

Federal Communications Commission.

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Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant "*Helianthus paradoxus*" (Pecos Sunflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Helianthus paradoxus* (Pecos or puzzle sunflower) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). This species is dependent on desert wetlands for its survival. It is known from 22 sites in Cibola, Valencia, Guadalupe, and Chaves Counties, New Mexico, and from two sites in Pecos County, Texas. Threats to this species include drying of wetlands from groundwater depletion, alteration of wetlands (e.g. wetland fills, draining, impoundment construction), competition from non-native plant species, excessive livestock grazing, mowing, and highway maintenance. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

DATES: Comments from all interested parties must be received by June 1, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna Road, NE, Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charlie McDonald, Botanist, at the above address, or telephone 505/761-4525 ext. 112; facsimile 505/761-4542.

SUPPLEMENTARY INFORMATION:

Background

Pecos sunflower was first collected on August 26, 1851, by Dr. S.W.

Woodhouse on the Sitgreaves expedition to explore the Zuni and Lower Colorado Rivers. The location was given as "Nay Camp, Rio Laguna" (Sitgreaves 1853). The Rio Laguna is now called the Rio San Jose and the collection site would have been somewhere between Laguna Pueblo and Bluewater in Cibola County, New Mexico. This specimen was identified as *Helianthus petiolaris* (prairie sunflower) by Dr. John Torrey, a botanical expert at the New York Botanical Garden (Sitgreaves 1853). It was not until 1958 that Dr. Charles Heiser named *Helianthus paradoxus* as a new species citing two known specimens—the type specimen collected September 11, 1947, by H.R. Reed west of Fort Stockton in Pecos County, Texas; and the Woodhouse specimen collected in New Mexico (Heiser 1958).

Heiser (1965) did hybridization studies to help resolve doubts about the validity of Pecos sunflower as a true species. There was speculation that the plant Heiser named as a new species was in fact only a hybrid between *Helianthus annuus* (common sunflower) and prairie sunflower. Heiser's studies showed that Pecos sunflower is a fertile plant that breeds true with itself. He was able to produce hybrids between Pecos sunflower and both common sunflower and prairie sunflower, but these hybrids were of low fertility. These results support the validity of Pecos sunflower as a true species. Rieseberg et al. (1990) published results of molecular tests of the hypothesized hybrid origin of Pecos sunflower. They used electrophoresis to test enzymes and restriction-fragment analysis to test ribosomal and chloroplast DNA. Their work showed Pecos sunflower is a true species of ancient hybrid origin with the most likely hybrid parents being common sunflower and prairie sunflower.

Pecos sunflower is an annual member of the sunflower family (Asteraceae). It grows 1.3–2.0 meters (m) (4.25–6.5 feet (ft)) tall and is branched at the top. The leaves are opposite on the lower part of the stem and alternate at the top, lance-shaped with three prominent veins, and up to 17.5 centimeters (cm) (6.9 inches (in)) long by 8.5 cm (3.3 in) wide. The stem and leaf surfaces have a few short stiff hairs. The flower heads are 5.0–7.0 cm (2.0–2.8 in) in diameter with bright yellow rays. Flowering is from September to November. Pecos sunflower looks much like the common sunflower seen along roadsides throughout the west, but differs from common sunflower in having narrower leaves, fewer hairs on the stems and leaves, slightly smaller flower heads, and later flowering.

Pecos sunflowers grow in soils that are permanently saturated. Areas that maintain these conditions are most commonly desert wetlands (cienegas) associated with springs, but they may also include stream margins and the margins of impoundments. When plants are associated with impoundments, the impoundments typically have replaced natural cienega habitats. Plants commonly associated with Pecos sunflower include *Limonium limbatum* (Transpecos sealavender), *Samolus cuneatus* (limewater brookweed), *Flaveria chloraefolia*, *Scirpus olneyi* (Olney bulrush), *Phragmites australis* (common reed), *Distichlis* sp. (saltgrass), *Sporobolus airoides* (alkali sacaton), *Muhlenbergia asperifolia* (alkali muhly), *Juncus mexicanus* (Mexican rush), *Suaeda calceoliformis* (Pursh seepweed), and *Tamarix* spp. (saltcedar) (Poole 1992, Sivinski 1995). All of these species are good indicators of saline soils. Studies by Van Auken and Bush (1995) indicate Pecos sunflower grows in saline soils, but seeds germinate and establish best when high water tables reduce salinities near the soil's surface.

