe can be dealt with so as to insure the continued existence of the plant. The Water and Power Resources Service also notes that the Brantley Dam has been relocated downstream of its previous location and is now 2 miles south-southwest of the closest *Eriogonum gypsophilum* population.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—There is no evidence to suggest overutilization for any of the above purposes.

3. *Disease and predation (including grazing).*—Some light grazing occurs mostly along cattle trails. An increase in the intensity of this grazing could possibly be detrimental to *Eriogonum gypsophilum* due to trampling.

4. *The inadequacy of existing regulatory mechanisms.*—New Mexico State Law, Chapter 45, Article 11, Section 1-4, affords limited protection within 400 yards of any highway to all plants (except noxious weeds). This protection includes limited prohibitions against destruction, mutilation, or removal of living plants (except seeds) on State or private land. For those *Eriogonum* plants occurring close to US

285 this would apply.

No Federal agency regulations currently offer this species protection. The Endangered Species Act would provide needed protection for this plant.

5. *Other natural or man-made factors affecting its continued existence.*—The small size and number of the populations cause this species to be in greater danger of extinction due to their natural fluctuations.

#### Critical Habitat

The Act defines "Critical Habitat" as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation.

Any activity which would result in disturbance of the area where *Eriogonum gypsophilum* occurs would probably adversely modify the Critical Habitat. The long-term solution on how to best protect *Eriogonum gypsophilum* may be to develop a protection plan for the species. In this respect, Critical Habitat designation may affect Federal activities. The Water and Power Resources Service should include in their planning process for the Brantley Dam project ways to protect *Eriogonum gypsophilum*. These plans should address the problems of slumping of the gypsum soils and ways to protect the habitat of the *Eriogonum gypsophilum* so that it is not used for any activity which would not be compatible with the plant's continued existence. The Bureau of Land Management may need to limit future stocking rates of cattle and off-road vehicle use in the small area where the *Eriogonum* occurs. This increased planning and the steps required by these agencies should not constitute a large impact or hardship on either agency.

Critical Habitat for *Eriogonum gypsophilum* is being determined to

include 130 acres in New Mexico where the species currently occurs plus some surrounding area. In the future, adjacent suitable habitat may be included as essential to the conservation of the species because it is necessary to provide areas for proper management, reintroduction, and natural expansion. Modifications of this Critical Habitat designation may be proposed in the future.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant in the foreseeable future. As stated earlier, efforts to protect the *Eriogonum* would only require additional planning and only minimal input of resources and manpower. The Service has notified and is working with these other agencies which have jurisdiction over the land and water under consideration in this proposed action. These agencies were requested to submit information on economic or other impacts of the proposed action and this information was utilized in completing this analysis. The Service will prepare a final impact analysis prior to the time of final rulemaking. The Service's Draft Economic Impact Analysis was used as part of the basis for the Service's decision whether to exclude any area from Critical Habitat for *Eriogonum gypsophilum*.

#### Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71 of 50 CFR and are summarized below.

With respect to *Eriogonum gypsophilum*, all prohibitions of Section 9(a)(2) of the Act, as implemented by § 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 would apply to agents of the Service and State conservation agencies. The Act and 50 CFR § 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. Provisions for Interagency Cooperation implementing § 7 are codified at 50 CFR Part 402. If published as a final rule, this proposal would require Federal agencies not only to insure that activities they authorize, fund or carry out, are not likely to jeopardize the continued existence of *Eriogonum gypsophilum* but also to insure that their actions are not likely to result in the destruction or adverse modification of its Critical Habitat which has been determined by the Director.

**National Environmental Policy Act**

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. A determination will be made before the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

**§ 17.12 Endangered and threatened plants.**

**Public Comments Solicited**

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
- (2) The location of populations of *Eriogonum gypsophilum* and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;
- (3) Additional information concerning the range and distribution of the species;
- (4) Current or planned activities in the subject areas, and the probable impacts of such activities on the area designated as Critical Habitat; and
- (5) The foreseeable economic and other impacts of the Critical Habitat designation on federally-funded or authorized projects.

Final promulgation of this rule on *Eriogonum gypsophilum* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt a final rule that differs from this proposal.

**Public Meetings**

The Service hereby announces that a public meeting will be held on this proposed rule. The public is invited to attend this meeting and to present

opinions and information on the proposed rule. Specific information relating to the public meeting is set out below:

Place	Date	Time	Subject
1. Carlsbad Public Library, Haliagueno Park, Carlsbad, N. Mex.	Aug. 27, 1980	7:00 p.m.	Threatened status for <i>Eriogonum gypsophilum</i>

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884).

The primary authors of this proposed rule are Dr. Stephen Talbot, P.O. Box 1306, Albuquerque, New Mexico 87103 (505-766-3974), Mr. Dave Flemming, and Ms. E. LaVerne Smith, Office of Endangered Species, Washington, D.C. 20240 (703/235-1975).

**Literature Cited**

Spellenberg, R. 1977. A report on the investigation of *Eriogonum gypsophilum* and *Haplopappus spinulosus* subspecies *laevis* in the vicinity of the Brantley Reservoir, Eddy County, New Mexico. Report prepared for the Bureau of Reclamation, Amarillo, Texas. 140 pp.

Wooton, E. O. and P. C. Standley. 1913. Descriptions of new plants preliminary to a report upon the flora of New Mexico. Contr. U.S. Nat. Herb. 16: 109-196.

**Regulations Promulgation**

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. It is proposed to amend § 17.12 by adding in alphabetical order, the following to the list of plants:

Species	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name				
Polygonaceae—Knotweed					
Family:					
<i>Eriogonum gypsophilum</i> ...	Gypsum wild buckwheat.....	New Mexico.....	T	NA	Yes NA

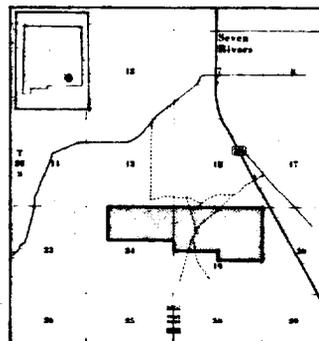
**§ 17.96 [Amended]**

2. Also, the Service proposes to amend § 17.96(a) by adding the Critical Habitat of *Eriogonum gypsophilum* after that of the Poaceae (*Zizania texana*).

**Polygonaceae**

*Eriogonum gypsophilum*

Gypsum wild buckwheat.—New Mexico; Eddy County; T20S, R25E, Section 19: N½, N½NE¼SE¼, N½NW¼SE¼; and T20S, R26E, Section 24: N½NE¼, N½S½NE¼, NE¼NW¼, N½SE¼NW¼; gypsum soils.



Dated: July 2, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

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