

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Erigeron Maguirei* var. *Maguirei* (Maguire Daisy) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Erigeron maguirei* var. *maguirei* (Maguire daisy) to be an endangered species under the authority of the Endangered Species Act as amended. The only known location of the Maguire daisy is at the upper ends of a slickrock sandstone canyon in Emery County, Utah. Only seven plants were seen in 1982, all on Bureau of Land Management (BLM) land. There are undeveloped oil and gas leases and mineral claims in the area; the probability of commercial development is remote. Although there is no surface disturbance near the few plants presently, any minor surface disturbance could easily cause their extinction. The taxon may also be depleted genetically as a consequence of its reduced population size.

This proposal, if made final, would implement for this taxon the protection and management measures provided by the Endangered Species Act of 1973, as amended. The Service is requesting comments on this proposed action.

DATES: Comments from all interested parties must be received by September 25, 1984. Public hearing requests must be received by September 10, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection by appointment during usual business hours of the Service's Regional Endangered Species Staff at 134 Union, Fourth Floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Botanist, Regional Endangered Species Staff at

either address above (303/234-2496 or FTS 234-2496).

SUPPLEMENTARY INFORMATION:**Background**

Erigeron maguirei var. *maguirei* (Maguire daisy) is a small perennial daisy growing up to 5 inches tall, which blooms in mid-June and is characterized by leafy, hairy and glandular stems and 1-5 flower heads with white to pinkish ray flowers around a yellow center. It was first collected by Dr. Bassett Maguire in 1940 in the dry, rocky, sandy bottom of Calf Canyon in the San Rafael Swell. The Maguire daisy was described by Dr. Arthur Cronquist in his monograph of the genus (Cronquist, 1947, p. 165). Not until 1980 was it seen again when James Harris, then a Brigham Young University graduate student, found a single plant in the bottom of Pine Canyon, a side canyon of Calf Canyon. This one plant, which was on State land, was looked for in 1981 but not found. In 1982, John Anderson, a Service botanist, hiked the entire length of Calf Canyon and its two side canyons, Cow Canyon and Pine Canyon, and found only seven plants, all at the upper ends of branches of Pine Canyon on sandstone ledges or among boulders (the Harris plant was not found in 1982 either). The seven known plants are on BLM land at about 5,800 feet elevation in the pinyon-juniper zone, growing with *Amelanchier utahensis* (Utah serviceberry), *Fraxinus anomalous* (single-leaf ash), *Rhus trilobata* (skunkbush), and *Philadelphus microphyllus* (little-leaf mock-orange) (Anderson, 1982). The daisy is one of the rarest taxa in Utah.

There are mining claims for uranium and oil and gas leases in the area, as in much of this part of Utah. Assessment work on mining claims is hard to monitor. Any mining development or oil and gas drilling plans require BLM permits, which would take into account the presence of endangered species. If there were to be an effect on the Maguire daisy, Section 7 consultation with the Service would be necessary. However, any development is a remote possibility, as no commercial deposits are known in the area at present. The canyon bottoms where the Maguire and Harris collections were made are grazed by cattle, which may have affected the taxon. In addition, these seven remnant plants, from a larger population known to be extirpated, may not remain viable without management.

Section 12 of the Endangered Species 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 and of its 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 1, 1975, *Federal Register* notice. *Erigeron maguirei* was included in the July 1975 notice (40 FR 27880) and the June 1976 proposal (41 FR 24531). General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909). Comments on this taxon that are received during the comment period for this new proposal will be summarized in the final rule.

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 16, 1976, proposal along with other proposals that had expired (44 FR 70796). The July 1, 1975, notice of review 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 *Erigeron maguirei*. No comments on this taxon have been received in response to the 1980 plant notice. On February 15, 1983, the Service published a notice in the *Federal Register* (48 FR 6752) of its prior petition finding that sufficient information exists to show that the listing of this taxon may be warranted, in accord with section 4(b)(3)(A) of the Act as amended in 1982.

In the spring of 1982, new field work was carried out at the site of the Maguire daisy by John Anderson, a Service botanist. Only seven plants were found and historical sites visited did not have any plants. In April 1983, *Erigeron maguirei* var. *harrisonii* was published as a new variety for plants in Wayne County, Utah, outside the historical and current range of *E. maguirei* var. *maguirei* in Emery County (Welsh, 1983a; 1983b, p. 274).

On October 13, 1983, the petition finding was made that listing *Erigeron*

maguirei var. *maguirei* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, Federal Register (49 FR 2485). Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; we find that the petitioned action is warranted and hereby publish the proposed rule to implement the action in accord 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 (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in that section. These factors and their application to *Erigeron maguirei* Cronquist var. *maguirei*, Maguire daisy, are as follows:

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

The Maguire daisy is extremely rare. First discovered in 1940, it appears to be extirpated at its two historical sites. Based on present information, only seven plants are known at the third, current site. There are mineral claims for uranium and oil and gas leases in the area.

Even minor surface disturbance associated with exploration or assessment of these claims and leases could cause extinction if it occurred where the taxon grows.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known.

C. Disease or Predation.

The presently known plants are in rocky areas inaccessible to cattle grazing. The absence of plants in the canyon bottoms where they were originally found in 1940 and 1980 may be a result of cattle grazing pressures. Studies are needed to determine the actual impact of cattle grazing and its compatibility with the survival of the daisy. Presumably, this small herbaceous perennial is palatable to cattle. Two of the seven plants showed some grazing damage, perhaps from deer.

