

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Erigeron maguirei* var. *maguirei* (Maguire daisy)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines endangered status for *Erigeron maguirei* var. *maguirei* (Maguire daisy). It is known to occur only at the upper end of a sandstone canyon in Emery County, Utah. Only seven plants were seen there in 1982, all on Bureau of Land Management land. Any surface disturbance could easily cause the extinction of this taxon, and it may also be depleted genetically as a consequence of reduced population size. This action implements the protection provided by the Endangered Species Act of 1973, as amended, for the Maguire daisy.

DATE: The effective date of this rule is October 7, 1985.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours of the Service's Endangered Species Regional Staff at the following locations: 134 Union Boulevard, Fourth Floor, Lakewood, Colorado 80228; Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104; and Suite B-109, Independence Plaza, 551 25½ Road, Grand Junction, Colorado 81501.

FOR FURTHER INFORMATION CONTACT: Larry England, Salt Lake City (801/524-4430 or FTS 538-4430), or John Anderson, Grand Junction (303/241-0563 or FTS 322-0348), at the above addresses.

SUPPLEMENTARY INFORMATION:**Background**

Erigeron maguirei var. *maguirei* (Maguire daisy) is a small perennial daisy, up to 5 inches tall, which blooms

in mid-June; it has leafy and stiffly hairy stems, and bears 1-5 flower heads with relatively few white to pinkish ray flowers surrounding a yellow center of disc flowers. It was first collected by Dr. Bassett Maguire in 1940 in the dry, rocky, sandy bottom of Calf Canyon in the San Rafael Swell, Emery County, Utah. *Erigeron maguirei* was described by Dr. Arthur Cronquist in his monograph of the genus (Cronquist 1947). It was not seen again until 1980, when James Harris, a temporary employee of the Bureau of Land Management (BLM), engaged in floristic inventory, found a single plant in the bottom of Pine Canyon, a side canyon of Calf Canyon. This one plant, which was on State of Utah land, was looked for in 1981, 1982, and 1984, 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 of this taxon, all at the upper ends of branches of Pine Canyon on sandstone ledges or among boulders. These seven plants were 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). Only five plants were seen in 1984. The Maguire daisy is thus one of the rarest taxa in Utah and the nation. In April 1983, *Erigeron maguirei* var. *harrisonii* was described as a new variety. It is a rare related plant in Wayne County, Utah, outside the historical and current range of *E. maguirei* var. *maguirei* (Welsh 1983a, 1983b).

There are mining claims for uranium, and oil and gas leases in the area in which this species grows, as in much of this part of Utah. No commercial deposits are known in the area at present; however, annual assessment work on the claims must still be done, and energy exploration may occur. The canyon bottoms where the Maguire and Harris collections were made are grazed by cattle, which may have affected the Maguire daisy. There is also some recreational motorcycle use in the canyon bottoms. In addition, the five to seven plants are all that remain of a formerly larger population and may not be viable without some management.

Section 12 of the Endangered Species Act of 1973 (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. In the *Federal Register* of July 1, 1975 (40 FR 27823), the Service published a notice of its acceptance of this report as a petition within the context of section 4(c)(2) of the Endangered Species Act of 1973 (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. In the *Federal Register* of June 18, 1976 (41 FR 24523), the Service published a proposed rule to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of these taxa 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 *Federal Register* notice of July 1, 1975. *Erigeron maguirei* was included in the notice of July 1975 (40 FR 27880), and the proposal of June 1976 (41 FR 24531). General comments received in response to the 1976 proposal were summarized in a publication in the *Federal Register* of April 26, 1978 (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was provided for proposals already over two years old. In the *Federal Register* of December 10, 1979 (44 FR 70796), the Service published a notice of the withdrawal of the still applicable portions of the proposal of June 16, 1976, along with other proposals that had expired. The notice of July 1, 1975, was replaced by the Service's publication in the *Federal Register* of December 15, 1980 (45 FR 82480), of a new notice of review for plants, which included *Erigeron maguirei*. No comments on this taxon were received in response to the 1980 notice. In the *Federal Register* of February 15, 1983 (48 FR 6752), the Service published a notice of its prior finding that the petitioned action on this taxon may be warranted, in accordance

with section 4(b)(3)(A) of the Act, as amended in 1982.

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 *Federal Register* of January 20, 1984 (49 FR 2485). In the case of such a finding, the petition is recycled and another finding becomes due within 12 months. In the *Federal Register* of July 27, 1984 (49 FR 30211), the Service published a proposed rule to determine endangered status for *Erigeron maguirei* var. *maguirei*, and that document incorporated the required 12-month finding.

