

collection of information subject to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities because no requirements are being added for small businesses and no protections are being withdrawn. The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969. The benefit of removing this rule from 48 CFR is the elimination of the printing cost of reproducing this information in 48 CFR annually.

List of Subjects in 48 CFR Part 1453

Government procurement, Reporting and recordkeeping requirements.

Dated: April 30, 1996.

Bonnie R. Cohen,

Assistant Secretary—Policy Management and Budget.

PART 1453—[REMOVED]

Under the authority found at Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301, Chapter 14 of Title 48 of the Code of Federal Regulations is amended by removing Part 1453.

[FR Doc. 96–15326 Filed 6–18–96; 8:45 am]

BILLING CODE 4310–RF–M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC71

Endangered and Threatened Wildlife and Plants; Reclassification of *Erigeron maguirei* (Maguire daisy) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The plant *Erigeron maguirei* (Maguire daisy), endemic to sandstone canyons and mesas, is found in the San Rafael Swell in Emery County, Utah, and Capitol Reef in Wayne County, Utah. In 1985, the Fish and Wildlife Service (Service) listed *Erigeron maguirei* var. *maguirei* as endangered under the Endangered Species Act of 1973 (Act) as amended. Recent taxonomic studies document that populations formerly recognized as *E. maguirei* var. *maguirei* and *E. maguirei* var. *harrisonii* do not merit recognition as separate varieties, so that *E. maguirei*

should be recognized as a species without infra-specific taxa. The studies concluded that the morphological differences previously used to distinguish the two varieties were ecotypic and not genetically based. The Service agreed with this taxonomic revision and on September 7, 1994 (59 FR 46219), published notice of its acceptance of this change in taxonomic understanding. When the status of the entire species is considered, a larger number of individuals is involved than had been previously considered to comprise var. *maguirei*. The Service, however, believes that *E. maguirei*'s long-term survival is tenuous, since a significant portion of its habitat is threatened by ongoing and potential habitat alteration from mineral development, recreational activities, and livestock trampling. The species exists in small, reproductively isolated populations that are vulnerable to inbreeding and the loss of genetic viability. Therefore, the Service finds that *E. maguirei* is a threatened species as defined by the Act.

EFFECTIVE DATE: July 19, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Utah Field Office, U. S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the above address (telephone: 801/524–5001; facsimile: 801/524–5021).

SUPPLEMENTARY INFORMATION:

Background

The genus *Erigeron* (composite family, Asteraceae) includes about 200 species (Cronquist 1947, 1994). Most *Erigeron* species are found in the Western Hemisphere, with the western United States as the center of distribution. *Erigeron maguirei* is a perennial, herbaceous plant with decumbent to sprawling or erect stems that are 7 to 18 centimeters (cm) (2.7 to 7.1 inches (in)) high. The basal leaves are spatulate or broadly oblanceolate, 2 to 5 cm (0.8 to 2.0 in) long and 6 to 9 millimeters (mm) (0.2 to 0.4 in) wide. The well-developed stem leaves are sessile or short-petiolate, and are alternately arranged on the stem. The leaves and stems are covered with abundant spreading hairs. One to three flower heads are borne at the end of each stem. The floral disc is 8 to 10 mm (0.3 to 0.4 in) wide; the involucre is 5 to 6.5 mm (0.20 to 0.26 in) high. Each floral head has 15 to 20 white or pinkish-white colored ligules (ray

flowers) that are about 6 to 8 mm (0.2 to 0.3 in) long and 1.5 to 2 mm (0.06 to 0.08 in) wide. The disk flowers are orange and about 3.5 to 3.8 mm (0.14 to 0.15 in) long. The seeds are 2-nerved achenes (Cronquist 1947, 1994; Welsh 1983a, 1983b; Welsh *et al.* 1987, 1993).