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws currently protect *Erigeron maguirei* var. *maguirei*. The Endangered Species Act offers possibilities for protection of this taxon through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal of specimens from areas under Federal jurisdiction when there is intent to reduce the plant to possession.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because only seven plants of the Maguire daisy now appear to exist, its vulnerability is greatly magnified by any inadvertent human actions in the area that do not take its presence into account, or any natural catastrophe. The genetic variation may be low because of the known loss of individuals since 1940. Listing would help to increase awareness of its vulnerability and provide possibilities for management or even recovery of the taxon.

The careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this taxon, were considered in determining the preferred action of this rule. Based on this evaluation, the preferred action is to list *Erigeron maguirei* var. *maguirei* as an endangered species. With only seven individuals known, endangered status seems an accurate assessment of the taxon's condition. Critical habitat is currently not prudent to propose for this species because doing so would increase risk to it, as detailed below.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that, to the maximum extent prudent and determinable, the Secretary must designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service finds that designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism, which might be exacerbated by the required publication of a detailed critical habitat map.

The BLM has been informed of this proposed action, is aware of the location of the population, has acknowledged the

threats to the Maguire daisy, and is considering the taxon in its management and planning. Therefore, no further benefits would accrue to *Erigeron maguirei* var. *maguirei* by critical habitat designation. Because of the very low number of plants and the accessibility of the nearby canyon bottoms to ORV's (off-road vehicles; i.e., motorcycles), it could be detrimental to the taxon to publish a critical habitat map and exact description of the daisy's location due to the potential for vandalism of this rare plant.

It should be noted that the present rocky sites might be a marginal habitat that is not viable for the taxon in the long term. The few existing plants occur at the upper end of canyons on sandstone ledges or among boulders in less accessible and thus naturally protected areas. This is a different habitat from the canyon bottom land where the plants were seen in 1980 and first seen ("dry rocky sandy canyon, bottom"); bottom land is more susceptible to impacts such as cattle grazing and ORV activity. Since the remaining plants are only in less accessible sites, this upper canyon habitat may, in fact, be an ecologically marginal site for a minor remnant of the population of the Maguire daisy. The vulnerable lower canyon bottoms may represent the prime, long-term habitat and the Maguire daisy's absence there may be a reflection of past land use rather than of the habitat suitability of the upper canyons. This speculation is supported by the fact that the most robust of the remaining plants is one found among boulders on the shallow wash bottom of the upper canyon, in somewhat deeper soil. Autecological studies over several years would be recommended in a recovery plan to help evaluate the essential habitat.

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 other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides the possibility for 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 by Federal

agencies and applicable prohibitions 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. Provisions for interagency cooperation implementing this section 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 informally confer with the Service on any of their actions that are likely to jeopardize the continued existence of a proposed species. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If an action may affect such a species, the Federal agency must enter into formal consultation with the Service. Possible effects resulting from BLM activities have already been discussed. BLM activities are likely to affect the taxon in the administration of mining or oil and gas exploration permits or grazing leases where the plants have been found, but not to any significant new extent.

The Act implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373) set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. The regulations pertaining to endangered plants are found at §§ 17.61, 17.62, and 17.63 of 50 CFR and are summarized below. With respect to *Erigeron maguirei* var. *maguirei*, 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 could 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 such trade in *Erigeron maguirei* var. *maguirei* is known. It is not anticipated that many trade permits would ever be issued since this plant is not common in the wild or known in cultivation, or of particular trade interest.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to

possession endangered plant species from areas under Federal jurisdiction. The new prohibition would apply to this daisy. Permits for exceptions to this prohibition for scientific purposes or to enhance the propagation or survival of the species 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 these will be finalized following public comment.

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). *Erigeron maguirei* var. *maguirei* does not occur on Federal lands; however, it is anticipated that few collecting permits for the Maguire daisy will ever be requested.

If this species is listed under the Act, the Service will review it 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.

Public Comments Solicited

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

- (1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to *Erigeron maguirei* var. *maguirei*;
- (2) The location of any additional populations of *Erigeron maguirei* var. *maguirei* and the reasons why any habitat of this taxon 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 taxon; and
- (4) Current or planned activities in the subject area and their possible impacts on the daisy.

Final promulgation of any regulations on *Erigeron maguirei* var. *maguirei* will take into consideration any comments and additional information received by the Service and such communications

may lead to 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 should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

National Environmental Policy Act

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

References

- Anderson, J. 1982. Search for *Erigeron maguirei*. U.S. Fish and Wildlife Service, Denver, Colorado.
- Cronquist, A. 1947. Revision of the North American species of *Erigeron*, north of Mexico. *Brittonia* 6(2):121-302.
- Harris, J. 1980. Inventory of Land in the San Rafael Resource Area for the Presence of Endangered or Threatened Plants. Bureau of Land Management, Price, Utah.
- Welsh, S.L. 1983a. A bouquet of daisies (*Erigeron*, Compositae). *Great Basin Naturalist* 43(2):365-368.
- Welsh, S.L. 1983b. Utah flora: Compositae (Asteraceae). *Great Basin Naturalist* 43(2):179-357.

Authors

The primary Service authors of this proposed rule are Mr. John Anderson, Grand Junction, Colorado, Field Office (303/243-2779 or FTS 322-0348) and Dr. James L. Miller, Denver Regional Office, Denver, Colorado. 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 plants, 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 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. It is proposed to amend § 17.12(h) by adding the following in alphabetical order under family Asteraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Asteraceae—Aster family						
<i>Erigeron maguirei</i> var. <i>maguirei</i>	Maguire daisy	U.S.A. (UT)	E		NA	NA

Dated: July 13, 1984.
G. Ray Arnett,
Assistant Secretary for Fish and Wildlife and Parks.
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