Summary of Comments and Recommendations

In the proposed rule of July 27, 1984 (49 FR 30211), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting general public comment, was published in the *Emery County Progress*, Castledale, Utah, on August 10, 1984. Three comments were received and are discussed below. No public hearing was requested or held.

Two comments, one from BLM and one from a private individual, supported the proposed listing. A third comment pointed out a typographical error in the proposed rule. BLM also noted the presence in portions of Pine Canyon of mining claims and oil and gas leases, but that no current or planned activities associated with these were known. In addition, no grazing is authorized by the BLM in one of the upper side canyons of Pine Canyon (which contains potential habitat but not the seven plants). The comment from the private individual was addressed to Senator Orrin Hatch of Utah, who requested information on the proposal for his constituent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Erigeron maguirei* var. *maguirei* (Maguire daisy) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the

Act (codified at 50 CFR Part 424) were followed. A species may be determined to be endangered or 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 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 have been extirpated at two of the three sites from which it is historically known. Only five to seven plants are now known to occur at the third site, which is on BLM land. 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 plants grow. Recreational motorcycle use of the canyon bottom also may threaten these plants.

It should be noted that the present rocky sites might be a marginal habitat that is not suitable for the taxon's survival in the long term. The few existing plants occur at the upper ends of canyons on sandstone ledges or among boulders in less accessible and thus naturally protected areas. This is different habitat from the canyon bottomland where the plants were seen in 1980 and first seen in 1940 ("dry rocky sandy canyon bottom"). Bottomland is more susceptible to impacts such as cattle grazing and off-road vehicle activity. Since the remaining plants are found only at less accessible sites, this upper canyon area may, in fact, be ecologically marginal habitat 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 soil somewhat deeper than that in which the other plants occur.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Not now known to be a problem, but the extremely low numbers of this taxon make it very vulnerable to any taking that might occur.

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 pressure. 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 have shown 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 and reduction to possession of specimens from areas under Federal jurisdiction.

E. Other natural or manmade factors affecting its continued existence. Because only five to 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 by any natural catastrophe. Its gene pool may be depleted because of the known loss of individuals since 1940.

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 make this rule final. Based on this evaluation, the preferred action is to list *Erigeron maguirei* var. *maguirei* as an endangered species. With only five to seven individuals known, endangered status seems an accurate assessment of the taxon's condition. A decision to list as threatened would not adequately reflect the threats to the species or the possibility of its extinction. It is not considered prudent to designate critical habitat for this species, because doing so would increase risk to it, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Maguire daisy at this time. BLM has been informed of this rule, is aware of the location of the Maguire daisy, has acknowledged the threats to the taxon, and is considering this information in its management and planning. Therefore, no further benefits would accrue to the daisy by critical habitat designation. Because of the very

low number of plants, the accessibility of the nearby canyon bottoms to off-road vehicles (i.e., motorcycles), and the potential for vandalism, it could be detrimental to the taxon to publish a critical habitat map and exact location description.

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 results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible 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 of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. With respect to *Erigeron maguirei* var. *maguirei*, BLM may be required to consult concerning its administration of mining or oil and gas exploration permits, and grazing leases, where the taxon has been found and may be affected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general

trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Erigeron maguirei* var. *maguirei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 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 anticipated that few trade permits will ever be issued, since this plant is not common in the wild or in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to *Erigeron maguirei* var. *vaguirei*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated these will be made final following public comment. This daisy is currently only known to occur on Federal (BLM) land. It is likely that few taking permits for it will ever be requested. 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, 6th Floor Broyhill, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as 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, 3pp.
 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. 3 pp.
 Welsh, S.L. 1983a. Utah flora: Compositae (Asteraceae). *Great Basin Naturalist* 43(2):179-357.
 Welsh, S.L. 1983b. A bouquet of daisies (*Erigeron*, Compositae). *Great Basin Naturalist* 43(2):365-368.

Authors

The primary author of this final rule is Mr. John Anderson, Botanist, of the Grand Junction address given above (303/241-0563 or FTS 322-0348). Mr. John L. England, Botanist, of the Salt Lake City address given above (801/524-4430 of FTS 588-4430), served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

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

§ 17.12 Endangered and threatened plants.

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster family:						
<i>Erigeron maguirei</i> var. <i>maguirei</i>	Maguire daisy	U.S.A. (UT)	E	199	NA	NA

Dated: August 22, 1985.

P. Daniel Smith,

*Acting Deputy Assistant Secretary for Fish
and Wildlife and Parks.*

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