Erigeron maguirei was described by Cronquist (1947) from a specimen collected in 1940 from Calf Canyon in the San Rafael Swell of Emery County, Utah. *Erigeron maguirei* var. *harrisonii* was described by Welsh (1983a) from a specimen he collected in 1982. However, this variety was first discovered in 1936 at Hickman Natural Bridge in the Capitol Reef of Wayne County, Utah. Welsh postulated that the morphological differences between *E. maguirei* var. *maguirei* from San Rafael Swell and *E. maguirei* var. *harrisonii* from Capitol Reef could represent ecotypic variation (Welsh 1983a, 1983b; Welsh *et al.* 1987, 1993). Heil (1989) reported both varieties from Capitol Reef and concluded that *E. maguirei* var. *harrisonii* is an ecotypic shade variant of *E. maguirei*. The Service funded genetic studies as part of its recovery activities for *E. maguirei* var. *maguirei* to determine the phylogenetic relationship of the two varieties. Through DNA analysis, Van Buren (1993) documented that *E. maguirei* var. *maguirei* and *E. maguirei* var. *harrisonii* are not taxonomically distinct, and that recognition at the varietal level is not genetically warranted. The Service accepted Van Buren's finding, and published a notice (59 FR 46219; September 7, 1994) of its recognition of *E. maguirei* as a species without infra-specific taxa. In the recently published volume 5 of the Intermountain Flora, Cronquist *et al.* (1994) included *E. maguirei* var. *harrisonii* in synonymy under *E. maguirei*. The taxonomic treatment in the Intermountain Flora further justifies the Service's acceptance of the species without infra-specific taxa.

Recent status surveys of endangered, threatened, and other rare plants in the San Rafael Swell (Kass 1990) and Capitol Reef (Heil 1989) documented that about 3,000 individuals of *E. maguirei* occur at 12 sites. These 12 sites are reproductively isolated, forming separate populations (R. Van Buren, Brigham Young University, pers. comm. 1994; K. Heil, San Juan College, pers. comm. 1994). Even with this number of individuals and populations, the species remains vulnerable to threats such as the loss of habitat and genetic viability.

The small and isolated populations of *Erigeron maguirei* are susceptible to natural and man-caused habitat

disturbances. In localized areas, the species has been adversely affected by off-road vehicles and trampling by humans and livestock. Mineral and energy exploration and development are potential threats to the species. The demographic stability of the various populations is not known at this time. Small and isolated populations often have a high potential of becoming genetically homozygous, rendering them vulnerable to the loss of genetic viability (R. Van Buren, pers. comm. 1994). Individually, natural factors such as disease, flash floods, grazing by native species, erosion, and vegetative competition may not pose a definitive threat to this species. However, due to low population numbers, the cumulative effect of these threats could jeopardize the continued existence of the species.

The Service sent the proposed rule to reclassify *E. maguirei* as threatened and background information to four botanists for peer review in order to substantiate the scientific basis of the Service's finding. Three of the reviewers (Dr. Renee Van Buren and Kim Harper, Brigham Young University, Provo, Utah, and Professor Kenneth Heil, San Juan Community College, Farmington, New Mexico) reviewed the proposed rule and status information and provided written comments on the proposed action. They agreed with the Service's proposed action to recognize *E. maguirei* as a species without infra-specific taxa and change its classification from endangered to threatened. They also provided additional information on the species' distribution, biological threats, and phylogenetic relationships. The fourth reviewer did not respond to the Service's request for peer review. The Service took the peer review information into consideration when preparing this final rulemaking.

Previous Federal Action

Federal action on this species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. 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 (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service acknowledged its intention to review the status of those plant taxa named in the report. *Erigeron maguirei* was included in the

Smithsonian report and in the July 1, 1975, Notice of Review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa, including *Erigeron maguirei*, to be endangered pursuant to section 4 of the Act.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal which had not been finalized. The withdrawal notice included *E. maguirei*. The revised notice of review for plants published on December 15, 1980 (45 FR 82480), included *E. maguirei* as a candidate species. Section 4(b)(3)(B) of the 1982 amendments to the Act requires that the Secretary of the Interior make a finding on a petition within 1 year of its receipt. In addition, Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as if newly submitted on that date. *Erigeron maguirei* was therefore treated as a new petition with October 13, 1983, as the deadline for a petition finding. On October 13, 1983, the Service made a 12-month finding that the petition to list the species was warranted, but precluded by other listing actions of a higher priority. On July 27, 1984, the Service published a rule proposing *E. maguirei* var. *maguirei* as an endangered species (49 FR 30211). The final rule designating the species as endangered was published on September 5, 1985 (50 FR 36090).

