

**FOR FURTHER INFORMATION CONTACT:**

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(202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04-12, adopted January 14, 2004, and released January 20, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Littleville, Channel 278A, and removing Russellville, Channel 249A.<sup>1</sup>

<sup>1</sup>In MM Docket No. 01-62, Station WKGL was ordered to specify operation on Channel 278A in lieu of Channel 249A at Russellville, Alabama. See *Ardmore, AL et al.*, 17 FCC Rcd 16332. Station WKGL was granted a license (BMLH-20030415ACF), which implemented this change.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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**BILLING CODE 6712-01-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List *Cymopterus deserticola* (Desert Cymopterus) as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list *Cymopterus deserticola* (desert cymopterus) as endangered under the Endangered Species Act of 1973, as amended. We find that the petition does present substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species, and will issue a 12-month finding to determine if the petitioned action is warranted. To help ensure the review is comprehensive, we are soliciting information and data regarding this species.

**DATES:** The finding announced in this document was made on January 29, 2004. To be considered in the 12-month finding for this petition, comments and information must be submitted to us by April 12, 2004.

**ADDRESSES:** Data, information, written comments and materials, or questions concerning this petition and finding must be submitted to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. The petition finding and supporting information are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, at the above ADDRESSES (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated under our internal candidate assessment process.

*Cymopterus deserticola* became a candidate for listing in 1975. In 1993, the Service elevated the status of *C. deserticola* from a "C2" candidate to a "C1" candidate. In 1995, *C. deserticola* was returned to the "C2" category, citing reduced threats due to the development of the West Mojave Plan (BLM 2003). In 1996, the Service discontinued the recognition of "C2" candidates and henceforth referred to former "C1" candidates as "candidates" (61 FR 7457).

On April 15, 2002, the Service received a petition, dated March 29, 2002, from Ilene Anderson of the California Native Plant Society and Daniel Patterson of the Center for Biological Diversity, requesting that the Service list *Cymopterus deserticola* (desert cymopterus) in the western Mojave Desert, California, as endangered pursuant to the Act, and to concurrently designate critical habitat. The petition requested endangered status because the petitioners assert very few *C. deserticola* remain in the western Mojave Desert, this species has suffered declines in recent years, and habitat destruction is ongoing and impending.

In response to the petitioners' requests to list *Cymopterus deserticola*, we sent a letter to the petitioners on June 12, 2002, explaining that we would not be able to address their petition until fiscal year 2003. The reason for this delay was that court orders and settlement agreements required nearly

all of our listing funding for fiscal year 2002. At the end of fiscal year 2003, we were able to initiate work on the petition.

### Biology

*Cymopterus deserticola* is a member of the carrot family (Apiaceae). *C. deserticola* varies from other members of the genus *Cymopterus* by having extremely dense, single-tiered umbels (flower stems radiating from a central point). Individual plants generally reach 6 inches (in) (15 centimeters (cm)) in height when in flower. The leaves are highly dissected (fernlike), grayish green and hairless, and are arranged in a basal rosette around the stem-root crown that is just below the soil surface.

*Cymopterus deserticola* is unusual in having herbaceous aboveground leaves and inflorescences (flowering structure) that die back at the end of the growing season, leaving only the perennial taproot to overwinter. The leaves and inflorescences may only be visible in years when climatic conditions, including sufficient rainfall, are present. In some years, individuals may produce leaves but not inflorescences. In years when flowering does occur, the inflorescences emerge between March and May. When climatic conditions are unfavorable, including drought, the plant may persist solely as a dormant taproot. Although many perennial desert species survive periods of drought-induced dormancy, the lifespan of the perennial taproot of *C. deserticola* is unknown.

In 1915, Thomas Brandege first described *Cymopterus deserticola* from material collected near Kramer Junction, San Bernardino County, California. The historic distribution of *C. deserticola* ranges from Apple Valley, San Bernardino County, northward approximately 55 miles (mi) (89 kilometers (km)) to the Cuddeback Lake basin in San Bernardino County, and westward approximately 45 mi (73 km) to the Rogers and Buckhorn Lake basins on Edwards Air Force Base (EAFB) in Kern and Los Angeles Counties (Mitchell *et al.* 1995; California Department of Fish and Game (CDFG) 2003).

