

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Abronia macrocarpa* (Large-fruited Sand-verbena)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined that a plant, *Abronia macrocarpa* (large-fruited sand-verbena), is an endangered species. The single known population of this plant occurs on active sand dunes on private land in Leon County, Texas. Because of its small population size and limited distribution, this species is vulnerable to the threats of residential development, recreation, and commercial use. The determination of endangered status for *Abronia macrocarpa* implements protection

provided by the Endangered Species Act of 1973 (Act), as amended.

EFFECTIVE DATE: October 28, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charles McDonald, Botanist, Endangered Species Office, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Abronia macrocarpa is an herbaceous perennial endemic to Leon County in eastern Texas. Plants are restricted to actively blowing sand dunes in the Post Oak Woods Forest and Grassland Mosaic vegetation type (McMahan *et al.* 1984). *Quercus stellata* (post oak) and *Ilex vomitoria* (yaupon) are dominants in the small wooded islands within the dunes and in the surrounding woodlands. *Abronia macrocarpa* is one of the many herbaceous species that temporarily dominate the bare sands

during spring. Some commonly associated species are *Gaillardia pulchella* (Indian blanket), *Coreopsis* sp. (tickseed), *Rhododon ciliatus*, *Stylisma* sp., and *Croton argyranthemus* (silver croton).

Showy pink-purple flower clusters make *Abronia macrocarpa* an attractive component of the spring wildflower display. Twenty to seventy-five flowers are arranged in each spherical nodding head that is golf ball size or larger. The plant's ascending or erect stems may reach 5 decimeters (20 inches) in height. Leaves are hairy, have sticky glands, and are arranged oppositely on the stems. The large scarious fruits of *Abronia macrocarpa* distinguish this species from related taxa.

The only known population of *Abronia macrocarpa* occurs on sand dunes that lie entirely within a residential resort community. The dunes cover about 30 acres, but the area occupied by *Abronia macrocarpa* is much less. In 1986, Service botanists estimated that the population contained 250 plants.

Abronia macrocarpa was first collected in 1968 by Dr. D.S. Correll and H.B. Correll at its only known locality.

Dr. L. Galloway formally named and described this species in 1972 in a monograph of the entire genus (Galloway 1972). Galloway was writing his monograph when the *Manual of the Vascular Plants of Texas* (Correll and Johnston 1970) was published, thus *Abronia macrocarpa* does not appear in the manual.

Federal action involving *Abronia macrocarpa* began when the species was included in category 1 of the December 15, 1980, notice (45 FR 82480) of plants under review for threatened or endangered classification. Category 1 comprises taxa for which the Service has substantial biological information to support proposing them as endangered or threatened. Further evaluation of *Abronia macrocarpa* indicated the need for more data, and the species was placed in category 2 (those species for which listing may be warranted but for which the Service does not presently have sufficient biological data to support proposing them as endangered or threatened) in a November 28, 1983, supplement (48 FR 53640) to the 1980 notice. A status report by Turner (1983) provided sufficient data to support returning *Abronia macrocarpa* to category 1 in the September 27, 1985, revision (50 FR 39526) of the 1980 notice and the 1983 supplement.

Species covered in the December 15, 1980, notice (45 FR 82480), including *Abronia macrocarpa*, are considered to be petitioned for listing. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within one year of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 12, 1982, be treated as having been newly submitted on that date. This was the case for *Abronia macrocarpa* because of its inclusion in the 1980 notice. In October 1983, 1984, 1985, and 1986 the Service found that the petition to list *Abronia macrocarpa* was warranted but precluded by other listing actions of higher priority. The June 16, 1987, proposal to designate *Abronia macrocarpa* as endangered constituted the next one-year finding for this species.

Summary of Comments and Recommendations

In the June 16, 1987, proposed rule (52 FR 22944) 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 public comment was published in the Bryan-College Station Eagle on July 1, 1987.

Five comments were received. Comments supporting the proposal were submitted by the Texas Natural Heritage Program, the Texas Parks and Wildlife Department, and Dr. Hugh Wilson, a botanist at Texas A&M University. Comments by the Texas State Department of Highways and Public Transportation and the management of the resort community where the species occurs, offered no new information and did not take a position on the proposal. Dr. Wilson commented that if designation of critical habitat would provide additional protection, then the dune area occupied by the plants should be so designated.