On September 27, 1985, the Service published a notice of review for plants (50 FR 39526) which included *E. maguirei* var. *harrisonii* as a candidate species. *Erigeron maguirei* var. *harrisonii* remained a candidate through the revised plant notice of review published on September 30, 1993 (58 FR 51144).

Recent taxonomic studies and status surveys (Heil 1989; U.S. Fish and Wildlife Service 1994; Van Buren 1993; R. Van Buren, pers. comm. 1993) indicate that *E. maguirei* var. *maguirei* and *E. maguirei* var. *harrisonii* are not taxonomically distinct. Since var. *harrisonii* is no longer recognized, it has been removed from candidate status. The Service published a Federal Register notice (59 FR 46219; September 7, 1994) proposing to change the entry for *E. maguirei* var. *maguirei* to one for *E. maguirei*, with the understanding that this would include the plants formerly recognized as var. *harrisonii*. This notice also proposed to reclassify the species from endangered to threatened.

The processing of this final reclassification follows the Service's final listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events: 1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and 2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for prompt processing of draft listings, including final downlistings, that were already in the Service's Washington office and already approved by the field and regional offices when the severe funding constraints were imposed in early fiscal year 1996. A draft of this rule was approved the Service's Denver Regional Director on August 9, 1995, and transmitted to the Washington office, where processing was postponed in favor of other, higher priority listing actions.

Summary of Comments and Recommendations

In the September 7, 1994, proposed rule, and through associated notifications, all interested parties (appropriate Federal and State agencies, county governments, scientific organizations, and private individuals) were requested to submit information that might contribute to the development of a final rule for *Erigeron maguirei*. Newspaper notices were published in the *Salt Lake Tribune* and the *Desert News* on October 6, 1994, and the *Emery County Progress* on October 11, 1994. The Service received a total of five comments on the proposed rule. The major issues raised by the commentors are addressed in the following summary:

Issue 1: Recent inventories in the San Rafael Swell have increased the known distribution of *E. maguirei* from 1 to 10 sites and from less than 10 individuals to between 1,000 and 2,000 over a range of 50 kilometers (30 miles). A portion of the species' distribution is located in the Sid's Mountain Wilderness Study Area. There are few threats to the species because of the Wilderness Study Area's inaccessibility.

Service Response: The expansion in the range and the discovery of new populations are a primary reason for the Service's reclassification of the species from endangered to threatened.

However, even with this increase in population size, the species remains rare and is restricted to certain sites that are vulnerable to habitat destruction. Several populations continue to be impacted by human and livestock trampling, especially in wash bottoms. The long-term protection of the species in the Sid's Mountain Wilderness Study Area is uncertain, since the area has not been officially designated as a wilderness area. Without such designation, the area could be opened to various uses and development.

Issue 2: Given the uncertainty of world market conditions for uranium, uranium mining is unlikely to occur in the species' habitat. Over a period of time, existing claims will likely be abandoned.

Service Response: Uranium mining claim assessment work continues in or near populations of *E. maguirei*. The Service is concerned that mineral extraction could begin as soon as market conditions change and thus pose a serious threat to the species. Mining activities and associated surface disturbances could directly or indirectly destroy plants or render the habitat unsuitable for the species.

Issue 3: The Service did not change the status of *E. maguirei* var. *harrisonii* from category 2 to category 1 in the notice of review as a consequence of Heil's (1989) report.

Service Response: Heil (1989) postulated that *E. maguirei* var. *harrisonii* might not be taxonomically distinct at the varietal level. *Erigeron maguirei* var. *harrisonii* remained a category 2 species until the taxonomic issue was resolved. Once the Service determined that *E. maguirei* var. *maguirei* and var. *harrisonii* were not taxonomically distinct, var. *harrisonii* was removed from candidate status.