The Apple Valley populations are known only from historic collections made in 1915, 1920, and 1941. Recent attempts to locate *Cymopterus deserticola* in areas of the historic Apple Valley collections have been unsuccessful, and it appears likely that these populations have been lost to urban development and off-highway vehicle (OHV) use (Moe 1988). The Apple Valley populations are also

disjunct by at least 28 mi (45 km) from the nearest known extant populations.

The extant range of the species includes the Rogers Dry Lake basin, the Harper Dry Lake basin, the Cuddeback Dry Lake basin, and the Superior Dry Lake basin. This extant range extends approximately 50 mi (80 km) from east to west and 35 mi (56 km) from north to south. However, the plant usually occurs in areas adjacent to these ephemeral (transitory) lakes.

Survey information is more complete for some areas than others. In addition, survey results are not always comparable because of the variation in how individuals tallied populations or colonies (concentrations of individuals) across the landscape. Moreover, surveys only count the individuals visible above ground; consequently, survey numbers represent only a subset of the total number of individuals that may be present at that population.

The greatest number of individuals are located within the Rogers Dry Lake basin on Edwards Air Force Base (EAFB), where approximately 14,093 plants were counted or estimated over 1,465 acres (ac) (593 hectares (ha)) throughout the base in 67 survey areas (Mitchell *et al.* 1995), including 8 previously documented populations from 1988 (Moe 1988; CDFG 2001) and 2 historic collections. Prior to extensive surveys conducted in 1995, *Cymopterus deserticola* had been reported from 29 populations on EAFB (Mitchell *et al.* 1995). The intensity of survey efforts for *C. deserticola* in 1995 and favorable weather contributed to the relocation of 19 of the previously known 29 populations, and the discovery of 57 new populations. Approximately 10,402 plants were counted in all the 19 populations in 1995, while fewer than 1,700 plants had previously been reported for these 19 populations. Within this watershed, there are 9 other populations outside of EAFB in the Peerless Valley where *C. deserticola* has been observed. Less than 200 plants have been cumulatively documented from these nine populations (Bureau of Land Management (BLM) 2001). In all, 76 *C. deserticola* populations were observed within this basin in 1995, with 14,362 plants counted.

In 2003, EAFB undertook efforts to develop an initial habitat model for *Cymopterus deserticola* and two other plant species of concern, *Calochortus striatus* (Alkali mariposa lily) and *Eriophyllum mohavense* (Barstow wooly sunflower). Six new populations of *C. deserticola* were found on base and just to the north of the base during field verification of the habitat model (Wood 2003). Therefore, *C. deserticola* has

occurred, or is known to occur, at 92 populations on EAFB.

The Harper Dry Lake basin contains 6 populations, which together support at a maximum 200 *Cymopterus deserticola* plants (BLM 2001). The Cuddeback Dry Lake basin supports four populations of *C. deserticola*. In 2001, more than 40 plants were observed at these populations. At the Superior Dry Lake basin in 2001, Silverman and Cione discovered a range extension to the east. Forty plants in a single population were counted (BLM 2001).

*Cymopterus deserticola* grows on loose sandy soils in Joshua tree woodland, saltbush scrub, and Mojavean desert scrub communities in the western Mojave Desert between 2,000 and 3,000 feet (610 and 915 meters) in elevation (Bagley 1998). The sandy soils that *C. deserticola* requires can be found in the following, alluvial fans and basins, stabilized sand fields, and occasionally sandy slopes of desert dry lake basins. This species typically grows in the cool, moist conditions of winter and early spring, and goes dormant as the warmer weather progresses in April and May (Bagley 1998).

