

Fish and Wildlife Service**50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Eriogonum pelinophilum* To Be an Endangered Species and To Designate Its Critical Habitat****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service has determined *Eriogonum pelinophilum* (clay-loving wild-buckwheat) to be an endangered species and has designated its critical habitat under the authority of the Endangered Species Act. Only one population of *Eriogonum pelinophilum*, with about 10,000 individuals, is known on 120 acres of private land in Delta County, Colorado. The adjacent land has been fenced off into horse corrals and pastures. All vegetation within these areas has been eliminated. The only area where the clay-loving wild-buckwheat is known to occur is under imminent threat of similarly being fenced off with the probable result being loss of the clay-loving wild-buckwheat. This determination will provide opportunity for protection and management of the species under the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is August 13, 1984.**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours of the Service's Endangered Species Staff at 134 Union Boulevard, fourth floor, Lakewood, Colorado.**FOR FURTHER INFORMATION CONTACT:** Dr. James L. Miller, Regional Botanist, Endangered Species Staff, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/234-2496 or FTS 234-2496).**SUPPLEMENTARY INFORMATION:****Background**

Eriogonum pelinophilum (clay-loving wild-buckwheat) was first collected by Harold Gentry in 1958. However, the distinctiveness of Gentry's collection was not recognized until 1971, when Dr. James Reveal conducted an analysis of the species group (Reveal, 1971). Even then, repeated searches were made before he relocated the site in 1972 (Reveal, 1973). Additional localities have not been found despite extensive field searches in 1981 and 1983.

Eriogonum pelinophilum is a low, rounded subshrub only 5-10 centimeters (to 4 inches) high and 8-15 centimeters

(to 6 inches) across, with woody stems at the base and herbaceous stems above. The short narrow leaves (5-12 millimeters long and 1-2 millimeters wide) are dark green above and densely woolly below. At the ends of the herbaceous branches there are clusters of small white to cream flowers. The plants grow in alkaline clay soils, locally referred to as adobes, on sparsely vegetated badlands of Mancos shale. They are apparently restricted to a band of whitish soil within the badlands. The single population with two sites about ¼ of a mile apart consists of 10,000 individuals on 120 acres of private land between Austin and Hotchkiss in west-central Colorado. Land adjacent to the population and between the two sites has been fenced off for horse pastures and corrals. As the horses consume all the vegetation within a pasture, additional land has been fenced off (there is little possibility of revegetation in this desert area). The area containing the population may be fenced off and overgrazed in the near future. All vegetation including the clay-loving wild-buckwheat would probably be lost. In addition, there is some off-road vehicle traffic over the population in connection with management of the horses and pasture. Thus, the species is vulnerable because of its restriction to a particular soil type and endangered by the likely fencing of its habitat and overgrazing by horses thereon. It is not protected under any Colorado law.

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, and included *Eriogonum pelinophilum*. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) of the 1973 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 rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. This list 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 1975 **Federal Register** notice. *Eriogonum pelinophilum* was included in the July 1975 notice (40 FR 27881) and in the June 1976 proposal (41 FR 24560). General comments received

in relation to the 1976 proposal were summarized in the April 26, 1978, *Federal Register* (43 FR 17909).

The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. 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 replaced on December 15, 1980, by the Service's publication in the *Federal Register* (45 FR 82479) of a new notice of review for plants, which included *Eriogonum pelinophilum*. No comments on this species were 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 accord with Section 4(b)(3)(A) of the Act as amended in 1982. On June 22, 1983, the Service published a proposed rule (48 FR 28504) to list *Eriogonum pelinophilum* as an endangered species, including a finding that the petitioned action was warranted, in accord with Section 4(b)(3)(B)(ii) of the Act, and also proposed critical habitat for the species.

Summary of Comments and Recommendations

In the June 22, 1983, proposed rule (48 FR 28504) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Delta County Independent* on July 4, 11, 18, and 25, 1983, which invited general public comment. Four comments were received and are discussed below. No public hearing was held.