Issue 4: The Service's proposed rule identified five populations of *E. maguirei*. Based on effective pollinator distances, at least 10 separate populations should be recognized.

Service Response: The Service grouped the species occurrences into five population clusters for convenience of discussion in the proposed rule. After reviewing the public comments and available information, the Service made a revision in the rule and will use 12 populations as a frame of reference for discussing the species' distribution. This is more closely aligned with the populations recognized by the Bureau of Land Management (BLM) and others.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available

information, the Service has determined that *Erigeron maguirei* should be reclassified from an endangered to a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR 424) were followed. A species may be determined to be threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Erigeron maguirei* Cronquist (Maguire daisy) are as follows:

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

The habitat of *Erigeron maguirei* is threatened with modification or destruction by off-road vehicle use and mining claim assessment work. Off-road vehicle use is a potential threat to populations located in accessible washes. Uranium ore deposits are known to occur within the species' habitat. Annual assessment work on uranium claims and other minerals is adversely impacting the species and its habitat (U.S. Fish and Wildlife Service 1994). Any future development of these mineral deposits or associated surface disturbances could be detrimental to the species and its habitat. Additionally, human and livestock trampling are known to adversely impact individual plants. Human foot traffic off established trails in Capitol Reef National Park is affecting one population (Heil 1989; K. Heil, pers. comm. 1994). Trampling from human foot traffic is a potential threat to the species throughout its scenic canyon habitat in the San Rafael Swell and Capitol Reef areas. Livestock trampling has affected all populations, including those in Capitol Reef National Park. Unlike most National Parks, Capitol Reef National Park is not closed to livestock grazing. Livestock trampling negatively impacts individuals of *E. maguirei* growing in accessible wash bottoms. This results in the species being restricted to less suitable habitat in the sandstone crevices of the adjoining slickrock canyon walls.

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

None known.

C. Disease or Predation

Under certain conditions, *E. maguirei* may be vulnerable to livestock grazing. Concentrations of livestock in localized areas, specifically wash bottoms that have limited vegetation, may result in *E. maguirei* being grazed by livestock.

D. The Inadequacy of Existing Regulatory Mechanisms

Through management plans, the BLM and National Park Service (NPS) have provided some protection for *E. maguirei* and its habitat in the San Rafael Swell and Capitol Reef areas. It is believed that these Federal agencies will continue to assist in the protection and recovery of this plant as a threatened species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small population size and restricted habitat of *E. maguirei* make this plant vulnerable to natural or human-caused catastrophic disturbances. Low population numbers, geographic separation, and reproductive isolation may contribute to reduced genetic viability in each of the individual populations. The accumulation and expression of phenotypic lethal alleles in the gene pool is highly probable since small inbreeding populations become increasingly homozygous over time (R. Van Buren, pers. comm. 1993). It is not presently known whether there are sufficient numbers of individuals to ensure the long-term survival of the species (U.S. Fish and Wildlife Service 1994).

The Service has carefully assessed the best available scientific and commercial information regarding past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list *E. maguirei* as a threatened species. Information gathered from surveys and recovery efforts conducted by the Service, BLM, and NPS have documented additional numbers of plants and indicated that some populations are relatively secure and adequately protected (Kass 1990). Consequently, the Service finds that the present magnitude of threats is significantly less than when *E. maguirei* var. *maguirei* was first listed as endangered in 1985. The Service concludes that the species no longer warrants listing as endangered under the Act. Nevertheless, with less than 3,000 known individuals existing in only 12 populations, the long-term survival of *E. maguirei* continues to be threatened by current and potential habitat disturbance from mining and recreational activities and livestock trampling. Additionally, the species' small, reproductively isolated populations may be subject to long-term genetic impoverishment due to their restricted gene pools. Therefore, the Service has determined that *E. maguirei*

should be listed as threatened without the designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed for listing as endangered or threatened. The Service finds that designation of critical habitat is not prudent for *E. maguirei*. Designation of critical habitat would entail publishing a detailed map and description of critical habitat in the Federal Register, which could expose the species to threats of vandalism.