### Conservation Status

The petitioners provided substantial amounts of information relating to threats to *Cymopterus deserticola*. Information on the status and threats to the species in relation to the five factors in section 4 of the Act are summarized below:

With respect to factor A, the petitioners assert that the Rogers Dry Lake basin, which contains the largest concentration of known extant species occurrences, is threatened by habitat alteration and destruction due to military activities on EAFB. One example is the cleanup of the groundwater contamination from the Air Force Research Laboratory Propulsion Directorate (EAFB 1998) that underlies one of the documented study sites for *Cymopterus deserticola* as stated in the 1995 Mitchell *et al.* report.

The petitioners claim that utility construction has also adversely affected this species and its habitat in the southern portion of the Harper Dry Lake basin and the northern portion of Rogers Dry Lake in the BLM designated utility corridor and adjacent sites (Bagley 1998). Types of projects in utility corridors include construction of transmission lines and pipelines. An example is the Kern River Pipeline expansion project that potentially threatens six populations on private lands west of Kramer Junction between Highway 58 and EAFB. The realignment

and widening of State Highway 58 also potentially poses a threat to the species and its habitat.

Other factors the petitioners claim are adversely affecting *Cymopterus deserticola* and its habitat include OHV activity, oil and gas development, and the BLM's Land Tenure Adjustment program. The BLM has assessed the habitat at the Superior Valley site as being in "poor condition" due to adverse affects from OHV recreation (BLM 1998). Oil and gas development may have increased the potential for destroying habitat for this species in the Cuddeback Dry Lake basin and Rogers Dry Lake. One population of *C. deserticola* occurs on BLM lands available for Land Tenure Adjustment, potentially removing another population from public management and making it available for private development.

With regard to factor B, the petitioners state no commercial or recreation overutilization for the species is known at this time, but that, because of its rarity, collection for scientific or educational purposes may be a threat to the species.

With respect to factor C, the petitioners assert that grazing poses another threat to this species. Although the effects of livestock grazing on *Cymopterus deserticola* is not documented in the literature, sheep grazing has been documented to have directly affected two populations. Although according to Bagley (1998), grazing is not permitted on EAFB, one of these two populations is located on the base. Individuals at this site on EAFB were entirely eliminated as a result of grazing by trespass sheep in 1994. On two other sites that occur on BLM lands in Harper Dry Lake outside of the grazing allotment, trespass of sheep has been chronic (BLM 1998). In addition to direct predation (eating the plants), the ecological processes of the habitat are altered by livestock trampling, which may disrupt water holding capacities of the soil, promote soil erosion from wind, and change the plant taxa composition found within the community to non-native weedy species that outcompete native species.

High levels of leaf predation on *Cymopterus deserticola* have been observed in two studies on EAFB in areas not grazed by livestock (Mitchell *et al.* 1995; Charleton 1993). Predation is likely due to a variety of herbivores such as black-tailed jackrabbits (*Lepus californicus*), brush rabbits (Family Leporidae), ground squirrels (Family Scuriidae), kangaroo rats (Family Heteromyidae), mice (Families Cricetidae and Muridae), desert tortoise

(*Gopherus agassizii*), caterpillars (Order Lepidoptera), and beetles (Order Coleoptera) (Bagley 1998). The petitioners claim no specific disease threats have been reported for *C. deserticola*.

In respect to factor D, the petitioners address the draft WMP (BLM 2003), which will function as a multi-species Habitat Conservation Plan for the desert tortoise (*Gopherus agassizii*) and other listed and sensitive species within the planning area. The petitioners claim that *Cymopterus deserticola* has been dropped from the planning process because the species cannot have a viable conservation strategy without military participation (BLM 2002). According to the draft Environmental Impact Report and Statement for the draft WMP (BLM 2003), *C. deserticola* is still a species targeted for conservation measures, and has not been dropped.