All four comments supported the listing of *Eriogonum pelinophilum* as an endangered species. Comments were received from the Governor of Colorado; the Colorado Natural Areas Program of the Colorado Department of Natural Resources; the Colorado Natural Heritage Inventory; and the Craig, Colorado, District Office of the Bureau of Land Management (BLM).

The Governor of Colorado, the Natural Areas Program, and the Natural Heritage Inventory indicated that 1983 field work revealed a larger population in the area than was indicated in the proposal (10,000 individuals instead of 800 to 1,000), and that critical habitat should be enlarged from the about 100

acres indicated in the proposal to 175 acres. The Governor also reminded the Service to recognize the interests of the private landowners as it took steps to protect the species. The BLM indicated it had no new data on the species. The Service agrees with the comments and has made changes accordingly, except that further study has resulted in recognition that the complete area occupied by the species is 120 acres rather than 175 acres.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Eriogonum pelinophilum* should be classified as an endangered species. Procedures found at 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 (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Eriogonum pelinophilum* Reveal (clay-loving wild-buckwheat) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Eriogonum pelinophilum* is in danger of having its remaining habitat fenced off into horse pastures and corrals. The subsequent grazing and trampling could destroy this species. Its range would be greatly curtailed if not entirely eliminated. Adjacent areas have already been fenced off and grazed, reducing the population and apparently splitting it into two sites separated by about $\frac{3}{4}$ of a mile. There is also some damage to the population from off-road vehicles in the course of continuing work in the area. See also factor C below.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Acreage of the ranch has been offered for sale in the newspaper *North Fork Times* under the heading "Own a Rare and Endangered Species" and featuring the species by name. However, no direct utilization of the species itself is known.

C. *Disease or predation.* As the vegetation in old pastures is grazed out, adjacent areas have been fenced off for pastures and corrals. If the sites where *Eriogonum pelinophilum* occurs are thus fenced off, the enclosed area will be heavily grazed. Probably all vegetation, including the clay-loving wild-

buckwheat, would be removed in a short time by horses and mules, as it has been in the adjacent fenced areas.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws currently protect *Eriogonum pelinophilum* or its habitat. The Endangered Species Act offers possibilities for protection of this species.

E. *Other natural or manmade factors affecting its continued existence.* Because the continuance of this species depends on only one population, its survival is endangered by inadvertent actions in the area that do not take its presence into account. It is not known whether the probable loss of plants on fencing and grazing the area between the two sites of the population has resulted in depletion of the genetic variation in the species.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the Service has determined to list *Eriogonum pelinophilum* as an endangered species. In view of the threat to its entire habitat, this appears to be the correct assessment of the situation faced by this species. Critical habitat is being designated for the reasons discussed in the following section. A decision to take no action would exclude *Eriogonum pelinophilum* from needed protection available under the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The 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, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for *Eriogonum pelinophilum* to include approximately 120 acres in Delta

County, Colorado, about 3 miles east of Austin near Highway 92; the exact area is indicated below under the "Regulations Promulgation" section. This area includes the entire known population and includes as a constituent element the alkaline clay soils within the sparsely vegetated badlands of Mancos shale to which *Eriogonum pelinophilum* is restricted. All of the critical habitat is on private land.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. The fencing of the critical habitat into horse pastures and corrals would, through grazing, directly impact the vegetation there, including *Eriogonum pelinophilum*. Also, the soil may become more compacted by trampling and vehicular activity, adversely affecting plant growth. Since the critical habitat is on private land, there will be no impact on private actions from the designation; no Federal activities are known in the area.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained from comments on the proposed rule, has prepared an analysis, and believes that economic and other impacts of this action are not significant in the foreseeable future. Although the critical habitat is expanded by about 18 acres from that in the proposal, no effect is anticipated since there is no Federal activity in the area. The conclusion of this analysis is that designation of critical habitat for this species will have no significant economic impact on any private or Federal agencies and that no known Federal activity is ongoing or anticipated that will affect the area so proposed.

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 can result in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and

cooperation with States such as Colorado, which has a plant cooperative agreement under Section 6(c)(2). The Act also requires that recovery actions be carried out for all listed species. Appropriate actions are initiated by the Service following listing. The protection required by Federal agencies and prohibitions against taking 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. 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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. However, no Federal involvement is known or expected for this species and its critical habitat.