Moreover, few additional benefits would be provided to the species by designation of critical habitat since most of the small, isolated populations are located on Federal lands. Any Federal action that would impact the species' habitat would be addressed through the section 7 consultation process. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any listed plant from any area under Federal jurisdiction. The NPS and BLM are aware of the occurrence of *E. maguirei* on lands under their jurisdiction and of their legal obligation to protect listed plants. Protection of the species' habitat will be accomplished through the recovery process.

Effects of the Rule

This rule changes the status of *Erigeron maguirei* from endangered to threatened and formally recognizes that this species is no longer in imminent danger of extinction throughout a significant portion of its range. Reclassification to threatened does not significantly alter the protection afforded this species under the Act.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any listed species. The consultation and other requirements of section 7 apply equally to endangered and threatened species. Virtually all known populations of *E. maguirei* occur on lands under the jurisdiction of the BLM or NPS. Those two agencies have been involved in recovery and section 7 consultation activities for this species since it was listed as endangered in 1985 and are likely to remain involved. Recovery activities are not expected to diminish since the primary objective of the recovery strategy is delisting of the species. The final recovery plan will reflect information acquired since the plan was drafted.

Certain prohibitions that apply to endangered plants do not apply to plants listed as threatened. The removal

and reduction to possession of *E. maguirei* from areas under Federal jurisdiction continues to be prohibited under section 9 of the Act and 50 CFR 17.71. However, the malicious damage or destruction of endangered plants on areas under Federal jurisdiction, and the removal, cutting, digging up or damage or destruction of endangered species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law will no longer constitute a violation of section 9. The import, export, and interstate and foreign commerce prohibitions of section 9 continue to apply to *E. maguirei*.

Pursuant to section 10 of the Act and 50 CFR 17.72, permits may be issued to carry out otherwise prohibited activities involving threatened plants. Such permits are available for scientific purposes and to enhance the propagation or survival of endangered and threatened species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes and policy of the Act. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the Field Supervisor of the Service's Salt Lake City Field Office (see **ADDRESSES** section).

This reclassification is not an irreversible commitment on the part of the Service. Reclassifying *E. maguirei* to endangered would be possible should changes occur in management, habitat, or other factors that alter the present threats to the species' survival and recovery.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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 October 25, 1983 Federal Register (48 FR 49244).

References Cited

- Cronquist, A. 1947. Revision of the North American species of *Erigeron*, north of Mexico. *Brittonia* 6(2):1–302.
- Cronquist, A. 1994. Volume 5, Asterales, intermountain flora; vascular plants of the Intermountain West, U.S.A. The

New York Botanical Garden, Bronx, New York. 496 pp.

- Heil, K.D. 1989. A vegetation study of Capitol Reef National Park—endangered, threatened, rare, and other plants of concern at Capitol Reef National Park. National Park Service, Torrey, Utah.
- Kass, R.J. 1990. Final report—habitat inventory of threatened and endangered and candidate plant species in the San Rafael Swell, Utah. Bureau of Land Management, Salt Lake City, Utah. 87 pp.
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- Welsh, S.L. 1983a. A bouquet of daisies (*Erigeron*, Compositae). *Great Basin Naturalist* 43(2):179–357.
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- Welsh, S.L., N.D. Atwood, L.C. Higgins, and S. Goodrich. 1987. A Utah flora. *Great Basin Nat. Mem.* 9:1–894.
- Welsh, S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1993. A Utah flora, second edition, revised. Brigham Young University Press, Provo, Utah. 986 pp.

Author

The primary author of this final rule is John L. England (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]
2. Section 17.12(h) is amended by removing the entry for *Erigeron maguirei* var. *maguirei* and adding the

following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and Threatened Plants.
* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
*	*	*	*	*	*		*
<i>Erigeron maguirei</i> .	Maguire daisy	U.S.A. (UT)	Asteraceae	T	202,584	NA	NA
*	*	*	*	*	*		*

Dated: May 29, 1996.
John G. Rogers,
Acting Director, Fish and Wildlife Service.
[FR Doc. 96-15571 Filed 6-18-96; 8:45 am]
BILLING CODE 4310-55-P