The draft WMP (BLM 2003) requires botanical surveys for projects proposed within the Fremont-Kramer and Superior-Cronese Desert Wildlife Management Areas (DWMAs) for those areas of windblown sand on the east side of larger playas, including Harper Dry Lake, Superior Dry Lake, and Cuddeback Dry Lake in San Bernardino County. If the plant is located, prescriptions call for avoiding all occurrences to the maximum extent practicable, and reporting the loss of plants. In Kern County, the draft WMP proposes the following measures: establishing the North Edwards Conservation Area, requiring botanical surveys, and adjusting the boundary over time to reflect survey results. The draft WMP has undergone numerous revisions over the last decade and is still in draft form and the implementation of conservation strategies for *Cymopterus deserticola* and its habitat remain a proposal.

The petitioners also state that the lack of any management or conservation strategies by EAFB and ongoing projects on EAFB is adversely affecting this species and leave the future survival of *C. deserticola* populations on EAFB uncertain. Petitioners assert that, since the core population of this species is located on EAFB, without assured conservation measures in place, the long-term survival of *C. deserticola* remains in question.

With regard to factor E, the petitioners claim that the "extremely limited distribution and relatively small numbers of individuals" of this species, make populations of *Cymopterus deserticola* vulnerable to extinction from stochastic events (*e.g.*, drought and disease). Species with few populations and individuals are vulnerable to the

threat of naturally occurring events, causing extinction through mechanisms operating either at the genetic level, the population level, and/or the landscape level. Isolation of small populations from one another can lead to loss of genetic variation due to genetic drift and increased inbreeding (Hamrick and Godt 1996). Genetic consequences of drift and loss of genetic variation include loss of adaptability to change and inbreeding, which is the mating of individuals likely to share some of their genes due to common ancestry. Inbreeding depression is thought to reduce fitness of individual plants; it may negatively affect components such as seed availability, germination success, and flower and fruit production (Falk 1992). At the landscape level, random natural events, such as storms or drought, could destroy a significant percentage of individuals or entire populations; a hot fire could destroy a seedbank as well. The restriction of colonies to small sites increases their risk of extinction from such naturally occurring events. The genetic characteristics of *Cymopterus deserticola* have not been investigated; therefore, the degree to which these characteristics contribute to the likelihood of *C. deserticola* being vulnerable to extinction for these reasons is unknown.

### Summary

The information provided by the petitioners and information in our files presents substantive information that *Cymopterus deserticola* may be threatened by habitat alteration and destruction and livestock grazing throughout its range, both on EAFB and BLM lands. The draft WMP may contain measures that contribute to the conservation of *C. deserticola*. However, the WMP only addresses a small portion of this species' range, which is outside of EAFB. More than 90 percent of the known populations occur on EAFB and conservation measures for the species were not included in the EAFB INRMP.

### Finding

We have reviewed the petition to list *Cymopterus deserticola* and the supporting documentation, information in our files, and other readily available information. We find that the petition did include substantial information indicating that the listing of *C. deserticola* may be warranted. With the publication of this notice, we are initiating a status review of *C. deserticola* to determine whether listing is warranted.

The petition also requests us to designate critical habitat for this species. If we determine in our 12-

month finding that listing *Cymopterus deserticola* is warranted, we will address the designation of critical habitat in the subsequent proposed listing rule or as funding allows.

#### Public Information Solicited

When we find that there is substantial information indicating that the petitioned action may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the *Cymopterus deserticola* throughout the species' range. We request any additional information, comments, and suggestions from the public, governmental agencies, the scientific community, industry, and any other interested parties concerning the status of this species throughout its range. We are seeking information regarding historic and current distribution, habitat, biology and

ecology, ongoing conservation measures for this species and its habitat, threats to the species and its habitat and information regarding the adequacy of existing regulatory mechanisms.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor (*see ADDRESSES* section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available

for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### References Cited

A complete list of all references cited herein is available on request from the Ventura Fish and Wildlife Office (*see ADDRESSES* section).

#### Author

The primary author of this document is Robert McMorran, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see ADDRESSES* section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 29, 2004.

#### Steve Williams,

*Director, Fish and Wildlife Service.*

[FR Doc. 04-2596 Filed 2-9-04; 8:45 am]

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