Response: Since the potential critical habitat area is on private land, the designation of critical habitat would be of no substantial benefit to the species. In addition, the precise locality information that must be supplied when critical habitat is designated could make protection and management of the site more difficult.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Abronia macrocarpa* 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 (50 CFR Part 424) promulgated to implement the listing provisions of the Act 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 *Abronia macrocarpa* Galloway (large-fruited sand-verbena) are as follows:

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

The historic and present known ranges of *Abronia macrocarpa* are the same; however, residential expansion and recreational activities associated with the surrounding resort community have destroyed habitat. Roads for a new residential area were recently built adjacent to the population. The open space of the sand dunes is an attractive area for horseback riding, bicycling, off-road vehicle (ORV) riding, and general play. These high-impact uses have produced wide paths where the sand is too disturbed to support vegetation.

An active oil well occurs on the sand dunes and construction of the well and the access road have destroyed habitat. Maintenance activities and oil spills could destroy additional plants and habitat. Maintenance of electric utility lines near the population could also contribute to site disturbance.

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

Presently, no commercial trade in *Abronia macrocarpa* exists, but horticultural interest may develop. *Abronia macrocarpa* could be developed as an ornamental, as has the similar species *Abronia ameliae*. Because of the easy accessibility of the site, the potential exists for uncontrolled collecting for horticultural research material or for commercial sale. Because the population occurs on private land, plants will not be protected, under the Endangered Species Act, from taking.

C. Disease or Predation

No threats are known.

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, *Abronia macrocarpa* is not protected by either Federal or State laws or regulations.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The limited distribution of this species makes it vulnerable to a variety of threats including disease, insect predation, or extreme weather conditions. Further reduction of its small population may result in a reduced gene pool that could threaten the species' reproductive capacity or genetic potential.

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 final rule. Based on this evaluation, the preferred action is to list *Abronia macrocarpa* as endangered without critical habitat. Endangered status seems appropriate because only one known population exists and it is subject to possible destruction by residential development, recreation, and commercial activity. The reasons for not designating critical habitat are discussed 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 this species at the time due to its low numbers and restriction to one population. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of specific location information associated with critical habitat designation would make the species more vulnerable to taking or vandalism. The location of this plant and the importance of its protection have been brought to the attention of appropriate agencies and other involved parties. Protection of the species' habitat will be addressed through the recovery process and through section 7 of that Act. Therefore, the determination of critical habitat would not be prudent, and would not result in any additional benefit to the species.

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 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 at the earliest opportunity. Actions that may benefit *Abronia macrocarpa* include fencing, and testing seed germination and growth for possible introduction of seedlings back into the home site. 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 being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *Abronia macrocarpa* is not known to occur on Federal lands and no Federal involvement with this species is currently known or expected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All 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 any endangered plant, transport it in interstate or foreign commerce in the course of the commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. 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. With respect to *Abronia macrocarpa*, it is anticipated that few trade permits would be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Permit Branch, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/343-4955).

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).

References Cited

Correll, D.S., and M.C. Johnston. 1970. Manual of the vascular plants of Texas. Texas Research Foundation, Renner, Texas. 1881 pp.
 Galloway, L.A. 1972. *Abronia macrocarpa* L.A. Galloway. Brittonia 24:148-149.
 Galloway, L.A. 1975. Systematics of the North American desert species of *Abronia* and *Tripterocalyx* (Nyctaginaceae. Brittonia 27:328-347.
 McMahan, C.A., R.G. Frye, L.K. Brown. 1984. The vegetation types of Texas including cropland. Texas Parks and Wildlife Department, Austin, Texas. 40 pp. + map.
 Turner, B.L. 1983. Status report on *Abronia macrocarpa*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 10 pp.

Author

The author of this final rule is Charles McDonald, Endangered Species Botanist, U.S. Fish And Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). Status information was provided by Dr. B.L. Turner, University of Texas at Austin, Texas.

List of Subjects in 50 CFR Part 17

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

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: 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.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§ 17.12 Endangered and threatened plants.

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Species Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
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Nyctaginaceae—Four-o'clock family:

Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scientific name						
<i>Abronia macrocarpa</i>	Large-fruited sand-verbena	U.S.A. (TX)	E	331	NA	NA

Dated: September 2, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and
Wildlife and Parks.

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