Until 1990, Pecos sunflower was known only from three extant sites. Two sites were in Pecos County, Texas, and one site was in Chaves County, New Mexico (Seiler et al. 1981). Searches of suitable habitats in Pecos, Reeves, and Culbertson counties, Texas, during 1991 failed to result in the discovery of any new Texas sites or in the rediscovery of any sites believed to have been extirpated (Poole 1992). Searches in New Mexico from 1991 through 1994, however, led to discovery of a significant number of new sites in that State (Sivinski 1995). Pecos sunflower is presently known from 24 sites that occur in 5 general areas. These areas are Pecos County, Texas, in the vicinity of Fort Stockton; Chaves County, New Mexico, from Dexter to just north of Roswell; Guadalupe County, New Mexico, in the vicinity of Santa Rosa; Valencia County, New Mexico, along the lower part of the Rio San Jose; and, Cibola County, New Mexico, in the vicinity of Grants. There are 2 sites in the Fort Stockton area, 11 in the Dexter to Roswell area, 8 in the Santa Rosa area, 1 along the lower Rio San Jose, and 2 in the Grants area.

Most of the Pecos sunflower sites are limited to less than 2.0 hectares (ha) (5.0 acres (ac)) of wetland habitat with some being only a fraction of a hectare. Two sites, one near Fort Stockton and one near Roswell, are considerably more

extensive. The number of plants at a site varies from less than 100 to several hundred thousand for the 2 extensive sites. Because Pecos sunflower is an annual, the number of plants at a site can fluctuate drastically from year to year with changes in water conditions. Pecos sunflower is totally dependent on the persistence of its wetland habitat. Even large populations will disappear if the wetland dries.

The sites where Pecos sunflower occurs are owned and managed by a variety of Federal, State, Tribal, municipal, and private interests. Federal agencies that manage sites are the U.S. Fish and Wildlife Service (Service), Bureau of Land Management, and National Park Service. There are plants in one State park. The cities of Roswell and Santa Rosa both have sites on municipal property. One site is owned and managed by the Laguna Indian Tribe. There are seven different private individuals or organizations that own sites or parts of sites. Some plants grow on State or Federal highway rights-of-way.

Four of the sites are on property managed principally for wildlife and the conservation of endangered species. Two of these are major sites on Bitter Lake National Wildlife Refuge near Roswell, New Mexico. The refuge has a series of six spring-fed impoundments totaling about 300 ha (750 ac). These impoundments are managed with high water levels in winter followed by a spring and summer drawdown that mimics a natural water cycle. This regime provides abundant habitat for Pecos sunflowers that thrive in almost solid stands at the edges of many of the impoundments. A small site with less than 100 plants occurs on Dexter National Fish Hatchery near Dexter, New Mexico. Plants first appeared here several years ago after saltcedar was removed to restore a wetland. One site near Fort Stockton, Texas, is owned and managed by The Nature Conservancy of Texas. The principal feature at this preserve is a large desert spring that harbors two species of endangered fish and three species of endemic snails, and supports an extensive stand of Pecos sunflowers that grow for about 1.2 kilometers (km) (0.75 miles (mi)) along the spring run.

Loss or alteration of wetland habitats is the main threat to Pecos sunflower. The lowering of water tables through aquifer withdrawals mostly for irrigated agriculture; the diversion of water from wetlands for irrigation, livestock, or other uses; wetland filling; and the invasion of wetlands by saltcedar and other non-native species have all destroyed or degraded desert wetlands

in the past. These activities still continue. Mowing of rights-of-way and some municipal properties regularly destroys some plants. Livestock will eat Pecos sunflowers, particularly if other green forage is scarce. There has been some unregulated commercial sale of this plant in the past and some plant collection for breeding programs to improve commercial sunflowers. Pecos sunflower will naturally hybridize with common sunflower. The extent to which back crosses might be affecting the genetic integrity of small Pecos sunflower populations is presently unknown, but worthy of concern.

Previous Federal Action

Federal government actions on Pecos sunflower began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), 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. That 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), accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act. The notice further indicated the Service's intention to review the status of the plants named therein. As a result of this review, the Service published a proposed rule in the **Federal Register** on June 16, 1976 (41 FR 24523), to determine approximately 1,700 vascular plants to be endangered species pursuant to section 4 of the Act. This list, which included *Helianthus paradoxus*, 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. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), which included *Helianthus paradoxus* as a category 1 candidate species. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Revised lists of plants under review for listing were published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). These notices retained *Helianthus paradoxus* as a category 1 candidate. In the **Federal Register** notices of review on February 28, 1996, and September 19, 1997 (61 FR 7596, 62 FR 49398), the Service ceased using multiple category designations and included *Helianthus paradoxus* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Helianthus paradoxus* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually from 1984 through 1997. Publication of this proposal constitutes the final 1-year finding for the petitioned action.