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 pelinophilum*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, 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 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in *Eriogonum pelinophilum* is known. It is anticipated that few trade permits involving the species would ever be sought or issued since this species is not known in cultivation nor is it common 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. Should the clay-loving wild-buckwheat occur on

Federal land, the new prohibition would apply. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Eriogonum pelinophilum* is known to occur only on private land. It is anticipated that few collecting permits for the species would ever be requested, as this plant has not been of interest to collectors. 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, D.C. 20240 (703/235-1903).

The Service will review this species to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by 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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on a Determination of Effects that is available from the Service's Denver Endangered Species Staff (see **ADDRESSES** section above).

Literature Cited

Reveal, J.L. 1971. Notes on *Eriogonum*-VI. A Revision of the *Eriogonum microthecum* complex (Polygonaceae). Brigham Young

University Science Bulletin, Biological Series 13(1): 1-45.
 Reveal, J.L. 1973. A new subfruticose *Eriogonum* (Polygonaceae) from western Colorado. Great Basin Naturalist 33:120-122.

Author

The primary author of this final rule is Dr. James L. Miller, U.S. Fish and Wildlife Service, Denver Regional Office (address above). Dr. Bruce MacBryde of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; 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.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Polygonaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
 (h) * * *

Species	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name				
Polygonaceae—Buckwheat family:					
<i>Eriogonum pelinophilum</i>	Clay-loving wild-buckwheat	U.S.A. (CO)	E	17.96(a)	NA

3. Amend § 17.96(a) by adding critical habitat of *Eriogonum pelinophilum* as follows: The position of this entry under § 17.96(a) will follow the same sequence as that in which the species occurs in 17.12.

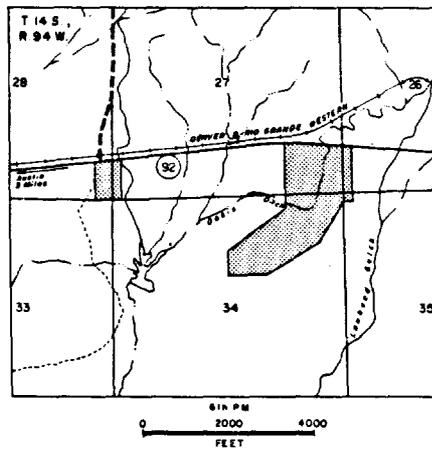
§ 17.96 Critical habitat—plants.

(a) * * *

Family Polygonaceae: *Eriogonum pelinophilum* (clay-loving wild-buckwheat). Colorado, Delta County. About 3 miles east of Austin near Highway 92. T14S, R94W 6th P.M. Section 26—west 225 feet of Section 26 lying south of State Highway 92 (5.6 acres). Section 27—that part of the SE ¼ SE ¼ lying south of State Highway 92 (35.6 acres). Section 34—an area bounded by a line beginning at the northeast corner of Section 34, thence south along the section line 200 feet to a point; thence southwesterly to a point 1050 feet south and 550 feet west of the northeast corner of Section 34; thence southwesterly to a point 700 feet north and 900 feet east of center ¼ corner of Section 34; thence westerly 900 feet to the north-south ¼ line; thence northerly 600 feet along the ¼ line to a point; thence northeasterly to a point of the east ¼ line; thence northerly along the ¼ line 300 feet to the north section line of Section 34; thence easterly along the north section line to the point of beginning (65.0 acres). Section 35—north 200 feet of the west 225 feet (1.0 acres). Section 27—west 200 feet of Section 27 lying south of State Highway 92 (4.3 acres). Section 28—east 400 feet of Section 28 lying south of State Highway 92

(8.3 acres). Total 119.8 acres. The primary constituent elements include those factors associated with the whitish alkaline clay soils within the sparsely vegetated badlands of Mancos shale.

**CRITICAL HABITAT
 CLAY-LOVING WILD-BUCKWHEAT
 Delta County, COLORADO**



Dated: June 21, 1984.
J. Craig Potter,
 Acting Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 84-18576 Filed 7-12-84; 8:45 am]
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