

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Determination of *Potentilla robbinsiana* To Be an Endangered Species, With Critical Habitat**

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

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Potentilla robbinsiana* (Robbins cinquefoil) to be an Endangered species and determines its Critical Habitat under the authority contained in the Endangered Species Act. Historically this plant was known to occur in New Hampshire and Vermont. This plant presently occurs in New Hampshire solely on public lands administered by the U.S. Forest Service. The plant is threatened by human trampling and natural factors. This determination of *Potentilla robbinsiana* to be an Endangered species will implement the protection provided by the Endangered Species Act of 1973 as amended.

**DATES:** This rule becomes effective on October 17, 1980.

**ADDRESSES:** Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

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

**SUPPLEMENTARY INFORMATION:** *Potentilla robbinsiana* (Robbins cinquefoil) was first discovered in 1829 by James Robbins for whom it was later named (Pease, 1917). This small perennial plant is a member of the rose family and forms densely tufted rosettes of leaves measuring 2-4 cm across. The yellow flowers are borne solitarily on stems, measuring only 1-3 cm long. *Potentilla robbinsiana* historically occurred in alpine areas of New Hampshire and Vermont. The habitat of this plant can be described as treeless, nearly barren fell-fields above 4,000 feet where the climate is extremely harsh. The substrate in which these plants occur has been described as a shallow loamy sand topped with a stony, pavement-like surface. This stony surface layer protects the soil from being either blown or washed away. The continued existence of this plant and the fragile habitat in which it occurs are being threatened by trampling and other factors. This rule determines *Potentilla*

*robbinsiana* to be Endangered and implements the protection provided by the Endangered Species Act of 1973. The following paragraphs further discuss this action, the threats to the plant, and the effects of the 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 published a notice in the *Federal Register* (40 FR 27823) 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) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. Comments on this proposal were summarized in the April 26, 1978, *Federal Register* publication of a final rule which also determined 13 plants to be either Endangered or Threatened species (43 FR 17909). *Potentilla robbinsiana* was included in the Smithsonian's report, the July 1, 1975, notice of review, and the June 16, 1976, proposal.

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.

Based on sufficient new information the Service repropoed *Potentilla robbinsiana* on March 24, 1980, and proposed its Critical Habitat for the first time (45 FR 19004). A public meeting was held on this proposal on April 28, 1980, in Concord, New Hampshire.

The regulations to protect Endangered and Threatened plant species appear at 50 CFR Part 17 and establish the 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 Part 14.

**Summary of Comments and Recommendations**

In the March 24, 1980, *Federal Register* proposed rule (45 FR 19004) and associated notifications and press releases, all interested parties were invited to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governors of New Hampshire and Vermont, the U.S. Forest Service, and local governments notifying them of the proposed rule and soliciting their comments and suggestions. All comments received during the period from March 24, 1980, through June 23, 1980, were considered and these are discussed below.

The Governor of New Hampshire commented that the State of New Hampshire concurred with the proposal of *Potentilla robbinsiana* to be an Endangered species and to determine its Critical Habitat.

No comment was received from the Governor of Vermont. During the early information gathering phase of the Service's efforts to propose *Potentilla robbinsiana*, Vermont's Agency of Environmental Conservation provided one written response. This response noted that the State of Vermont would be in accord with an action to declare *Potentilla robbinsiana* to be Endangered.

Five other written comments were received in relation to the proposal of *Potentilla robbinsiana* to be Endangered. On April 11, 1980, the Forest Supervisor of the White Mountain National Forest (U.S. Forest Service) noted his concurrence with the proposal and that USFS personnel have supplied input on the proposal to the Service's Regional Office in Massachusetts.

The Appalachian Mountain Club (AMC) commented that it believes protection for *Potentilla robbinsiana* is desirable but also noted some questions and concerns about the proposal. These included: concern over how the Critical Habitat designation might affect the operation of its Lakes of the Clouds Hut; relocation of the Crawford Path through the Critical Habitat; and the omission of the Franconia Ridge (historical distribution of *Potentilla robbinsiana*) area from the Critical Habitat. The AMC also recommended and is carrying out educational programs to try to reduce the trampling of the *Potentilla robbinsiana*. Service Response: Protection of *Potentilla robbinsiana* should not affect the AMC's operation of the Lakes of the Clouds Hut except for its added involvement in educating hikers of the vulnerability of the

consideration of wildlife habitat and endangered species in the permitting of developments or subdivisions.

The Forest Service's regulations governing the land on which this species occurs prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9). These regulations, however, may be difficult to enforce. The Endangered Species Act will offer additional protection to this species.

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

Another major cause of *Potentilla robbinsiana* mortality in addition to trampling is the harsh climate of the area where the plants occur. Only 40 percent of the seedlings survive each year and during the first few years after germination the mortality rate of the plants is very high.