The processing of this proposed rule conforms with the Service's final listing priority guidance issued on December 6, 1996 (61 FR 64475), and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process the rulemakings. The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action. Additionally, the Service stated in the guidance that, "Effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has begun implementing a more balanced listing program, including processing Tier 3 actions. The processing of this Tier 3 action follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Helianthus paradoxus* Heiser (Pecos sunflower) are as follows:

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

Wetland habitats in the desert Southwest are both ecologically important and economically valuable. Wetlands cover only about 195,000 ha (482,000 ac) (0.6 percent) of New Mexico (Fretwell *et al.* 1996). This is a reduction of about 33 percent from the wetland acreage that existed 200 years ago (Dahl 1990). Wetlands in Texas cover about 3,077,000 ha (7,600,000 ac), a decline of about 52 percent from the State's original wetland acreage (Dahl 1990). The loss of springs in western Texas may be a better indicator of wetland losses that affect Pecos sunflower than figures for the State as a whole. Within the historical range of Pecos sunflower in Pecos and Reeves counties, only 13 of 61 (21 percent) springs remain flowing (Brune 1981).

The lowering of water tables due to groundwater withdrawals for irrigated agriculture has reduced available habitat for Pecos sunflower, particularly in Texas. Beginning around 1946, groundwater levels fell as much as 120 m (400 ft) in Pecos County and 150 m (500 ft) in Reeves County due to heavy pumping for irrigation. As a result, most of the springs in these counties went dry. Groundwater pumping has lessened in recent decades due to the higher cost of pumping water from greater depths, but rising water tables or resumption of spring flows are not expected (Brune 1981). Texas water law provides no protection for remaining springs. The law is based on the right of first capture that lets any water user pump as much groundwater as can be put to a beneficial use without regard to overall effects on the aquifer.

Habitats for Pecos sunflower in Chaves County, New Mexico, have been affected by groundwater pumping in the past, but water tables are now rising due to State-directed efforts at monitoring and conservation. These efforts are the result of a court ruling that requires

New Mexico to deliver larger volumes of Pecos River water to Texas than in the past. There are presently no major groundwater withdrawals taking place in the vicinity of the other Pecos sunflower sites in New Mexico.

The introduction of non-native species, particularly saltcedar, is a major factor in the loss and degradation of southwestern wetlands. Several species of saltcedar were introduced into the United States for ornament, windbreaks, and stream bank stabilization in the 1800s. They invaded many western riverine systems from the 1890s to the 1930s and increased rapidly from the 1930s to the 1950s, by which time they occupied most of the available and suitable habitat in their main area of North American distribution in Arizona, New Mexico, and western Texas (Christensen 1962, Horton 1977). Saltcedar will out-compete and displace native wetland vegetation, including Pecos sunflower. At Dexter National Fish Hatchery, Pecos sunflower was recorded for the first time in the summer of 1996 after salt cedar was removed to rehabilitate a wetland (Radke 1997).

A total of 24,124 ha (59,586 ac) of saltcedar infest 35 of the national wildlife refuges in 12 western states. In southern California, Nevada, Utah, Arizona, and New Mexico, 27 of the 41 refuges (66 percent) are infested. Saltcedar affects 2,000 ha (5,000 ac) at Bitter Lake National Wildlife Refuge where the most extensive Pecos sunflower population occurs (U.S. Fish and Wildlife Service 1996). There have been many projects on refuges to remove saltcedar. These projects are labor intensive and reinvansion of saltcedar is a continuing problem.

Some wetlands where Pecos sunflower occurs have been either filled or impounded. Part of a wetland near Grants, New Mexico, was filled for real estate development along a major highway. The development predated knowledge that Pecos sunflower grows there, so it is unknown if any plants were actually destroyed. Wetlands in Santa Rosa were impounded many years ago for a fish hatchery that is now abandoned. Pecos sunflowers grow on the dams of some of the impoundments. The extent of the former wetland is unknown, so it is uncertain whether the impoundments have increased or decreased sunflower habitat.

Habitat is being altered through mowing on some highway rights-of-way and some municipal properties where Pecos sunflower occurs. In Santa Rosa, vegetation including some Pecos sunflowers is often mowed around some of the old fish hatchery ponds that are

now used for recreational fishing. In another part of town an open boggy area is mowed when dry enough. In years when it is too wet to mow, a stand of Pecos sunflowers develops. Mowing of highway rights-of-way in Santa Rosa and near Grants may be destroying some plants. In Texas, the only population in a highway right-of-way was fenced several years ago to protect it from mowing and other activities.

B. Overutilization for commercial, recreational, scientific, or educational purposes

There has been some commercial trade in Pecos sunflower (Poole, Texas Parks and Wildlife Department, Austin, *in litt.* 1991). The trade was undertaken by an organization interested in preserving rare species of indigenous crop plants through their dissemination and cultivation. There has also been some collecting for crop breeding research (Seiler *et al.* 1981). With its tolerance for high salinity, Pecos sunflower was considered a good candidate for the introduction of salt tolerance into cultivated sunflowers. Some Pecos sunflower sites are both small and easily accessible. These sites could be harmed by repeated uncontrolled collecting.

C. Disease or Predation

Livestock will eat Pecos sunflowers, particularly when other green forage is scarce. Livestock tend to pull off the flower heads. If an area is grazed for several years in succession when the plants are flowering, the soil seed bank will be diminished and the population will eventually decline. There are several examples of Pecos sunflowers being absent from habitat that is heavily grazed, but growing in similar nearby habitat that is protected from grazing. In these instances, grazing is the most likely cause of the plant's absence from otherwise suitable habitat.

D. The inadequacy of existing regulatory mechanisms

Pecos sunflower is a New Mexico State endangered plant species listed in NMNRD Rule 85-3 of the State Endangered Plant Species Act (9-10-10 NMSA). This act primarily regulates scientific collecting, commercial transport, and sale of Pecos sunflower. It does not protect plants on private lands or require collecting permits for Federal employees working on lands within their jurisdictions (Sivinski and Lightfoot 1995). The State act lacks the interagency coordination and conservation requirements found in section 7 of the Federal Endangered Species Act. Further, State listing fails

to generate the level of recognition or promote the opportunities for conservation that result through Federal listing. Pecos sunflower is not listed as an endangered, threatened, or protected plant under the Texas Endangered Plant Species Act.

E. Other natural or manmade factors affecting its continued existence

Natural hybrids between Pecos sunflower and common sunflower have been seen at Pecos sunflower sites in both Texas and New Mexico. Human activities have substantially increased the habitat for common sunflower and it may now have more contact with Pecos sunflower than in the past. The hybrid plants have low fertility, but they are not completely sterile (Heiser 1965).

Backcrosses of these hybrids to Pecos sunflower could detrimentally affect the genetic integrity of Pecos sunflower populations. Study is needed to determine if such backcrosses could occur to the degree that common sunflower might genetically swamp small Pecos sunflower populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list Pecos sunflower as threatened. The drying of springs due to ground water pumping, the diversion of water for agriculture and other uses, the degradation of wetlands from intensive livestock grazing, and the invasion of saltcedar and other non-native plants into many wetlands has significantly reduced the habitat of this species. Most remaining populations are vulnerable because these activities continue to destroy habitat or keep it in a degraded condition. While not in immediate danger of extinction, the Pecos sunflower is likely to become an endangered species in the foreseeable future if present trends continue.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (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 consideration 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 conservation of the species. "Conservation" means the use of all

methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Pecos sunflower. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for Pecos sunflower is not prudent because both of the above situations exist. There has been some commercial trade in Pecos sunflower, which was due largely to its rarity. There are several documented instances of other species of commercially valuable rare plants being collected when their localities became known. In 1995, at least 48 plants of the endangered *Pediocactus knowltonii* (Knowlton cactus) were taken from a monitoring plot at the species' only known locality (Sivinski, New Mexico Forestry and Resources Conservation Division, Santa Fe, *in litt.* 1996). In the early 1990s, the rediscovery of *Salvia penstemonoides* (big red sage) in Texas led to the collection of thousands of seeds at the single rediscovery site (Poole, *in litt.* 1991).

Listing contributes to the risk of over-collecting because the rarity of a plant is made known to far more people than were aware of it previously. Designating critical habitat, including the required disclosure of precise maps and descriptions of critical habitat, would further advertise the rarity of Pecos sunflower and provide locations of occupied sites causing even greater threat to this plant from vandalism or unauthorized collection. Many of the Pecos sunflower sites are small, have few individuals, and are easily accessible. The plants at these sites would be particularly susceptible to indiscriminate collection if publication of critical habitat maps made their exact locations known.

Critical habitat designation, by definition, directly affects only Federal agency actions. Private interests own 12 of the 24 Pecos sunflower sites. For the

most part, activities constituting threats to the species on these lands, including alterations of wetland hydrology, competition from non-native vegetation, grazing, and agricultural and urban development, are not subject to the Federal review process under section 7. Designation of critical habitat on private lands provides no benefit to the species when only non-Federal actions are involved.