Frost heaving during the spring and fall is the most frequent natural cause of plant death. Many seedlings also die during the hot, dry periods from what is believed to be drought stress. Trampling may also contribute to high seedling mortality. After the first few years the mortality rate decreases and plants may survive two or more decades with some plants approaching an age of 40 years (Graber, 1980). This high mortality rate in seedlings and young plants is not terribly unusual in the plant kingdom but for a plant which is already declining in numbers this can make it even more vulnerable.

#### 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."

Critical Habitat for *Potentilla robbinsiana* is being determined to include the area in New Hampshire where the species currently occurs. In the future, adjacent suitable habitat may be included so as to provide areas for

management, reintroduction, and natural expansion. Therefore, the Critical Habitat delineated does not necessarily include the entire area necessary for the survival of *Potentilla robbinsiana* throughout its range, and modifications of this Critical Habitat designation may be proposed in the future.

Any activity which would result in increased trampling or disturbance of the fragile alpine areas where *Potentilla robbinsiana* occurs would probably adversely modify the Critical Habitat. A long term solution on how best to protect *Potentilla robbinsiana* may be to reduce greatly the human traffic in the area where this plant occurs. This may require prohibiting the development of new trails in areas where the plant occurs, relocating old trails, or other steps by the Forest Service.

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 an impact analysis and believes at this time that economic and other impacts of this action are not significant in the foreseeable future. The Service has worked with the U.S. Forest Service, which has jurisdiction over the land and water under consideration. The impacts upon the Forest Service should be minimal and only require a small commitment of manpower and resources to properly protect and manage *Potentilla robbinsiana*. The U.S. Forest Service, the Appalachian Mountain Club (AMC), other Federal agencies, and other interested persons or organizations were requested to submit information on economic and/or other impacts. The Service prepared the final impact analysis based upon these comments and other information. This document served as the basis for the decision whether to exclude any area from Critical Habitat for *Potentilla robbinsiana*.

Areas of potentially suitable habitat and historical locations were excluded from the Critical Habitat in order to allow the Forest Service more time in which to incorporate plans for protecting *Potentilla robbinsiana* into their unit plan and to better identify which areas are most desirable for reintroduction. The Forest Service, the Fish and Wildlife Service and the AMC are currently working together to identify additional areas necessary for the conservation of this species and those may be proposed as additional Critical Habitat in the future.

#### Effects of the rule

In addition to the effects discussed above, the effects of this rule will

include, but will not necessarily be limited to, those mentioned below. The Act and implementing regulations published in the June 24, 1977, *Federal Register* (42 FR 32373) 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 *Potentilla robbinsiana* 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. International and interstate commercial trade in *Potentilla robbinsiana* does not exist. It is anticipated that few permits involving plants of wild origin would ever be issued, since this plant is not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal in the case of *Potentilla robbinsiana*.

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. This protection will now accrue to *Potentilla robbinsiana*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Potentilla robbinsiana*, 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. A discussion of the Forest Service's involvement appears in the Critical Habitat section of this rule. No other

Federal involvement is foreseeable at this time.

**National Environmental Policy Act**

An 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. This assessment forms the basis for a decision that this is not 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.

**Author**

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884). The primary author of this rule is Ms. E.

LaVerne Smith, Washington Office of Endangered Species (703/235-1975).

**Literature Cited**

- Burt, F. A. 1960. The Story of Mount Washington. Dartmouth Publications, Hanover, New Hampshire.
- Graber, R. E. 1980. The life history and ecology of *Potentilla robbinsiana*. *Rhodora*: 82(829): 131-140.
- Pease, A. S. 1917. Notes on the botanical explorations of the White Mountains. *Appalachia* 14:157-178.
- Steele, F. L. 1964. *Potentilla robbinsiana* in the White Mountains of New Hampshire. *Rhodora* 68:408-411.

**Regulations Promulgation**

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plant:

**§ 17.12 Endangered and threatened plants.**

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Rosaceae—Rose family:						
<i>Potentilla robbinsiana</i> .....	Robbins' cinquefoil...	U.S.A. (NH and VT) .	E	.....	17.96(a)	NA

2. Section 17.96(a) is amended by adding the Critical Habitat of *Potentilla robbinsiana* after that of the Poaceae—*Zizania texana*, as follows:

Robbins' cinquefoil—Family Rosaceae: (*Potentilla robbinsiana*). New Hampshire, Coos County; the area is a strip of land 4,066 feet long and 450 feet wide with east and west boundaries running parallel to Trail A (see map); starting at the north junction of Trail A and B and ending at their southern junction with two-thirds of the strip (300 ft.) lying to the east and south of Trail A and with one-third (150 ft.) lying to the west and north of Trail A.

Dated: August 29, 1980.

Robert S. Cook,  
Acting Director, Fish and Wildlife Service.

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**Robbins' Cinquefoil  
Coos County, New Hampshire**