Activities on Federal lands and some activities on private lands require Federal agencies to consult with the Service under section 7. There are few known sites for Pecos sunflower and habitat for the species is limited. Given these circumstances, any activity that would adversely modify designated critical habitat would likely also jeopardize the species' continued existence. Thus, in this case, the Federal agency prohibition against adverse modification of critical habitat would provide no additional benefit beyond the prohibition against jeopardizing the species.

Occupied habitat for Pecos sunflower occurs on a national wildlife refuge and national fish hatchery administered by the Fish and Wildlife Service, a national monument administered by the National Park Service, and Federal lands administered by the Bureau of Land Management. Because these occupied habitats are well known to the managers of these Federal lands, no adverse modification of this habitat is likely to occur without consultation under section 7 of the Act. Because of the small size of the species' habitat, any adverse modification of the species' critical habitat would also likely jeopardize the species' continued existence. Designation of critical habitat for Pecos sunflower on Federal lands, therefore, is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The elevated profile that Federal listing affords enhances the likelihood that conservation activities will be undertaken. The Act provides for possible land acquisition and cooperation with the States. The protection required of Federal agencies

and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Federal agencies that manage occupied habitat for Pecos sunflower are the ones most likely to be involved in section 7 activities. These agencies are the Service, Bureau of Land Management, and National Park Service. Other agencies with potential section 7 involvement include the U.S. Army Corps of Engineers through its permit authority under section 404 of the Clean Water Act, the Natural Resources Conservation Service that provides private landowner planning and assistance for various soil and water conservation projects, the Federal Highway Administration for highway construction and maintenance projects that receive funding from the Department of Transportation, the Bureau of Indian Affairs that has trust responsibilities for certain activities on Indian lands, and various agencies of the Department of Housing and Urban Development that undertake homeowner mortgage insurance and community development programs.

Listing the Pecos sunflower would provide for development of a recovery plan for the plant. A recovery plan would bring together private, State, and Federal efforts for conservation of this species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan would also describe site-specific management actions necessary

to achieve conservation and survival of the species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to the states of New Mexico and Texas for management actions promoting the protection and recovery of Pecos sunflower.

Because many of the known sites for Pecos sunflower are on private land, the Service will pursue conservation easements and conservation agreements with willing private landowners to help maintain and/or enhance habitat for the plant. Under a cooperative program between the State of New Mexico and the Service, all private landowners have been contacted. The importance of Pecos sunflower and the consequences for the private landowner of having it listed under the Act have been explained. No agreements have been established to date, but several landowners have indicated a willingness to continue discussing the subject.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the

propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Pecos sunflower is not common in cultivation or in the wild, and there has been only limited commercial trade in the species. Therefore, it is anticipated that few trade permits will ever be sought or issued. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248-6649, facsimile 505/248-6922). Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.72.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 (prohibited acts) of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the species' range. Collection of this species from Federal lands would violate section 9, although in appropriate cases permits could be issued to allow collection for scientific or recovery purposes.

Generally, activities of landowners on private lands or of others on lands not under Federal jurisdiction will not violate section 9 of the Act even if the activities result in destruction of Pecos sunflowers. These activities might include filling of wetlands, construction or maintenance of drainage ditches, construction of impoundments or other livestock watering facilities, mowing or clearing, and livestock grazing. However, some of these activities may require Federal, State, and/or local approval under other laws or regulations; filling of wetlands, for example, may require Army Corps of Engineers authorization under Section 404 of the Clean Water Act. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Pecos sunflower;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and,

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on the proposed regulation for this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, 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 **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, New

Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Charlie McDonald, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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.

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

§ 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>Helianthus paradoxus</i> .	Pecos sunflower (=puzzle sunflower, paradox sunflower).	U.S.A. (NM, TX)	Asteraceae	T	x	NA	NA
*	*	*	*	*	*		*

Dated: March 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–8518 Filed 3–31–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018–AE89

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant *Rumex orthoneurus* (Chiricahua Dock)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list *Rumex orthoneurus* (commonly known as

Chiricahua or Blumer's dock) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). This plant is a rare Southwest endemic occurring within riparian and cienega (marshy wetland) habitats. The plant is known from the Chiricahua, Pinaleno, Huachuca, Sierra Ancha, and White mountains in Arizona. In New Mexico, the plant is known from the Mogollon and San Francisco mountains. The plant is also believed to extend into northern New Mexico in the Pecos Wilderness and to have been extirpated from the Lincoln National Forest. A site in Mexico in the Sierra de los Ajos has also been reported. Habitat loss and degradation due to livestock grazing, recreation, water diversions and